

# ARTICLE 80

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### TEXT OF ARTICLE 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

## INTRODUCTORY NOTE

1. As explained in the earlier Repertory studies of this Article, Article 80 has been invoked in the United Nations in connexion with the question of South West Africa, and Article 80 (1) was cited by the International Court of Justice in its advisory opinion of 11 July 1950 1/ to support the Court's opinion that the Mandate for South West Africa remained in force and that the Union of South Africa continued to have the international obligations it assumed thereunder, with supervisory functions to be exercised by the United Nations.

2. Like its predecessors, this study, which is confined to a discussion of the question of South West Africa, does not imply any limitations with respect to the Charter authority under which the General Assembly acted in its decisions concerning that question.

3. The General Assembly and its Committee on South West Africa continued to exercise supervisory functions with respect to the administration of the Territory, and, in this connexion, studies of legal action to ensure the fulfilment by the Government of the Union of South Africa of its obligations under the Mandate were undertaken during the period under review. In addition, the General Assembly initiated further efforts to reach an agreement with the Union Government concerning the status of the Territory.

4. To the extent that the above-mentioned studies of legal action relate to the submission of requests for advisory opinions to the International Court of Justice, a detailed treatment of the subject is included in this Supplement under Article 96, rather than under Article 80. With this exception, questions relating to Article 80 have been dealt with below under the headings established earlier in the Repertory. There is, however, no material to report under heading II A 3, "The question of the voting procedure in the General Assembly on questions relating to reports and petitions concerning South West Africa".

## I. GENERAL SURVEY

5. The regular supervisory functions of the General Assembly and the Committee on South West Africa continued to be carried out under special rules of procedure 2/ conforming as far as possible to those of the Council of the League of Nations and its Permanent Mandates Commission. The Committee continued to apply its alternate rules of procedure 3/ with respect to reports in order to enable it to discharge its functions under General Assembly resolution 749 A (VIII) without the co-operation of the Union of South Africa.

6. The Committee consequently continued to base its annual examination of conditions in the Territory primarily on information and documentation submitted to it by the Secretary-General of the United Nations, 4/ supplemented by Press reports and petitions relating to South West Africa. In its annual reports 5/ to the General Assembly, the Committee continued to submit its observations and recommendations on various aspects

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1/ International status of South West Africa, I C J, Reports 1950, p. 128.

2/ G A resolution 844 (IX).

3/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex II, rules XXII to XXV, replacing rules I to V.

4/ A/AC.73/L.10, A/AC.73/L.12 and A/AC.73/L.13 (mimeographed).

5/ G A (XII), Suppl. No. 12 (A/3626 and Corr.1), annex I; G A (XIII), Suppl. No. 12 (A/3906 and Add.1, part III); and G A (XIV), Suppl. No. 12 (A/4191), part II.

of political, economic, social and educational conditions, and incorporated in each report a separate chapter giving the Committee's concluding remarks in regard to the administration.

7. By resolutions 1054 (XI), 1140 (XII) and 1245 (XIII), recording its approval of these reports, the General Assembly explicitly or implicitly reaffirmed the position that the Union Government was under a continuing obligation to administer South West Africa in accordance with the Mandate and to submit reports on its administration of the Territory to the United Nations. By resolutions 1060 (XI) and 1142 B (XII), the General Assembly requested the Committee on South West Africa to undertake studies of legal action to ensure the fulfilment of the obligations assumed by the Union Government under the Mandate.

8. The Union of South Africa, on the other hand, reasserted its position during the period under review to the effect that the Mandate had lapsed on the dissolution of the League of Nations and that it no longer had international obligations in regard to South West Africa.

9. In examining petitions concerning South West Africa, the Committee continued to apply its alternate rules of procedure, suspending one of these rules temporarily in relation to one petitioner, as noted below, in section A 2 of the Analytical Summary of Practice. During the period under review, both the General Assembly and the Committee on South West Africa reaffirmed the right of petition. Article 80 (1) was again cited in this connexion by the Committee, which also reaffirmed the position that the Union of South Africa remained under obligation to transmit petitions from inhabitants of South West Africa to the United Nations.

10. In addition, by resolution 1047 (XI), the General Assembly accepted and endorsed the advisory opinion of the International Court of Justice of 1 June 1956 <sup>6/</sup> concerning the admissibility of hearings of petitioners by the Committee on South West Africa and authorized the Committee to grant oral hearings to petitioners. Section A 2 of the Analytical Summary of Practice in this Supplement deals in detail with questions which, during the period under review, arose in the General Assembly and in Committee meetings, with respect to oral hearings, including a reaffirmation by the Union Government of its position on this subject.

11. Questions relating to the obligation of the Union of South Africa to accept the compulsory jurisdiction of the International Court of Justice arose during this period in connexion with the legal studies undertaken by the Committee on South West Africa pursuant to General Assembly resolution 1060 (XI). Interpretations by members of the Committee concerning the categories of States which were entitled to invoke the relevant provision of the Mandate (article 7) in bringing a case before the Court also appear to constitute an interpretation of the "rights whatsoever of any states" and the "terms of existing international instruments to which Members of the United Nations may respectively be parties", referred to in Article 80 (1).

12. By resolution 1142 A (XII), the General Assembly, after preliminary consideration of the Committee's special report on legal action, drew the attention of Member States to the failure of the Union Government to submit annual reports, and to the legal action provided for in article 7 of the Mandate, read with Article 37 of the Statute of the International Court of Justice.

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6/ I C J Reports 1956, p. 23.

13. In its report 7/ to the eleventh session of the General Assembly, the Committee indicated that its attempts to renew negotiations with the Union of South Africa pursuant to resolution 749 A (VIII) had been unsuccessful. After examining the Committee's report, the General Assembly, by resolution 1061 (XI), considering that the continuing absence of an agreement between the United Nations and the Union Government required that the Committee should remain in existence for the purposes set forth in the resolution establishing it, increased the composition of the Committee from seven to nine members, one third of the membership to be renewed annually.

14. Further attempts were made by the General Assembly, in resolution 1059 (XI), to reach a solution to the question by diplomatic means, through the intercession of the Secretary-General, and by resolutions 1143 (XII) and 1243 (XIII), to seek, through negotiations between a Good Offices Committee on South West Africa and the Union Government, a basis for an agreement which would continue to accord an international status to the Territory.

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. The responsibilities and functions of the United Nations in relation to the administration of South West Africa under its present international status

#### *1. The question of the obligation of the Union of South Africa to administer the Territory of South West Africa in accordance with the League of Nations Mandate and to submit reports on its administration of the Territory to the United Nations*

15. In accordance with resolution 749 A (VIII), the Committee on South West Africa presented three further annual reports to the General Assembly during the period under review, each of which included the Committee's report and observations 8/ on conditions in the Territory.

16. The General Assembly, by resolution 1054 (XI), approved an earlier annual report 9/ submitted by the Committee on South West Africa concerning conditions in the Territory and noted with concern that for the third successive year the Committee had been unable to escape the conclusion that conditions in the Territory were for the most part, and particularly for the "Native" majority, still far from meeting in a reasonable way the standards implicit in the purposes of the Mandates system. The General Assembly approved and endorsed, without prejudice to the solution of the broader issues raised by the Committee concerning the situation in the Territory, all the Committee's conclusions and recommendations as to the action which should be taken by the Union Government as the Mandatory Power. It drew the attention of the Government, in particular, to certain of the recommendations and invited it to submit information to the United Nations concerning its consideration of the Committee's conclusions and recommendations, and the action it had taken in each case to ensure the "fulfilment of its obligations and responsibilities under the Mandate".

7/ G A (XI), Suppl. No. 12 (A/3151), paras. 1 and 7-9.

8/ G A (XII), Suppl. No. 12 (A/3626), annex I; G A (XIII), Suppl. No. 12 (A/3906 and Add.1), part III; G A (XIV), Suppl. No. 12 (A/4191), part II.

9/ G A (XI), Suppl. No. 12 (A/3151 and Corr.1), annex II.

17. In addition, by resolution 1060 (XI), the General Assembly requested the Committee to study what legal action was open to organs of the United Nations or to Members of the United Nations or the former League of Nations to ensure that the Union of South Africa fulfilled the obligations assumed by it under the Mandate, pending the placing of South West Africa under the International Trusteeship System. The Committee was further requested to submit a special report on this question to the General Assembly at its twelfth session.

18. The special report 10/ submitted by the Committee on South West Africa dealt mainly with the institution of judicial proceedings by means of requests for advisory opinions from the International Court of Justice. In this connexion, the Committee noted that an advisory opinion, while not binding per se on any Member of the United Nations, might be a factor in influencing a State to fulfil its obligations as defined in that opinion. 11/ The report referred to the possibility that the General Assembly might recommend to Members of the United Nations that they should adopt measures which, in its opinion, would increase the probability that a State would fulfil its obligations; the report also mentioned the possible imposition of legal sanctions. With respect to the legal action open to States, the Committee examined the question of instituting contentious proceedings before the International Court of Justice. This question, including subsequent decisions of the General Assembly relating thereto, is dealt with in section II A 4, below.

19. During consideration of the question of South West Africa by the Fourth Committee during the twelfth session of the General Assembly, several members expressed 12/ the view that the United Nations had an obligation to defend the interests of the people of South West Africa, because the Territory remained under international Mandate.

20. At that session, Liberia submitted a draft resolution 13/ containing nine operative paragraphs, by which the General Assembly would refer in some detail to conditions in the Territory and (a) would note with concern that conditions and the trend of the administration as described by the Committee on South West Africa represented a situation contrary to the Mandate System, the Charter of the United Nations, the Universal Declaration of Human Rights, the advisory opinions of the International Court of Justice and the resolutions of the General Assembly; (b) would reaffirm that the Union Government continued to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa; and (c) would approve and endorse the conclusions and recommendations of the Committee on South West Africa and would call upon the Union Government to give them its urgent attention.

21. After the introduction of another draft resolution, 14/ which would establish a Good Offices Committee with a view to reaching a basis for agreement with the Union Government concerning the status of the Territory, Liberia substantially revised its resolution on conditions in the Territory, to include two operative paragraphs which

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10/ G A (XII), Suppl. No. 12A (A/3625).

11/ For a detailed treatment of this and further studies by the Committee on South West Africa concerning the submission of advisory opinions to the International Court of Justice, and of the relevant decisions of the General Assembly, see this Supplement under Article 96.

12/ G A (XII), 4th Com., 657th mtg.: Ghana, para. 6; 658th mtg.: Guatemala, para. 1; 660th mtg.: Morocco, para. 23; 662nd mtg.: Syria, para. 17.

13/ G A (XII), Annexes, a.i. 38, p. 4, A/3701, para. 17 (A/C.4/L.487/Rev.1).

14/ Ibid., para. 28 (A/C.4/L.492).

would express appreciation of the work of the Committee on South West Africa and would approve the Committee's report on conditions.

22. The draft resolution, as revised, was approved 15/ by the Fourth Committee, and subsequently by the General Assembly as resolution 1140 (XII). A similar resolution 16/ was adopted by the General Assembly at its thirteenth session.

23. In each of its annual reports to the General Assembly, the Committee on South West Africa noted 17/ that the Union of South Africa had not submitted an annual report on its administration of South West Africa or otherwise co-operated in the work of the Committee. By a letter of 15 June 1959, 18/ the Union Government, replying to an invitation from the Committee to submit an annual report, informed the Committee that its attitude concerning the submission of such reports remained unchanged.

24. Earlier, in 1958, the Government of the Union of South Africa reasserted its position more fully before the Good Offices Committee. 19/ The Union Government recalled that it had consistently held that the Mandate had lapsed with the demise of the League of Nations; while the Union Government had undertaken to continue to administer the Territory in the spirit of the sacred trust under articles 2 to 5 of the Mandate, it did not recognize any international commitment as a result of the demise of the League; the supervisory functions of the League had not passed to the United Nations; and the Union Government recognized no other kind of obligation to accept supervisory authority on the part of the United Nations in regard to the administration of the Territory. The Union Government further explained, among other considerations upon which it based its position, that the relationship which had developed under the Mandates System between the Union Government and the Territory would, in its view, make the Government's acceptance of United Nations authority impracticable; the United Nations was a totally different body from the League in its composition, functions and powers, and in its approach to questions such as that of South West Africa; and the unanimity rule had afforded the Union Government under the League a protection which it would no longer have under the United Nations.

25. According to a statement 20/ by the Minister of External Affairs of the Union Government, reported by the Committee on South West Africa, the Union Government, while not recognizing the supervisory authority of the United Nations over the Territory of South West Africa, had never invoked Article 2 (7) of the Charter in dealing with the question.

26. In this connexion, it may further be noted that the Union Government, by a letter dated 30 November 1956 21/ to the Chairman of the Fourth Committee, stated that "although the South African Government strongly adheres to its view that it is in no way accountable to the United Nations in respect of its administration of South West Africa", its non-attendance during discussions of the Committee relating to that Territory should in no way be construed as implying discourtesy to the Chairman and members of the Committee. The letter indicated that the absence of the delegation of

15/ Ibid., para. 20.

16/ G A resolution 1245 (XIII).

17/ G A (XII), Suppl. No. 12 (A/3626), para. 15 and annex I, para. 156; G A (XIII), Suppl. No. 12 (A/3906), paras. 11 and 168; G A (XIV), Suppl. No. 12 (A/4191), para. 28.

18/ G A (XIV), Suppl. No. 12 (A/4191), para. 29.

19/ G A (XIII), Annexes, vol. I, a.i. 39, A/3900, paras. 39 and 40.

20/ G A (XIV), Suppl. No. 12 (A/4191), para. 40.

21/ G A (XI), Annexes, a.i. 37, A/C.4/338.

the Union Government from further meetings of the Fourth Committee also involved matters other than South West Africa.

27. The Union Government decided to take part again in all the activities of the United Nations, including discussions in the Fourth Committee concerning South West Africa, beginning with the thirteenth session of the General Assembly. During that session, its representative stated 22/ in the Fourth Committee that it had been prompted in this respect by the spirit of conciliation which was shown by the Fourth Committee at the twelfth session of the General Assembly, and by the Good Offices Committee during its negotiations with the Union Government in 1958. Although the Union Government continued to stand by the attitude it had taken during the previous twelve years, and accordingly did not recognize the legality of the Committee on South West Africa, the representative stated that it had decided to participate, without prejudice to its juridical position, in the discussion of the report of that Committee during the thirteenth session of the General Assembly. The Union Government representative added, however, that in view of the Fourth Committee's decision to grant a hearing to the Reverend Michael Scott, specifically on the report of the Good Offices Committee, and the Union Government's consequent decision not to participate further in consideration of the report of the Good Offices Committee, his Government would not carry out its intention of being present at the discussion of the report of the Committee on South West Africa. Accordingly, the Union of South Africa withdrew from further participation in consideration of the question of South West Africa during the thirteenth session of the General Assembly.

## *2. The question of the right of petition by the people of South West Africa*

28. During the period under review, the Committee on South West Africa included in its annual reports 23/ to the General Assembly its conclusions and recommendations with respect to the petitions and communications it had examined relating to South West Africa. The General Assembly, at its eleventh, twelfth and thirteenth sessions, adopted without amendment five resolutions 24/ on petitions and related communications recommended to it by the Committee. Three additional draft resolutions 25/ with respect to petitions were recommended by the Committee for subsequent adoption by the General Assembly at its fourteenth session.

29. According to the reports 26/ of the Committee on South West Africa, there was no change, during the period under review, in the attitude of the Union Government with respect to petitions, and the Committee accordingly continued to apply the alternate procedure of its rules of procedure 27/ in the examination of petitions.

30. In one instance, and in relation to one petitioner, Mr. Jacobus Beukes, the Committee decided 28/ on 18 July 1957 to suspend alternate rule XXVI (a), which requires petitioners from within South West Africa to re-submit their petitions through the Union Government if they have not already done so. The petitioner in question had

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22/ G A (XIII), 4th Com., 748th mtg., paras. 6 and 7.

23/ G A (XII), Suppl. No. 12 (A/3626), paras. 16-35; G A (XIII), Suppl. No. 12 (A/3906), paras. 12-30; G A (XIV), Suppl. No. 12 (A/4191), paras. 11-27.

24/ G A resolutions 1057 (XI), 1058 (XI), 1138 (XII), 1139 (XII) and 1244 (XIII).

25/ G A (XIV), Suppl. No. 12 (A/4191), annexes II, III and IV.

26/ G A (XII), Suppl. No. 12 (A/3626), para. 16; G A (XIII), Suppl. No. 12 (A/3906), para. 12; G A (XIV), Suppl. No. 12 (A/4191), para. 17.

27/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex II, rules XXVI and XXVII, replacing rules VII and XII.

28/ G A (XII), Suppl. No. 12 (A/3626), para. 21.

been informed 29/ by his District Magistrate that he would be fined if he addressed a further letter to the Territorial Administrator; the Committee considered that this had

"... serious implications as to the right of petition, a right which, in the opinion of the International Court of Justice, is maintained by Article 80, paragraph 1, of the Charter." 30/

31. The Committee recommended that the Union Government should take steps:

"to ensure that the right of petition is maintained throughout the Territory, bearing in mind its obligation as the Mandatory Power to transmit to the United Nations petitions from sources within the Territory, in accordance with the advisory opinion of 11 July 1950 of the International Court of Justice accepted by the General Assembly." 31/

32. On 22 January 1959, the Committee decided 32/ to resume the application of rule XXVI (a) to petitions received from Mr. Jacobus Beukes, since the latter had informed the Committee that a new Magistrate had been appointed, and the petitioner had subsequently sent further letters to the Administrator.

33. In its report to the General Assembly at its fourteenth session, in 1959, the Committee on South West Africa also drew the attention of the General Assembly to a petition from Chief Hosea Kutako concerning this procedure. Enclosed with the petition was a copy of a letter from a Union Government official returning to Chief Kutako a petition which he had resubmitted through the Government in accordance with the Committee's rules of procedure. As the reason for this act, the Government official stated that "the Union of South Africa does not recognize the authority of the United Nations on any matter concerning South West Africa". 33/ The Committee recorded its opinion in this connexion as follows:

"... the Union Government, by refusing to transmit the petition, was acting contrary to the obligations it had assumed under Article 2, paragraphs 2 and 5, of the Charter. The Committee accordingly cites this as one example of the manner in which the Government of the Union of South Africa is failing to discharge its duties as a Member State." 34/

34. The right of petition was specifically reaffirmed by the General Assembly in resolution 1057 (XI), originally proposed 35/ by the Committee on South West Africa on a petition and communications from Mr. Jacobus Beukes. In this resolution, the General Assembly, after noting that the petitioner sought the cancellation of local "citizenship" rights of certain "immigrant" inhabitants of the Rehoboth Community in the Territory, on the ground that they had improperly submitted to the United Nations a petition expressing views contrary to those held by the "original" inhabitants of the Community, decided:

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29/ Ibid., para. 20.

30/ Ibid., para. 22.

31/ Ibid., para. 23.

32/ G A (XIV), Suppl. No. 12 (A/4191), para. 17.

33/ Ibid., para. 18 and annex VIII.

34/ G A (XIV), Suppl. No. 12 (A/4191), para. 19.

35/ G A (XI), Suppl. No. 12 (A/3151), annex VI (c).



"to inform the petitioner that all inhabitants of the Mandated Territory, including the so-called immigrant members of the Rehoboth Community, have the right to submit petitions to the United Nations."

35. The question of the right of petition also arose in connexion with allegations made by petitioners concerning the right of petition and the treatment of petitioners.

36. In resolution 1058 (XI), concerning a petition from the Ukuanyama Tribal Congress, Ovamboland, the General Assembly decided to inform the petitioners that it had insufficient information on which to take action with respect to their allegations that another petitioner was ordered removed from Ovamboland while he was petitioning on their behalf, and that the headmen and sub-headmen who supported him were to be deposed.

37. In its report to the General Assembly at the thirteenth session, the Committee on South West Africa referred 36/ to other petitions containing allegations relating to the right of petition. After noting that it had insufficient information to enable it to determine whether or not these allegations were well founded, the Committee expressed the hope:

"that the Union Government will see to it that the right of petition is guaranteed to the inhabitants, and that any misapprehensions about the matter will be dispelled."

38. As previously noted in the Repertory, 37/ the Permanent Mandates Commission had no provision in its rules for oral presentations of petitions concerning mandated territories, and the General Assembly sought an advisory opinion of the International Court of Justice concerning the admissibility of hearings of petitioners by the Committee on South West Africa.

39. On 1 June 1956, the Court gave its advisory opinion as follows:

"... the grant of oral hearings to petitioners by the Committee on South West Africa would be consistent with the Advisory Opinion of the Court of 11 July 1950." 38/

40. The Court had construed 39/ the question as asking whether it was legally open to the General Assembly to authorize the Committee on South West Africa to grant oral hearings to petitioners, whom it understood to mean persons who had submitted written petitions to the Committee in conformity with the latter's rules of procedure. 40/ Moreover, immediately before recording its opinion as quoted above, the Court held that:

"... it would not be inconsistent with its Opinion of 11 July 1950 for the General Assembly to authorize a procedure for the grant of oral hearings by the Committee on South West Africa to petitioners who had already submitted written petitions: provided that the General Assembly was satisfied that such a course was necessary

36/ G A (XIII), Suppl. No. 12 (A/3906), paras. 18 and 19.

37/ Supplement No. 1, vol. II, under Article 80, paras. 33-39.

38/ I C J, Reports 1956, p. 32.

39/ Ibid., p. 26.

40/ Ibid., p. 25.

for the maintenance of effective international supervision of the administration of the Mandated Territory." 41/

41. The Fourth Committee considered the Court's advisory opinion of 1 June 1956 during the eleventh session of the General Assembly. The discussion 42/ centred on a draft resolution 43/ submitted by Liberia, by which, as originally introduced, the General Assembly would accept and endorse the advisory opinion. This, in the view of a number of representatives, would, by implication, authorize the Committee on South West Africa to grant hearings. Others maintained that the Committee could grant hearings only if specifically authorized to do so by the General Assembly, while some representatives argued that the Committee should take into account the prerequisites laid down in the advisory opinion, in particular, to limit the granting of hearings to persons who had submitted written petitions. A few representatives thought that the Committee should not be authorized to grant hearings to petitioners, since this would not further the interests of the inhabitants of the Territory.

42. During the discussion in the Fourth Committee, the representative of Liberia introduced a revised draft resolution, 44/ that included a paragraph which would authorize the Committee on South West Africa to grant hearings to petitioners. An amendment 45/ proposed by the representative of Sweden, which would require the Committee to take into account the prerequisites laid down in the advisory opinion of the Court, was rejected by 39 votes to 11, with 11 abstentions. The Fourth Committee then adopted 46/ the revised draft resolution submitted by Liberia, by 51 votes to 1, with 10 abstentions.

43. Statements 47/ subsequently made by representatives in explanation of their votes indicated that some interpreted the resolution that was adopted as enabling the Committee to grant hearings to petitioners who had submitted written petitions, while others considered, in view of the rejection of the amendment submitted by Sweden, that no such restriction was implied. The resolution 48/ was adopted without amendment by the General Assembly.

44. During the eleventh session of the General Assembly, the Fourth Committee itself granted 49/ hearings on the question of South West Africa to two petitioners, the Reverend Michael Scott and Mr. Mburumba Kerina (Getzen), after rejecting a proposal that it should take note of Mr. Kerina's request for a hearing and refer it to the Committee on South West Africa. The General Assembly adopted a resolution 50/ recommended by the Fourth Committee, taking note of the statements of the petitioners on behalf of the African inhabitants of the Territory and transmitting these statements to the Committee on South West Africa for its study and consideration.

45. In its report to the General Assembly at the twelfth session, the Committee on South West Africa drew attention 51/ to two communications received in 1957 with

41/ Ibid., p. 32.

42/ G A (XI), 4th Com., 568th and 569th mtgs.

43/ G A (XI), Annexes, vol. I, a.i. 38 (A/C.4/L.438).

44/ G A (XI), Annexes, vol. I, a.i. 38, A/3450, paras. 3 and 6 (A/C.4/L.438/Rev.1).

45/ Ibid., A/3450, para. 4 (A/C.4/L.440).

46/ G A (XI), 4th Com., 569th mtg., para. 60.

47/ Ibid., paras. 61-74.

48/ G A resolution 1047 (XI).

49/ G A (XI), Annexes, vol. I, a.i. 37, p. 4, A/3541, para. 3.

50/ G A resolution 1056 (XI).

51/ G A (XII), Suppl. No. 12 (A/3626), paras. 26-28.

respect to oral hearings. The first communication was a petition from Mr. Wilhelm Heyn and Dr. Joachim Seegert, who stated that they were prepared to appear before a United Nations organ to prove their own statements in rebuttal of the statements made by the Reverend Michael Scott and Mr. Mburumba Kerina (Getzen) during the eleventh session of the General Assembly. In the second communication, Chief Hosea Kutako called attention to the fact that the Union Government had until that time refused to grant passports to enable representatives of the people of the Territory to appear before the United Nations and asked that the United Nations explore means of enabling petitioners from South West Africa to come to New York as soon as possible.

46. In connexion with these communications, received from sources within South West Africa, the Committee referred 52/ to the resolution authorizing it to grant hearings to petitioners and expressed the opinion that any refusal by the Mandatory Power to grant travel facilities for this purpose would be contrary to the rights of the petitioners and the intention of the General Assembly. The Committee also emphasized in this connexion:

"... the special importance, in the absence of co-operation by the Mandatory Power in such matters as the submission of annual reports, of the full exercise of the right of petition in respect of South West Africa..."

47. The Committee on South West Africa further recommended 53/ that the General Assembly should urge the Mandatory Power to grant petitioners travel documents to enable them to appear before the proper organs of the United Nations for hearings, when granted by such organs, and to return thereafter to their places of residence.

48. At the twelfth session of the General Assembly, the Fourth Committee granted hearings to the Reverend Michael Scott and Mr. Mburumba Kerina (Getzen), who accordingly addressed 54/ the Committee. The Fourth Committee also decided 55/ that Mr. Wilhelm Heyn and Dr. Joachim Seegert, referred to in the report of the Committee on South West Africa, should be informed that the Fourth Committee had expressed its willingness to grant them a hearing should they so wish. It took a similar decision 56/ in regard to Mr. Jariretundu Kozonguizi, whose request for a hearing had been orally transmitted to the Fourth Committee by the Reverend Michael Scott. The three additional petitioners did not appear before the Fourth Committee, however. 57/

49. Of the three, Mr. Jariretundu Kozonguizi, a South West African student in the Union of South Africa, confirmed his request for a hearing and indicated his intention of appearing before the Fourth Committee. He later informed 58/ the Committee that his application for a passport had been refused, and his letter to that effect was referred 59/ to the Committee on South West Africa by decision of the Fourth Committee.

50. In examining the situation, the Committee on South West Africa 60/ recalled the refusal of the Union Government to issue passports to South West Africans granted

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52/ G A (XII), Suppl. No. 12 (A/3626), para. 29.

53/ Ibid.

54/ G A (XII), 4th Com., 653rd mtg., paras. 1-37.

55/ Ibid., para. 55.

56/ Ibid., 654th mtg., paras. 1 and 2.

57/ G A (XII), Annexes, a.i. 38, p. 4, A/3701, para. 7.

58/ G A (XII), 4th Com., 736th mtg., para. 8.

59/ G A (XII), 4th Com., 736th mtg., para. 9.

60/ G A (XIII), Suppl. No. 12 (A/3906), paras. 21-24.

hearings by the Fourth Committee in 1951, on the ground that the hearings "would have been unconstitutional and in violation of the Charter". In its report to the General Assembly at the thirteenth session, the Committee on South West Africa recorded its belief that any legal doubts in the matter of oral hearings should have been removed by the advisory opinion of the International Court of Justice of 1 June 1956. It also reviewed, on the basis of a Press report, the conditions under which a "Native" might secure a passport from the Union Government, concluding therefrom that the Government appeared unwilling to issue a passport to an inhabitant of South West Africa who had been granted a hearing by the United Nations. The Committee again emphasized the special importance - in the absence of co-operation by the Mandatory Power in supplying information about conditions in the Territory - which should be attached to the full exercise of the right of petition and reiterated its recommendation that the General Assembly should urge the Mandatory Power to grant travel documents to petitioners to enable them to appear before the United Nations when granted hearings.

51. The report of the Committee on South West Africa also indicated that the Committee itself had granted a request for an oral hearing for the first time in 1958, by a decision taken at its 92nd meeting, to the Reverend Michael Scott on the basis of a petition dated 22 July 1958. With this petition, 61/ Mr. Scott submitted a statement from those he represented in South West Africa and informed the Committee that they had asked that their statement should be treated as a written petition and should form the basis of a more comprehensive oral petition on their behalf by the Reverend Michael Scott. Mr. Scott addressed the Committee at its 94th meeting.

52. During its sixth session, in 1959, the Committee on South West Africa granted 62/ a request for an oral hearing, received from Mr. Jariretundu Kozonguizi, who stated that he was in Accra on his way to New York. Mr. Kozonguizi had previously submitted a written petition, dated 5 August 1954, on which the Committee had recommended a draft resolution 63/ adopted in modified form as resolution 939 (X) by the General Assembly. His request for a hearing was not accompanied by a further written petition. Mr. Kozonguizi addressed the Committee at its 102nd meeting on 1 May 1959. The Committee decided 64/ to grant him a further hearing at a later stage of its work, but the petitioner was unable to appear before it.

53. At the same session, the Committee received a request for a hearing in the form of an unsigned radiogram, the author of which asked permission to appear before the Committee to defend his petition regarding the withdrawal of passports by the Union Government. On the basis of this radiogram, and other information available to it, the Committee granted 65/ a hearing to Mr. Hans Beukes, a South West African student who had been granted a three-year scholarship to the University of Oslo and whose passport had been withdrawn by the Union Government. His written petition 66/ was subsequently received and examined by the Committee. The petitioner did not appear before the Committee during its sixth session.

54. The position of the Union Government on the question of oral hearings was reasserted in the Fourth Committee at the thirteenth session of the General Assembly, in connexion with the granting of hearings to the Reverend Michael Scott and

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61/ Ibid., annex VII.

62/ G A (XIV), Suppl. No. 12 (A/4191), paras. 13 and 14, and annex V, item 1.

63/ G A (IX), Annexes, a.i. 34, A/2666/Add.1, annex III and paras. 15 and 16.

64/ G A (XIV), Suppl. No. 12 (A/4191), para. 14.

65/ Ibid., paras. 13, 15 and annex VI.

66/ Ibid., annex XXXI.

and Mr. Mourumba Kerina (Getzen) on the report of the Good Offices Committee and the report of the Committee on South West Africa.

55. The representative of the Union Government maintained 67/ that 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 to grant oral hearings unilaterally, without the consent of the State concerned. He observed that the advisory opinion of the International Court of Justice of 1 June 1956 - which in any case his Government did not accept - was not relevant, since the Fourth Committee was scheduled to discuss the report of the Good Offices Committee, which did not deal with matters on which the petitioners presumably wanted to give evidence. He also pointed out that the Permanent Mandates Commission of the League of Nations had not been authorized to grant oral hearings to petitioners. Apart from the juridical position, the representative of the Union Government observed that granting hearings would be improper procedurally and unwise politically, having regard in particular to the identity of the two petitioners. Stating that the Union Government had consistently objected to the granting of hearings and felt strongly about the matter, the representative suggested that a decision by the Committee to grant the hearings might jeopardize the work of the Good Offices Committee and would create a serious situation.

56. In favour of granting the hearings, it was argued 68/ that the legal right of the Fourth Committee to grant hearings was beyond question, and that representatives of the people of the Territory should be heard on a matter of such importance as the possible partitioning of the Territory, concerning which the Good Offices Committee had made a recommendation to the General Assembly.

57. On 30 September 1958, by a roll-call vote of 45 to 19, with 9 abstentions, the Fourth Committee decided 69/ to hear both petitioners in connexion with the report of the Good Offices Committee; and by a roll-call vote of 60 to 5, with 9 abstentions, to hear them on the report of the Committee on South West Africa.

58. At the subsequent meeting of the Fourth Committee, on 6 October 1958, the representative of the Union Government informed 70/ the Committee that the delegation of the Union of South Africa, for the reasons summarized in paragraph 27 above, was withdrawing from further participation in the consideration of the question of South West Africa.

*\*\*3. The question of the voting procedure in the General Assembly on questions relating to reports and petitions concerning South West Africa*

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67/ G A (XIII), 4th Com., 745th mtg., paras. 32-37.

68/ G A (XIII), 4th Com., 745th-747th mtgs.

69/ *Ibid.*, 747th mtg., paras. 25 and 26.

70/ G A (XIII), 4th Com., 748th mtg., paras. 6 and 7.

4. *The question of the obligation of the Union of South Africa  
to accept the compulsory jurisdiction of the International  
Court of Justice*

59. As reported in the Repertory, 71/ the International Court of Justice, in its advisory opinion of 11 July 1950, referred to article 7 of the Mandate 72/ concerning the submission of disputes to the Permanent Court of International Justice. The Court stated that:

"Having regard to Article 37 of the Statute of the International Court of Justice, and Article 80, paragraph 1, of the Charter, the Court is of opinion that this clause in the Mandate is still in force and that, therefore, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court according to those provisions." 73/

60. This opinion of the Court was accepted by General Assembly resolutions 449 A (V) and 749 A (VIII).

61. By resolution 1060 (XI), the General Assembly requested the Committee on South West Africa to study:

"What legal action is open to the organs of the United Nations, or to the Members of the United Nations, or to the former Members of the League of Nations, acting either individually or jointly, to ensure that the Union of South Africa fulfils the obligations assumed by it under the Mandate, pending the placing of the Territory of South West Africa under the International Trusteeship System?"

62. Pursuant to this resolution, the Committee on South West Africa submitted a special report 74/ to the General Assembly at its twelfth session. The Committee's study of legal action open to States related to the question of bringing a contentious case against the Union of South Africa with respect to the Mandate, either under article 7 of the Mandate or otherwise.

63. In connexion with article 7 of the Mandate, the Committee recalled 75/ the opinion of the Court that the Union of South Africa remained under an obligation to accept the compulsory jurisdiction of the Court according to the provisions of that article, but pointed out that determination of which States had a right to take advantage of article 7 had not been dealt with specifically by the Court.

64. After examining the situation, the Committee recorded its view that:

"the right to invoke article 7 of the Mandate is enjoyed at any rate by those former Members of the League which were Members at the date of dissolution of the

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71/ Vol. IV, under Article 80, para. 33.

72/ The relevant clause of article 7 of the Mandate states:

"The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations."

73/ International status of South West Africa, I C J, Reports 1950, p. 138.

74/ G A (XII), Suppl. No. 12 A (A/3625).

75/ Ibid., paras. 10, 24, 25 and 31.

League and which are now Members of the United Nations or are otherwise parties to the Statute of the Court." 76/

65. Concerning other States which had been Members of the League of Nations, the Committee stated:

"Former Members which ceased to be Members prior to the final dissolution of the League apparently lost all rights thereunder, including those in relation to article 7 of the Mandate, at the date of the cessation of their membership. In that event there would not appear to be any reason why those rights should revive after the dissolution of the League. Furthermore, there is an additional category of some doubt, namely, former Members of the League at the date of dissolution of the League which are not now Members of the United Nations or otherwise parties to the Statute of the Court. This category is not dealt with in the 1950 opinion but, in the view of Judge Read, the rights under article 7 of those former Members which did not become parties to the Statute of the present Court lapsed." 77/

66. The Committee also noted:

"There may be other categories of some doubt, for example the position of any State which might be regarded as having succeeded to the rights and obligations of any former Member of the League. Such categories raise important and extremely complicated questions of law which the Committee does not feel called upon to decide." 78/

67. On the issue whether the right to employ article 7 of the Mandate was currently enjoyed by all Members of the United Nations, there were differences of opinion in the Committee on South West Africa. The two positions taken were reported by the Committee as follows:

"A number of members of the Committee on South West Africa were of the opinion that the right to employ article 7 of the Mandate was clearly vested in all Members of the United Nations under and in accordance with the opinion of the Court. They felt that, if the Court had not stated that the right to employ article 7 was to be enjoyed by all Members of the United Nations, it must be remembered that the Court had not been asked to give an opinion on this point. They stressed that international supervision had passed from one organization to another organization, and not from one group of States to another group of States. They considered that as, according to the Court's opinion, 'international supervision ... is an important part of the Mandates System' and as the supervisory functions are, according to that opinion, to be exercised by the United Nations, the system of judicial supervision provided in the Mandate should now be exercisable by Members of the United Nations. They were of the opinion that the system of judicial supervision complemented the reporting procedure of the Mandate and provided for the possibility of binding judgements which organs of the League could not obtain directly. As the United Nations had the right to exercise the supervisory functions and, similarly, could not participate in contentious proceedings before the Court, the right to invoke article 7 of the Mandate was now enjoyed by all Members of the United Nations. Such members of the Committee suggested, as an additional reason, that any conclusion from the opinion of 1950 resulting in a situation where legal rights in respect of judicial supervision were enjoyed only

76/ Ibid., para. 32.

77/ G A (XII), Suppl. No. 12A (A/3625), para. 31.

78/ Ibid., p. 5, foot-note 24.

by some Members of the United Nations was contrary to the basic idea of supervision and was not consistent with the Charter of the United Nations.

"Other members of the Committee, while appreciating the force of the position stated in the preceding paragraph, were of the opinion that the question was not entirely free from doubt. They thought that if a contentious case were brought before the Court under article 7 of the Mandate a number of arguments regarding the right of all Members of the United Nations to employ article 7 might be put forward. Without intending to comment on the validity of any of these arguments, they nevertheless felt that the existence of a doubt in this matter should be brought to the attention of the General Assembly. Such members of the Committee thought that any State desiring to put forward contrary arguments might argue that the Court, in giving its opinion, would have stated expressly that article 7 of the Mandate could be employed by all Members of the United Nations if the Court had intended this result. In this connexion, any contrary argument could refer to the separate opinions of Sir Arnold McNair and Judge Read where it is assumed that the rights under article 7 enjoyed by Members of the League survive. Any reference to these separate opinions could point out that neither Judge had taken the position that rights under article 7 have been transferred to another body of Members. Any State putting forward this contrary argument might also be able to argue that the application of article 7 to all Members of the United Nations amounted to an extension of the Mandate." 79/

68. As to the nature of the dispute which might be submitted to the International Court under article 7 of the Mandate, the Committee stated that:

"... the opinion of the Court of 1950 would appear to suggest that a dispute concerning the supervision functions themselves could properly exist, as well as a dispute relating to the administration or the status of the Territory." 80/

69. Whether proceedings in the United Nations until that time indicated the existence of a dispute between the Union of South Africa and any State intending proceedings under article 7, the Committee stated, was a question for that State to answer and to resolve. In this connexion, the Committee added:

"... there would appear to be no legal bar to the General Assembly drawing the attention of such former Members of the League to article 7 of the Mandate or of recommending such action relating thereto as the Assembly deemed appropriate." 81/

70. Apart from disputes which might be brought under article 7 of the Mandate, the Committee considered 82/ the institution of contentious proceedings which would be subject to the terms of acceptance by the Union of South Africa of compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court. In this connexion, the Committee discussed the right of a Member of the United Nations to institute contentious proceedings in order to enforce a right enjoyed by it as a member of one of the United Nations organs or a right enjoyed by the organ of which it was a member. It also referred to the possibility that a Member of the United Nations might institute contentious proceedings against a State which had allegedly breached its Charter obligations.

79/ G A (XII), Suppl. No. 12A (A/3625), paras. 26 and 27.

80/ Ibid., para. 34.

81/ Ibid., para. 33.

82/ Ibid., paras. 23, 29 and 30.



71. During the discussions of the special report of the Committee on South West Africa in the Fourth Committee, the view was expressed 83/ by one member that the compulsory jurisdiction of the International Court of Justice under the terms of article 7 of the Mandate offered the only means of bringing South West Africa under effective international supervision. On the other hand, another member, after stating that South West Africa was a Mandated Territory and should be placed under the International Trusteeship System as being a collective responsibility of the United Nations, maintained 84/ that no action by any Member State or group of Members could take the place of such a collective assumption of responsibility and that a general review of the question by some outside body would not contribute to its solution.

72. On the recommendation of the Fourth Committee, the General Assembly adopted resolution 1142 (XII), by which it:

(a) noted with deep concern that the Union of South Africa:

"contends that, the Mandate having 'lapsed', it has no obligations of which the United Nations has cognizance ... [and the Union Government] has not rendered annual reports to the United Nations in accordance with Article 22 of the Covenant of the League of Nations, article 6 of the Mandate, and General Assembly resolution 449 A (V) of 13 December 1950";

(b) drew the attention of Member States:

"to the failure of the Union of South Africa to render annual reports to the United Nations, and to the legal action provided for in article 7 of the Mandate read with Article 37 of the Statute of the International Court of Justice"; and

(c) decided to resume consideration of the special report of the Committee on South West Africa at its thirteenth session.

At that session, by resolution 1247 (XIII), the General Assembly decided to resume further consideration of the question of legal action at its fourteenth session.

73. On 22 January 1959, the Committee on South West Africa decided to make further studies of legal action to ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of South West Africa, and it established a Sub-Committee to conduct such studies.

74. With respect to the legal action open to States, the Sub-Committee considered background material, which it attached to its report 85/ for the information of members of the Committee. The Sub-Committee's report also reviewed the question of the institution of contentious proceedings as dealt with in the special report submitted by the Committee on South West Africa to the General Assembly at its twelfth session. It was noted in this connexion that the question of whether or not all Members of the United Nations had the right to invoke article 7 of the Mandate was not resolved and could in any case be settled only by the International Court of Justice itself.

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83/ G A (XII), 4th Com., 656th mtg.: Iran, para. 6.

84/ Ibid., 659th mtg.: China, para. 16.

85/ A/AC.73/2 (mimeographed).

75. On 24 August 1959, the Committee on South West Africa decided 86/ to take note of the Sub-Committee's report, and to bring it to the attention of the General Assembly. It also decided to keep the matter of legal action under review, pending further instructions from the General Assembly.

B. The question of the consent of the United Nations to the modification of the international status of South West Africa

76. As stated in the Repertory, 87/ the International Court of Justice recorded its opinion:

"that the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of the South Africa acting with the consent of the United Nations." 88/

77. The Committee on South West Africa, in its reports 89/ to the General Assembly during the period under review, expressed the belief that the degree of integration of South West Africa with the Union of South Africa may have exceeded the limits imposed by the Mandate; that the Mandatory Power had failed to pay due regard to the international status of the Territory; and that, without the consent of the United Nations and without proper consultation of the population as a whole under conditions agreed upon with the United Nations, the Mandatory Power was carrying out a unilateral process of incorporation of the Territory into the Union of South Africa. It also reported statements by the Prime Minister and other officials of the Union Government and of other members of the Nationalist Party in power in the Union of South Africa and the Territory, to the effect that the Mandate had lapsed; and statements by members of the Opposition Party in the Territory to the effect that the Mandate remained in force. During the same period, the Committee annually reiterated in its reports that the status of South West Africa in international law was that of a Territory under Mandate.

78. In resolutions 90/ adopted at its eleventh to thirteenth sessions, the General Assembly reaffirmed its acceptance of the advisory opinion of the International Court of Justice that the Mandate remained in force.

79. During the twelfth session of the General Assembly, it was contended 91/ in the Fourth Committee that neither the Government of the Union of South Africa nor the European population of South West Africa could abrogate the Mandate, and that even if the Union Government were to incorporate the Territory as a fifth province of the Union of South Africa, the Mandate would continue to exist until other arrangements were agreed upon between the United Nations and the Mandatory Power.

80. At its eleventh, twelfth and thirteenth sessions, the General Assembly continued to reiterate its earlier resolutions 92/ recommending that South West Africa should be

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86/ G A (XIV), Suppl. No. 12 (A/4191), para. 8.

87/ Vol. IV, under Article 80, para. 11.

88/ International status of South West Africa, I C J, Reports 1950, p. 144.

89/ G A (XII), Suppl. No. 12 (A/3626), annex I, section I A; G A (XIII), Suppl. No. 12 (A/3906), part III, section I A; G A (XIV), Suppl. No. 12 (A/4191), part II, section II A.

90/ G A resolutions 1055 (XI), 1060 (XI), 1141 (XII) and 1246 (XIII).

91/ G A (XII), 4th Com., 656th mtg., Iran, para. 4.

92/ G A resolutions 1055 (XI), 1141 (XII) and 1246 (XIII).

placed under the International Trusteeship System and to reassert that this would be the normal way of modifying the international status of the Territory.

81. In addition, by resolution 1059 (XI), the General Assembly, considering that South West Africa remained the only one of the class B or class C Mandates that had not been placed under Trusteeship and that it was in the best interest of all parties concerned that a satisfactory solution to the question of the Territory should be reached as soon as possible, requested the Secretary-General:

"to explore ways and means of solving satisfactorily the question of South West Africa and to take whatever steps he shall deem necessary with a view to finding such a solution in line with the principles of the Charter of the United Nations and the advisory opinion [of 11 July 1950] of the International Court of Justice."

82. The Secretary-General, requested to report on this matter at his earliest convenience, had not submitted his report at the time of the opening of the fourteenth session of the General Assembly.

83. At its twelfth session, the General Assembly made a further attempt to reach a settlement of the question through negotiation. By resolution 1143 (XII), it decided to establish a Good Offices Committee

"... to discuss with the Government of the Union of South Africa a basis for an agreement which would continue to accord to the Territory of South West Africa an international status."

84. The Good Offices Committee, consisting of Brazil, the United Kingdom and the United States, was requested 93/ to submit to the General Assembly at its thirteenth session a report on its activities "for examination and decision by the Assembly in accordance with the Charter of the United Nations".

85. The Good Offices Committee met in Pretoria in June 1958 with representatives of the Union Government. In its report 94/ to the General Assembly, the Committee indicated that it had proposed to the Union Government, as a basis for agreement, the establishment of arrangements which, with suitable adaptations, would reproduce those existing under the League of Nations Mandates System as precisely as might be practicable.

86. This proposal, as well as any form of Trusteeship Agreement for the Territory as a whole, was rejected by the Union Government, which informed the Committee that it was not prepared to accept the United Nations as the second party to an agreement concerning the Territory or to accept any commitment making it responsible to the United Nations for the administration of the Territory. As an alternative, the Union Government indicated that it was prepared under certain conditions to enter into an agreement regarding the Territory with the Governments of France, the United Kingdom and the United States, as the three remaining principal Allied and Associated Powers. A similar proposal, the Committee noted, had earlier been rejected by the General Assembly, by resolution 749 A (VIII). Reporting that its own approach to a basis for agreement had precluded any agency other than the United Nations from being the second party to the agreement, the Committee stated that it did not consider itself in a position to express an opinion on the proposal of the Union Government, but submitted it for the consideration of the General Assembly.

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93/ G A resolution 1143 (XII).

94/ G A (XIII), Annexes, a.i. 39, A/3900.

87. In the absence of agreement on any of the above-mentioned proposals, the Good Offices Committee and the Union Government representatives discussed as an alternative basis for agreement the possibility of partitioning the Territory, part of it to be placed under a Trusteeship Agreement and the remainder annexed to the Union of South Africa. In the view of the Union Government, a partition of the Territory, if found to be practicable, might be effected on the basis that the northern portion, containing the great majority of the Bantu population, would be administered by the Union Government as an integral part of the Union of South Africa under a Trusteeship Agreement with the United Nations, and the rest of the Territory would be annexed to the Union of South Africa. Explaining its willingness, in this particular context, to contemplate the United Nations as the second party to an agreement, the Government indicated that one of its difficulties in the United Nations had been due to the fact that because South West Africa was administered as an integral part of the Union of South Africa, much of the latter's legislation applied to the Territory; the discussions in the United Nations on South West Africa had consequently afforded the opportunity for attacking the internal racial policy of the Union Government. In the event of partition, however, the area to be placed under Trusteeship would probably contain only Bantu races, thereby obviating discussions of the multi-racial situation in the Union of South Africa. It was in these circumstances that the Government, in order to achieve a solution, found it possible to entertain a proposal which would bring the United Nations into the picture.

88. The Good Offices Committee, for its part, considered that the possibility of partition could at that stage be considered only in principle. Both the Committee and the Union Government agreed that before any pronouncements on the merits and demerits of partition could be made, the Union Government would have to put forward detailed proposals, which could be framed only after the competent authorities of the Union Government had completed thorough investigation as to the practicability of partition. On the understanding that the Union Government would be prepared to carry out this investigation and that, if the investigation proved the approach to be practicable, the Government would then be prepared to submit proposals to the United Nations for partitioning the Territory, the Committee expressed to the General Assembly (a) its opinion that some form of partition, under which a part of the Territory would be placed under a Trusteeship Agreement with the United Nations and the remainder would be annexed to the Union of South Africa, might provide a basis for an agreement, and (b) the hope that the General Assembly would therefore encourage the Union Government to carry out an investigation of the practicability of partition.

89. At the thirteenth session of the General Assembly, the debate in the Fourth Committee on the report of the Good Offices Committee centred on the proposal concerning partition. The Chairman of the Good Offices Committee stressed 95/ that the Committee, while aware that it might have laid itself open to the charge of having exceeded its terms of reference by lending its support to the idea of partition, deemed that it was its duty to bring to the attention of the General Assembly, and to recommend for further study and investigation, a proposal envisaging the extension of the benefits of the International Trusteeship System to the great majority of the so-called non-European population of South West Africa.

90. He emphasized, 96/ as did the representative of the Union Government in supporting the proposal in the Fourth Committee, that there was no actual proposal for partition before the Fourth Committee but only a proposal that the feasibility of partition should be investigated.

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95/ G A (XIII), 4th Com., 745th mtg., para. 12, and 752nd mtg., para. 14.

96/ Ibid., 745th mtg., paras. 13 and 21.

91. The representative of the Union of South Africa further explained 97/ that the investigation would cover, for example, the possibility of moving four or five Native reserves from the southern to the northern part of the Territory. In addition, the views of all groups of the population would have to be ascertained.

92. Other members supporting the Committee's proposal also observed 98/ that there was no actual plan of partition before the General Assembly and that in any case nothing could be done until the inhabitants had been consulted and had given their consent. It was also suggested that the United Nations had no right to prevent an inquiry which might result in extending the benefits of Trusteeship to some of the inhabitants merely because the International Trusteeship System would not be applied to the whole of the Territory.

93. There was, however, overwhelming opposition 99/ to the proposal. It was argued that approval of the proposal by the General Assembly would be tantamount to its acceptance in principle of the partitioning of the Territory. Examining the implications of partition, representatives suggested that it would involve the annexation of the more developed area and its resources by the Union of South Africa, and would deprive the indigenous majority in that area of the safeguards provided in the Mandate and the Charter. Moreover, the General Assembly would be abandoning its supervisory responsibilities and repudiating its earlier resolutions.

94. Following the general debate, two draft resolutions 100/ on the report of the Good Offices Committee were submitted; the first was subsequently withdrawn. The second draft resolution, submitted by Argentina, Iran, Ireland, Japan and Venezuela, read in part as follows:

"The General Assembly

".....

"1. Decides not to accept the suggestions contained in the report [of the Good Offices Committee] that envisage partition and annexation of any part of the Territory as a basis for the solution of the question of South West Africa;

"2. Invites the Good Offices Committee to renew discussions with the Government of the Union of South Africa to find a basis for an agreement which would continue to accord to the Territory of South West Africa as a whole an international status."

95. The Fourth Committee approved the first operative paragraph quoted above by a roll-call vote of 57 to none, with 16 abstentions. It approved two amendments, 101/ submitted by Ghana, Greece, Haiti, India, Indonesia, Liberia, Philippines and Thailand, to the second operative paragraph. The first amendment, identifying the Territory as "the Mandated Territory", was approved by 62 votes to none, with 10 abstentions. The second amendment, approved by a roll-call vote of 71 to none, with 2 abstentions,

97/ Ibid., para. 21.

98/ Ibid., 757th mtg.: Canada, paras. 17-19; 762nd mtg.: Brazil, paras. 8-13; 763rd mtg.: United Kingdom, paras. 17-30.

99/ G A (XIII), 4th Com., 754th and 756-763rd mtgs.

100/ G A (XIII), Annexes, a.i. 39, p. 13, A/3959, paras. 16 (a) (A/C.4/L.531) and 16 (b) (A/C.4/L.532).

101/ Ibid., para. 17 (A/C.4/L.535).

further qualified the new terms of reference of the Good Offices Committee by adding at the end of the paragraph the words: "and which would be in conformity with the principles and purposes of the United Nations". The Fourth Committee voted on the second operative paragraph in parts, approving the first part up to the words "which would continue" by 60 votes to 11, with 1 abstention, and the balance of the paragraph, as amended, by a roll-call vote of 57 to 1, with 15 abstentions.

96. The draft resolution, 102/ approved as a whole by the Fourth Committee, by 55 votes to 9, with 8 abstentions, would also provide that the General Assembly should request the Good Offices Committee to bear fully in mind the discussions held at the thirteenth session of the General Assembly, and to submit a further report to the General Assembly at its fourteenth session. The resolution was adopted 103/ by the General Assembly as resolution 1243 (XIII).

97. Subsequently, by resolution 1333 (XIII), adopted 104/ on the recommendation of the Fourth Committee, the General Assembly expressed the belief that a verbatim record of the debate concerning the report of the Good Offices Committee would permit a proper understanding of the position of the United Nations on the question of South West Africa, facilitating the implementation of resolution 1243 (XIII), and requested the preparation and circulation of such a record.

98. Renewed discussions between the Good Offices Committee and the Union Government took place between 11 and 21 September 1959. The Committee's report indicated 105/ that the Union Government was not prepared to agree to a proposal by the Committee:

"that further talks might be concentrated on the negotiation of some form of agreement to which the United Nations might be a party for the supervision of the administration of South West Africa in a manner which would not impose greater responsibilities on the Union Government or impair the rights enjoyed by it under the Mandate."

99. The Union Government informed the Good Offices Committee that it continued to stand by its undertaking to investigate the feasibility of partition and was convinced that the recommendation made in that respect by the Committee in its previous report to the General Assembly offered the best prospects for settling the issue of South West Africa. The Government also stood by its offer to enter into an agreement with France, the United Kingdom and the United States, which it termed the three remaining Allied and Associated Powers. Both of these proposals being unacceptable to the Committee, the Union Government was willing to continue negotiations with the Committee for the purpose of arriving at an arrangement which would be acceptable both to the Union Government and to the United Nations, it being understood that such discussions would be without prejudice to the juridical position it took in regard to the issue of South West Africa.

100. After the Committee expressed the view that this would not provide a framework within which further negotiations could take place with prospects of achieving an agreement acceptable to the United Nations, the Union Government proposed as a basis for further negotiations another formula which did not specify the United Nations as

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102/ G A (XIII), Annexes, a.i. 39, p. 13, A/3959, paras. 20 and 22; ibid., p. 21, draft resolution I.

103/ G A (XIII), Plen., 778th mtg., para. 21.

104/ G A (XIII), Plen., 790th mtg., para. 97.

105/ G A (XIV), Annexes, a.i. 38, A/4224, paras. 10-16.

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the second party to any prospective agreement and which, in the Committee's opinion, did not improve the position. The Good Offices Committee therefore informed the General Assembly that it had not succeeded in finding a basis for an agreement under its terms of reference.

