

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. Article 80 (1) provides that nothing in Chapter XII of the Charter should be construed to alter the rights of States or peoples or the terms of existing international instruments pending the conclusion of Trusteeship Agreements, and then only with respect to matters dealt with in the Agreements. Article 80 (2) specifies that the provisions of Article 80 (1) shall not be a ground for delaying or postponing the negotiation and the conclusion of Trusteeship Agreements.

2. The provisions of Article 80 (2) have been considered in the study on Article 77 in connexion with the question of the obligation to place South West Africa under the Trusteeship System. ^{1/} The present study is therefore confined to a discussion of Article 80 (1) in so far as it has been invoked in the United Nations in connexion with the question of the status of South West Africa. In accordance with the general principles applied in the preparation of the Repertory, the treatment of the question of the status of South West Africa in this study does not imply any pronouncement on the question of the Charter authority under which the General Assembly acted in the resolutions relating to that question adopted by it.

3. The General Survey gives a brief account of the decisions of United Nations organs in which there was express reference to, or which bear upon, Article 80 (1).

4. The Analytical Summary of Practice deals with questions which have arisen in the course of consideration by United Nations organs of the status of South West Africa in connexion with which references to Article 80 (1) have been made by representatives in the General Assembly and its Fourth Committee and by the International Court of Justice in its advisory opinion.

I. GENERAL SURVEY

5. By resolutions 65 (I), 141 (II) and 227 (III), the General Assembly recommended that South West Africa be placed under the Trusteeship System, and noted the assurance

^{1/} See in this Repertory under Article 77.

given by the Union of South Africa that, pending agreement regarding the future status of South West Africa, it would continue to administer the Territory in the spirit of the League of Nations Mandate. By resolution 141 (II), the General Assembly authorized the Trusteeship Council to examine a report on the administration of South West Africa submitted by the Government of the Union of South Africa. By resolution 227 (III), the Assembly further recommended that, until agreement was reached with the United Nations regarding the future of South West Africa, the Union of South Africa continue to supply annually information on its administration of the Territory, and requested the Trusteeship Council to continue to examine such information. In the course of the discussion of the resolution at its draft stage, a number of representatives who supported the above-mentioned recommendations of the General Assembly invoked Article 80 as a basis for maintaining that supervisory powers over the Territory of South West Africa were now vested in the United Nations.

6. After the Union of South Africa had informed ^{2/} the United Nations of its decision not to transmit further reports on its administration of the Territory, Article 80 (1) was again one of the Articles invoked in the course of the discussion at the fourth session of the General Assembly in connexion with the question of the international obligations of the Union of South Africa under the Mandate, the concomitant question of the responsibilities and functions of the United Nations with respect to South West Africa, and the question of the right of petition by the people of the Territory.

7. By resolution 337 (IV), the General Assembly (1) expressed regret that the Government of the Union of South Africa had "withdrawn its previous undertaking ... to submit reports on its administration of the Territory of South West Africa for the information of the United Nations"; (2) reiterated "in their entirety" the three resolutions referred to in paragraph 5 above; and (3) invited the Government of the Union of South Africa to resume the submission of such reports and to comply with the decisions of the General Assembly.

8. By resolution 338 (IV), the General Assembly submitted certain questions relating to the international status of the Territory of South West Africa to the International Court of Justice with a request for an advisory opinion. Some of the questions put to the Court read as follows:

"What is the international status of the Territory of South West Africa and what are the international obligations of the Union of South Africa arising therefrom, in particular:

"(a) Does the Union of South Africa continue to have international obligations under the Mandate for South West Africa and, if so, what are those obligations?

".....

"(c) Has the Union of South Africa the competence to modify the international status of the Territory of South West Africa, or, in the event of a negative reply, where does competence rest to determine and modify the international status of the Territory?"

The resolution provided that the Secretary-General should include, among the documents to be transmitted to the Court, the text of Articles 77 and 80.

^{2/} G A (IV), 4th Com., Annex, p. 7, A/929.

9. The Court delivered its advisory opinion on 11 July 1949. With regard to the above-quoted question in respect of the international status of the Territory of South West Africa and the international obligations of the Union of South Africa arising therefrom, the Court was of the opinion, 3/ unanimously, that

"South-West Africa is a territory under the international Mandate assumed by the Union of South Africa on December 17th, 1920;"

and by 12 votes to 2, that

"the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South-West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted, and the reference to the Permanent Court of International Justice, to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court;"

10. In support of this opinion, the Court relied in part on its analysis of the provisions of Article 22 4/ of the Covenant of the League of Nations and of the terms of

3/ International status of South-West Africa, I C J, Reports 1950, p. 143.

4/ Article 22 of the Covenant reads, in part, as follows:

"1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

".....

"7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

"8. The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

"9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

the Mandate. 5/ The Court stated in this connexion that its conclusions concerning the obligations of the Union of South Africa were confirmed by the provisions of Article 80 (1) which were intended to safeguard the rights not only of States, but also of peoples of Mandated Territories (see paragraphs 20-22 below).

11. In answer to the question regarding the competence of the Union of South Africa to modify the international status of the Territory of South West Africa, the Court was of the opinion, unanimously, 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 South Africa acting with the consent of the United Nations."

12. Under resolution 449 A (V), the General Assembly reproduced the conclusions and accepted the advisory opinion of the Court. By that resolution, and by resolutions 570 A (VI) and 749 A (VIII), the General Assembly took a series of decisions aimed at the establishment of agreed procedures for the examination of reports on the administration of the Territory of South West Africa and of petitions concerning the Territory. It also established committees authorized to examine such reports and petitions. Resolution 749 A (VIII) stated, moreover, that if no reports were to be submitted by the Government of the Union of South Africa, the Committee on South West Africa, established by that resolution, should examine such other information and documentation as might be available. Article 80 (1) was referred to in the preamble to resolution 749 A (VIII) as follows:

5/ The relevant provisions of the Mandate for South West Africa (A/70) are as follows:

Article 2

"The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa to the territory, subject to such local modifications as circumstances may require.

"The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate."

Articles 3, 4 and 5 provide for further and more specific obligations relating to the performance of the sacred trust of civilization.

Article 6

"The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory; and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4 and 5.

Article 7

"The consent of the Council of the League of Nations is required for any modification of the terms of the present Mandate.

"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."

"Considering that, in accordance with the opinion of the International Court of Justice, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court as provided by Article 37 of the Statute of the International Court of Justice, by Article 80, paragraph 1, of the Charter of the United Nations, and by article 7 of the Mandate for South West Africa,".

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

13. The Trusteeship Council, by resolution 111 (V), informed the General Assembly that the refusal of the Government of the Union of South Africa to submit further reports on its administration of South West Africa to the United Nations (see paragraph 17 below) precluded the Council from exercising further the functions assigned to it under General Assembly resolution 227 (III). The resolution embodied in the report 6/ of the Trusteeship Council to the General Assembly at its fourth session, was included 7/ in the agenda of the General Assembly and referred to the Fourth Committee for consideration and report.

14. In the course of the discussion in the Fourth Committee, the representative of the Union of South Africa maintained 8/ that the United Nations had no supervisory jurisdiction over South West Africa. Some other representatives contended, 9/ however, that the Mandate had not ended with the dissolution of the League of Nations and that, by the resolution 10/ adopted on 18 April 1946, the Assembly of the League of Nations had taken note of the expressed intentions of Members of the League administering territories under Mandate to continue to administer them in the spirit of the Mandate, "until other arrangements have been agreed between the United Nations and the respective Mandatory Powers."

15. For its part, the International Court of Justice observed, 11/ in its advisory opinion of 11 July 1950, that the Mandate had been created as an international institution with an international object, that the League of Nations had assumed an international function of supervision and control, that the Mandate had not lapsed despite the dissolution of the League, and that the resolution adopted by the Assembly of the League in 1946 presupposed that the supervisory functions exercised by the League would be taken over by the United Nations.

16. The relation of Article 80 (1) to the supervisory authority of the United Nations in respect of South West Africa was referred to by representatives in the course of the above-mentioned proceedings of the General Assembly and by the International Court of Justice in its advisory opinion, in connexion with the specific questions set forth below.

6/ G A (IV), Suppl. No. 4 (A/933), p. 102.

7/ G A (IV), Plen., 224th mtg.

8/ G A (IV), 4th Com., 128th mtg., para. 5.

9/ Ibid., 128th mtg., Philippines, para. 59; 129th mtg., China, para. 16; India, para. 27; 130th mtg., Syria, para. 31.

10/ See League of Nations, Official Journal, Special Supplement No. 194, p. 58.

11/ International status of South-West Africa, I C J, Reports 1950, pp. 132-137.

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*

17. In informing the United Nations of its decision not to submit further reports, the Union of South Africa stated 12/ that:

"the Union Government have at no time recognized any legal obligations on their part to supply information on South West Africa to the United Nations, but in a spirit of goodwill, co-operation and helpfulness offered to provide the United Nations with reports on the administration of South West Africa, with the clear stipulation that this would be done on a voluntary basis, for purposes of information only and on the distinct understanding that the United Nations has no supervisory jurisdiction in South West Africa. In this spirit a report was submitted in 1947, and in 1948 detailed replies were furnished to a subsequent questionnaire formulated by the Trusteeship Council. It was emphasized at the time that the forwarding of information on policy should not be regarded as creating a precedent, or construed as a commitment for the future or as implying any measure of accountability to the United Nations on the part of the Union Government."

18. Subsequent to this decision of the Union of South Africa, not to submit further reports, in the course of the discussion of the report of the Trusteeship Council (see paragraph 13 above) in connexion with the question of South West Africa in the Fourth Committee at the fourth session of the General Assembly, one representative, relying upon Article 80 (1) as one of the supporting arguments in favour of the obligation of the Union Government to submit, and the right of the United Nations to receive, such reports and information, expressed 13/ the views set forth below. (1) The provisions of Article 80 (1) made it clear that the situation which had prevailed under the Mandates System should not be changed in the case of South West Africa. (2) The rights of the people concerned were clearly compromised when the international community ceased to receive information on how they were being administered, and when the people themselves could no longer exercise the right of petition. (3) The cessation of the transmission of information by the Union Government was therefore a flagrant violation of Article 80 (1). (4) The peoples of former Mandated Territories should not be deprived of any of their privileges while awaiting the establishment of the Trusteeship System.

19. At a later stage in the debate, the representative of India submitted a draft resolution 14/ under the terms of which the General Assembly would express

"regret that the Government of the Union of South Africa has repudiated its previous assurance, referred to in resolution 141 (II) of 1 November 1947, to submit reports on its administration of the Territory of South West Africa for the information of the United Nations;"

The representative of Canada submitted an amendment 15/ under which the word "repudiated" would be replaced by the words "has not continued, in accordance with". He explained that the use of the word "repudiated" in the text offered by the representative of India gave the impression that the Union Government was under a legal obligation to submit

12/ G A (IV), 4th Com., Annex, p. 7, A/929.

13/ G A (IV), 4th Com., 130th mtg., paras. 49 and 54.

14/ G A (IV), Plen., Annex, p. 103, A/1180, para. 29, A/C.4/L.53.

15/ G A (IV), 4th Com., 139th mtg., para. 3.

information, which was not the case. The representative of India subsequently modified his draft resolution by substituting the words "withdrawn its previous undertaking" for the words "repudiated its previous assurance". He explained ^{16/} that he did not agree with the representative of Canada that no legal obligation existed, but he was prepared to modify his text so long as the purpose of his draft resolution was not destroyed. At the time of voting, however, the representative of the Philippines submitted an oral amendment under which the words "withdrawn its previous undertaking" would be replaced by the words "repudiated its previous assurance", thus restoring the original text of the draft resolution. This amendment was adopted ^{17/} by the Fourth Committee by 25 votes to 14, with 7 abstentions. At the 269th plenary meeting of the General Assembly, the representative of India reintroduced his amendment, substituting the words "withdrawn its previous undertaking" for the words "repudiated its previous assurance", previously submitted in the Fourth Committee. There being no objections, the amendment was adopted. ^{18/} The draft resolution, as amended, was adopted and became resolution 337 (IV). (For provisions of the resolution, see paragraph 7 above.)

20. The International Court of Justice, in dealing with this question, stated ^{19/} in its advisory opinion delivered on 11 July 1950 that the Union of South Africa continued to be bound by two groups of international obligations which it had assumed as the Mandatory. The first group, according to the Court, was directly related to the administration of the Territory of South West Africa and corresponded to the sacred trust of civilization referred to in Article 22 of the Covenant of the League of Nations. The second group related to the machinery for implementation, and was closely linked to the supervision and control of the Council of the League.

21. Having stated that the first group of obligations was to promote to the utmost the material and moral well-being and the social progress of the inhabitants, the fulfilment of which did not depend on the existence of the League of Nations, the Court continued:

"This view is confirmed by Article 80, paragraph 1, of the Charter, which maintains the rights of States and peoples and the terms of existing international instruments until the territories in question are placed under the Trusteeship System. It is true that this provision only says that nothing in Chapter XII shall be construed to alter the rights of States or peoples or the terms of existing international instruments. But - as far as mandated territories are concerned, to which paragraph 2 of this article refers - this provision presupposes that the rights of States and peoples shall not lapse automatically on the dissolution of the League of Nations. It obviously was the intention to safeguard the rights of States and peoples under all circumstances and in all respects, until each territory should be placed under the Trusteeship System."

22. With regard to the second group of obligations, particularly the obligation of the Union of South Africa to submit to the supervision and control of the Council of the League and the obligation to render to it annual reports in accordance with Article 22 of the Covenant and Article 6 of the Mandate, the Court was of the opinion that such obligation was an important part of the Mandates System. It could not be admitted that the obligation to submit to supervision had disappeared merely because the supervisory organ had ceased to exist, when the United Nations had another international organ

^{16/} Ibid., para. 5.

^{17/} Ibid., para. 51.

^{18/} G A (IV), Plen., 269th mtg., para. 120.

^{19/} International status of South-West Africa, I C J, Reports 1950, pp. 133 and 134.

performing similar, though not identical, supervisory functions. The Court went on to say 20/ that:

"These general considerations are confirmed by Article 80, paragraph 1, of the Charter, as this clause has been interpreted above. It purports to safeguard, not only the rights of States, but also the rights of the peoples of mandated territories until Trusteeship Agreements are concluded. The purpose must have been to provide a real protection for those rights; but no such rights of the peoples could be effectively safeguarded without international supervision and a duty to render reports to a supervisory organ."

23. Having, further, affirmed the competence of the General Assembly as such a supervisory organ, 21/ the Court arrived at the conclusion that:

"the General Assembly of the United Nations is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory, and that the Union of South Africa is under an obligation to submit to supervision and control of the General Assembly and to render annual reports to it."

24. After the General Assembly had accepted 22/ the advisory opinion of the Court, the representative of the Union of South Africa, at the eighth session of the Assembly, set forth the view of his delegation concerning Article 80 in relation to the question of South West Africa; this was summarized 23/ in the Official Records as follows:

20/ Ibid., pp. 136 and 137. In a separate opinion appended to the majority opinion of the Court, one member of the Court stated that the Mandate provided two kinds of machinery for its supervision - judicial and administrative. The judicial supervision provided for in article 7 of the Mandate was expressly preserved by means of Article 37 of the Statute of the International Court of Justice. The administrative supervision, by virtue of Article 22 of the Covenant of the League of Nations and article 6 of the Mandate, ended with the dissolution of the League. Referring to the reliance by certain Governments on Article 80 (1), as a basis for maintaining that the Union of South Africa was under an obligation to accept the administrative supervision of the Mandate by the United Nations, the separate opinion stated that "the cause of the lapse of the supervision of the League and of article 6 of the Mandate is not anything contained in Chapter XII of the Charter but is the dissolution of the League, so that it is difficult to see the relevance of this article." (Ibid., p. 160.)

21/ On this point, the Court stated that:

"The competence of the General Assembly of the United Nations to exercise such supervision and to receive and examine reports is derived from the provisions of Article 10 of the Charter, which authorizes the General Assembly to discuss any questions or any matters within the scope of the Charter and to make recommendations on these questions or matters to the Members of the United Nations. This competence was in fact exercised by the General Assembly in Resolution 141 (II) of November 1st, 1947 and in Resolution 227 (III) of November 26th, 1948, confirmed by Resolution 337 (IV) of December 6th, 1949." (Ibid., p. 137.)

22/ G A resolution 449 A (V).

23/ G A (VIII), 4th Com., 363rd mtg., para. 17.

"the Court had relied to a large extent, in support of its conclusion that the Mandates System subsisted, on the provisions of Article 80 of the Charter. The South African Government, however, was convinced that Article 80 was irrelevant to the question. Article 80, paragraph 1, was doubtless the basis for the impression many representatives had that the United Nations had ensured that the mandates, which had undoubtedly been in force at the time the Charter was drawn up, would continue in force, whatever else might happen, until trusteeship agreements were concluded. His Government believed that that impression was erroneous. Article 80 did not mean that subsequent action taken by the League, which had still existed at that time, should not be construed as altering the rights under, or the terms of, the Mandate. Action taken by the League within its own sphere of competence could not be affected by any provision of the United Nations Charter. Hence, Article 80 only safeguarded rights from being altered by the terms of Chapter XII; it could not safeguard rights under the terms of other international instruments from alteration by the parties to those instruments. It was for those parties to decide whether or not, and to what extent, those instruments were to be altered as a result of the establishment of the United Nations and the adoption of the Charter. The United Nations had no authority to take that decision on behalf of those parties. In expressing the view that the Charter provided that mandates would continue in existence in spite of any subsequent action which might be taken by the League, the Court had contradicted itself, since it had also stated in its opinion that 'the Charter has contemplated and regulated only a single system, the International Trusteeship System. It did not contemplate or regulate a co-existing Mandates System' (p. 140). Although paragraphs 1 and 2 of Article 80 were worded in equally negative form, in the case of paragraph 2, the Court had deduced that no positive conclusion could be drawn from that paragraph regarding the obligation to enter into trusteeship agreements, whereas, in the case of paragraph 1, it had deduced that the obligations of the Mandates System continued to be in force. The two conclusions appeared to be in contradiction."

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

25. In the course of the discussion of the report of the Trusteeship Council (see paragraph 13 above) in connexion with the agenda item on South West Africa in the Fourth Committee at the fourth session of the General Assembly, a further question arose as to whether certain communications relating to South West Africa received by the Chairman of the Committee and the Secretary-General should be circulated as Committee documents, and whether a hearing should be granted to one or more representatives of the indigenous inhabitants of South West Africa, upon request.

26. In the context of the discussion of one of these communications, the representative of the Union of South Africa stated ^{24/} that if the communication in question was merely a request for a hearing, his delegation would have no objection to its publication. On the other hand, if it was a petition or a complaint, his delegation could not agree to its publication, because, if the communication became an official document, the Committee would be examining a petition, which was not within its competence.

27. The Fourth Committee subsequently adopted, ^{25/} by 28 votes to 6, with 9 abstentions, a proposal submitted by the representative of Cuba, as amended by the representative of India, to circulate those parts of the communications which related to the request for an oral hearing.

^{24/} G A (IV), 4th Com., 130th mtg., para. 74.

^{25/} *Ibid.*, 131st mtg., para. 54.

28. In connexion with a draft resolution 26/ submitted by Guatemala by which the Fourth Committee would be requested "to grant a hearing to one or more representatives of the indigenous population of South West Africa", two divergent views were put forward in the ensuing debate. In opposition to the draft resolution, the arguments set forth below were among those advanced. 27/ (1) Since the Committee had before it another draft resolution 28/ under which an advisory opinion would be requested of the International Court of Justice on the question of the international status of South West Africa, the adoption of the draft resolution submitted by Guatemala would prejudge the opinion of the Court. (2) In answer to an earlier assertion that Article 2 (7) referred only to the domestic jurisdiction of sovereign States and that it did not apply to South West Africa, which was not a sovereign State, but a territory placed under the Mandates System of the League of Nations and thus was under the supervision of the community of nations, namely the General Assembly, it was contended that Article 2 (7) spoke of "domestic jurisdiction" and not of sovereignty. The Union of South Africa had such jurisdiction, since it had received a mandate to administer South West Africa as an integral part of its own territory. The adoption of the draft resolution would therefore violate one of the essential provisions of the Charter. (3) If South West Africa was still governed by the provisions of the Mandate, it might be asked by what right the Fourth Committee substituted itself for the Permanent Mandates Commission of the League of Nations, what its juridical foundations were, and what the source of its legal competence was. Under Articles 80 and 87 of the Charter, the Trusteeship Council could receive and examine petitions from Trust Territories, but the fact remained that South West Africa had not been placed under the Trusteeship System.

29. On the other hand, the views set forth below were among those expressed 29/ in favour of the draft resolution submitted by Guatemala. (1) The Court would give its opinion only on the strictly juridical aspect of the problem. It would be logical also to request the opinion of the populations on the non-juridical aspects. (2) The granting by the Fourth Committee of a hearing to one or more representatives of the indigenous population of South West Africa would not be intervening in matters which were essentially within the domestic jurisdiction of the Union of South Africa, since the latter had never had sovereignty over the Territory. If some members of the Fourth Committee were also of the opinion that Article 2 (7) was applicable in the case under discussion, other Members could cite the provisions of Article 80. (3) The United Nations was the heir to the League of Nations and Article 80 guaranteed the rights of the peoples of the Mandated Territory, which included the right of petition.

30. The Fourth Committee adopted 30/ the draft resolution submitted by Guatemala, as amended by Haiti, by 25 votes to 15, with 6 abstentions, and subsequently approved 31/ the report of a sub-committee appointed to study the credentials of the representatives of the indigenous population of South West Africa. After the Committee decided to grant a hearing, the representative of the Union of South Africa stated 32/ that he would absent himself during this hearing, since his presence might be interpreted as consent to the decision of the Committee. The Committee held the hearing at its 138th meeting.

26/ G A (IV), Plen., Annex, p. 103, A/1180, para. 7, A/C.4/L.56/Rev.1.

27/ G A (IV), 4th Com., 132nd mtg., Belgium, paras. 44-46; Canada, para. 72; South Africa, para. 28; 133rd mtg., France, paras. 5-9; 134th mtg., Norway, para. 7.

28/ G A (IV), Plen., Annex, p. 103, A/1180, para. 34, A/C.4/L.55.

29/ G A (VI), Plen., 132nd mtg., Guatemala, para. 77; 133rd mtg., Philippines, para. 18; 134th mtg., Cuba, paras. 12 and 13; India, para. 24.

30/ Ibid., 134th mtg., para. 69.

31/ Ibid., 137th mtg., para. 57.

32/ Ibid., para. 59.

31. When the Fourth Committee considered a draft resolution 33/ concerning a request to the International Court of Justice for an advisory opinion, the question arose whether the statement made and the documents submitted by the representative granted a hearing in the Committee should be included in the documentation to be sent to the Court. The Committee finally adopted 34/ a proposal submitted by the Philippines under which the documents referred to would be considered as an integral part of the official record of the meeting. Subsequently a draft resolution 35/ was submitted by the representative of Haiti under the terms of which the documentary statements would have been attached to the documents relating to the question of South West Africa for transmission to the International Court of Justice. After it had been pointed out that the substance of the draft resolution submitted by Haiti was covered by operative paragraph 2 of the joint draft resolution, 36/ requesting an advisory opinion of the Court, the representative of Haiti withdrew 37/ his draft resolution. The draft resolution concerning a request for an advisory opinion recommended by the Fourth Committee was adopted by the General Assembly, and became resolution 338 (IV) (see paragraph 8 above).

32. The International Court of Justice in its advisory opinion of 11 July 1950, having arrived at the conclusion that the General Assembly of the United Nations was legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory of South West Africa, stated 38/ that the right of petition was not mentioned by Article 22 of the Covenant of the League. However, the Council of the League of Nations, said the Court, had adopted certain rules according to which petitions to the League from communities or sections of the populations of mandated territories were to be transmitted to the Mandatory Governments, which were to attach to these petitions such comments as they might consider desirable. Therefore the Court was of the opinion that the right of petition

"which the inhabitants of South-West Africa had thus acquired, is maintained by Article 80, paragraph 1, of the Charter, as this clause has been interpreted above. In view of the result at which the Court has arrived with respect to the exercise of the supervisory functions by the United Nations and the obligation of the Union Government to submit to such supervision, and having regard to the fact that the

33/ G A (IV), Plen., Annex, p. 103, A/1180, para. 34, A/C.4/L.54.

34/ Ibid., 138th mtg., paras. 123-125.

35/ Ibid., 140th mtg., para. 18.

36/ The paragraph read as follows:

"2. Requests the Secretary-General to transmit this resolution to the International Court of Justice, in accordance with Article 65 of the Statute of the Court, accompanied by all documents likely to throw light upon the question.

"The Secretary-General shall include among these documents the text of article 22 of the Covenant of the League of Nations; the text of the Mandate for German South West Africa, confirmed by the Council of the League on 17 December 1920; relevant documentation concerning the objectives and the functions of the Mandates System; the text of the resolution adopted by the League of Nations on the question of mandates on 18 April 1946; the text of Articles 77 and 80 of the Charter and data on the discussion of these Articles in the San Francisco Conference and the General Assembly; the report of the Fourth Committee and the official records, including the annexes of the consideration of the question of South West Africa at the fourth session of the General Assembly."

(G A (IV), Plen., Annex, p. 103, A/1180, para. 35, A/C.4/L.64.)

37/ G A (IV), 4th Com., 140th mtg., para. 66.

38/ International status of South-West Africa, I C J., Reports 1950, pp. 137 and 138.

dispatch and examination of petitions form a part of that supervision, the Court is of the opinion that petitions are to be transmitted by that Government to the General Assembly of the United Nations, which is legally qualified to deal with them."

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

33. In its advisory opinion, the Court referred to article 7 of the Mandate concerning the submission of disputes to the Permanent Court of International Justice, and stated 39/ 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."

34. The above-quoted opinion of the Court was endorsed by the General Assembly under resolution 749 A (VIII) (see paragraph 12 above). In this connexion, one representative pointed out 40/ that Article 37 of the Statute of the International Court of Justice and Article 80 (1) of the Charter merely maintained and confirmed the principle set forth in article 7 of the Mandate.

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

35. At the first part of the first session of the General Assembly, the Union of South Africa informed 41/ the Assembly that arrangements were under way to consult the people of the Mandated Territory of South West Africa regarding the form which their future government should take and until these consultations had been concluded, the Government of the Union of South Africa was forced to reserve its position concerning the future of the Mandate, together with its rights of full liberty of action, as provided for in Article 80 (1). In the letter referred to earlier (see paragraph 17 above) informing the Secretary-General that the Union of South Africa would no longer submit reports on its administration of the Territory of South West Africa, the representative of the Union enclosed, for information, a copy of the South-West Africa Amendment Act, No. 23 of 1949, by which certain changes in the form of association between South West Africa and the Union of South Africa were introduced. At the fourth session of the General Assembly, the representative of the Union of South Africa stated 42/ in the Fourth Committee in connexion with the question of granting hearings to the representatives of the indigenous population (see paragraphs 28-30 above), that the United Nations could not regard itself as the successor to the League of Nations, nor the Fourth Committee as the successor to the Permanent Mandates Commission. Another representative considered 43/ that one of the arguments in favour of the stand taken by the Union of South Africa could be found in Article 80 (1),

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

40/ G A (VIII), 4th Com., 364th mtg., para. 7.

41/ G A (I/1), Plen., 12th mtg., p. 185.

42/ G A (IV), 4th Com., 134th mtg., para. 57.

43/ Ibid., 136th mtg., para. 29.

which, he said, might be interpreted to mean that the Mandated Territory might retain its status as long as the Mandatory Power deemed fit.

36. On the other hand, those representatives who stressed the necessity of consent by the United Nations to any change of the status of South West Africa expressed 44/ the views set forth below. (1) The "closer association" announced in the letter of the representative of the Union of South Africa amounted to incorporation of the Territory. (2) The Union of South Africa could not terminate the Mandate unilaterally by virtual annexation of South West Africa. (3) Such acts on the part of the Union Government constituted a violation of Article 80. (4) By the provisions of Article 80 (1), the United Nations had ensured that no change could be made in existing international instruments. (5) The Charter did not provide for the co-existence of the Mandates System and the Trusteeship System. (6) The United Nations was the successor to the League of Nations.

37. In its advisory opinion on the international status of South West Africa, the International Court of Justice referred to article 7 of the Mandate which required the consent of the Council of the League of Nations for any modification of its terms. Basing itself partly on Article 80 (1), the Court further stated that the powers of supervision in respect of the administration of the Mandates now belonged to the General Assembly of the United Nations (see also paragraphs 20-23 above). After citing other Articles of the Charter relating to the authority of the General Assembly over the operation of the International Trusteeship System, and after referring to the previous actions taken by the General Assembly and by the Union of South Africa regarding the status of the Territory, the Court concluded 45/ that the competence to determine and modify the international status of South West Africa rested with the Union of South Africa with the consent of the United Nations.

38. At the fifth session of the General Assembly, the opinion was expressed 46/ in the Fourth Committee that, since the Government of the Union of South Africa was not entitled to modify the status of the Territory without the consent of the United Nations, the underlying principles of Article 80 and of the Preamble to the Charter should be reaffirmed.

44/ G A (IV), 4th Com., 128th mtg., Philippines, para. 58; 134th mtg., Cuba, para. 12; India, para. 24; 135th mtg., Brazil, para. 21.

G A (V), 4th Com., 190th mtg., Mexico, para. 46; 194th mtg., Cuba, para. 7.

45/ International status of South-West Africa, I C J, Reports 1950, p. 143.

46/ G A (V), 4th Com., 195th mtg., para. 15.

