

468. Under the present Constitution the Administrator occupies a peculiar triple position. In the first place he exercises, by delegation, the Legislative and executive powers specially reserved to the Governor-General-in-Council. Secondly, and thirdly, he is at once the representative of the Union Government and the head of the executive government within the ambit of the representative institution. In two of these capacities he is above local politics. In regard to the Angola settlement, for example he was beyond political criticism or administrative control. As I have shown, the criticism that such autocratic powers have led to their abuse by Administrators has not been supported by facts proving the contention. But it is patent that the system is unnecessarily involved and confusing and tends to obscure the Union's direct responsibility for the administration of the Mandated Territory.

ADVANTAGES OF THE FORM OF GOVERNMENT SUGGESTED BY ME.

469. The form of administration which I suggest would have the following advantages over the present and over incorporation—

- (1) It would remove all incentive to political and racial agitation among the Europeans.
- (2) The administration would not be embarrassed by the claims of a disloyal or irresponsible electorate.
- (3) The fears and doubts which exist and cause the present feeling of insecurity are largely artificial, fostered by party politicians. With the disappearance of politics these will be allayed and the inhabitants would be able to devote their energies to the development of the country.
- (4) Public expenditure would in some measure be influenced by the resources, the prospects for development and the requirements of the Territory.
- (5) There would be no temptation to extend to the Territory the operation of such of the Union's laws as were primarily framed to regulate a more developed economic and industrial system.
- (6) The Union Government would directly and impartially control the budget and the allocation of the country's revenues to services benefiting the aborigines and the Europeans respectively. Policy in the Territory would be less liable to be influenced by party politics and the Union would consequently be in a better position to discharge its obligations under the Mandate.
- (7) This form of administration would be less costly than either the present or some form of government as a province of the Union; a weighty consideration if one bears in mind that the Territory is generally unable to balance its budget.
- (8) When the Territory's situation has changed so that some form of representation could be given, the franchise could be granted to Union nationals, whether by birth or naturalisation, in the Territory for the election of representatives in the Union Parliament. This franchise would be governed by the relations of the voter to the Union, not by his relations to the Territory. Such delegation of responsibility cannot be said to be in any way in conflict with the Mandate (see paragraphs 241 to 244 inclusive of the joint report). No drastic changes in the pattern of government would be necessary. The machinery for the application of Ministerial responsibility would already be in existence, subject to adequate control by the Union Government for the discharge of its Mandatory obligations. There would be no merger of the Territory and the Union and no confusion in regard to the former's peculiar international status.

OBJECTIONS TO THE REVOCATION OR SUSPENSION OF
REPRESENTATIVE INSTITUTIONS.

470. To this recommendation the objection is made that it suggests a reactionary step; that constitutional privileges once granted cannot or should not lightly be revoked.

471. The first leg of this argument is on a par with most claims of superiority; as it is difficult to apply a rational or absolute criterion, one is apt to decide arbitrarily, according to one's bias or preconceived notions. I submit no governmental change can *per se* be a retrograde step. A form of government which runs counter to all theory, if it works reasonably well in practice, is better than a theoretically perfect system which is out of touch with the realities of the situation.

472. The second half of the argument is wrenched from its setting. It is applicable only to communities within the British Empire and relates properly to the delegation of powers by an absolutist Crown to the representative institutions of the community in question. It relates primarily to the *Crown's* power of revocation, not to the powers of Parliament. For the rest there is a mere canon of expedience that liberal institutions should not lightly be revoked. But no such rule can exist in circumstances such as those under consideration here, where the Union has definite extra-constitutional obligations which, from their very nature, it cannot delegate and of which it cannot divest itself.

473. The German section cannot complain if their political rights are curtailed. The grant of those rights implied loyalty on their part and co-operation with other Union nationals. Obsessed as they all confessedly are with the Nazi *Weltanschauung*, with its apotheosis of "Blood" and "Leadership", their convictions leave no room for co-operation on democratic lines, with members of what they regard as an alien race. In the light of their political philosophy they scoff at the outworn ossuaries of democracy and liberal institutions. They can hardly complain if they are relieved of that which they hold in contempt.

474. It is objected that the Union section will have a valid grievance if they are deprived of their share in the government. From the nature of the Union's obligations these rights could not have been committed to them as a permanent delegation, but merely as a temporary trust. They have not been happy in their discharge of this trust. They have been whimsical and mercurial in their political aims, now asking for extended powers, then again for suspension of the Constitution and at another time for incorporation in the Union. The same leaders who would one day boycott all things German on the slightest provocation would make common cause with the Germans on the next. Leaders as well as electorate have not exhibited much fixity of purpose, public spirit or aptitude for government. The European section have certainly not exerted themselves to further the moral and material welfare of the Natives.

475. In South West Africa, as we have pointed out, a large percentage of the annual revenue represents capital assets of the State. Even the yield of the customs may be said largely to be derived indirectly from state domains, i.e., farms allocated to Europeans under the Land Settlement Laws. Even so, the Territory cannot make ends meet and loans are obtained from the Union on such a scale that interest and redemption charges threaten to consume ordinary revenue in the near future. The basis of democratic institutions is the contributions made by the subjects to the state. Here we have a reversal of the principle. The ward's substance, supplemented by the guardian, is being consumed by the guardian's representative, who resents his principal's interference.

476. The responsibility for the good government of the Mandated Territory is that of the Union alone. Furthermore, it is the concern of the whole nation, not only of that portion which happens to be resident in the Territory. In principle therefore, I cannot see any good ground for objection to the course I suggest.

477. The background for representative institutions is a well-established, stable and self-sufficient community, with common loyalty and common interests. There must be in the community a fair proportion of men who have the necessary qualities to exercise political rights in a public-spirited and disinterested manner. Their interests and those of the state should, in a large measure, be identical; in other words, the state should be dependent on the subjects rather than that the subjects should look for maintenance to the state. Judging by these criteria, I am of opinion that the grant in South West Africa of a measure of self-government has been premature. That form of government has failed because it did not suit the character, the temperament, or the circumstances of the people to be governed. For a long time to come the most suitable form of government for them would be that which I have recommended. When the European community, as a whole, has qualified for some share in representative government—and I do not expect this to happen in the near future—political rights could be extended to them on the lines I have suggested, which would then satisfy all their reasonable requirements in this direction, without necessitating any revolutionary changes in constitutional arrangements and without in any way compromising the Union or confusing the status of the Mandated Territory.

478. While the Territory remains impressed with the character of mandate, it will labour under the disadvantages inherent in the system. To me it is inconceivable that any form of government in the meantime which leaves out of consideration the essential difference between the relations of the Union to its provinces on the one hand and to the Mandated Territory on the other, could fail to prejudice and embarrass the Mandatory.

(Signed) F. P. VAN DEN HEEVER.

(III.)—PROPOSED ALTERNATIVE FORM OF GOVERNMENT
RECOMMENDED BY DR. J. E. HOLLOWAY.

479. Your Excellency's Commissioners are unanimous in the view that the South West Africa Constitution Act should be repealed.

480. We are, however, not in agreement as to the form of government which should be introduced if the Constitution Act is repealed.

481. Like the Chairman, I do not find myself in agreement with Mr. Justice van den Heever's recommendation, that the Territory should be ruled, subject to certain modifications, in the manner outlined in the Schedule to the South Africa Act for the Native Territories adjacent to the Union. Such a semi-autocratic system would differ very little from that which was in force before 1926. Apart from the fact that in dealing with people who are not under tutelage, but full citizens, a semi-autocratic system fits ill into the democratic institutions of the Union, many objections were raised against the pre-1926 system in evidence before us by the Union section, while the German section maintained that the Territory could not be held responsible for acts of the Administrator, such as the guarantee given in respect of the Walvis Harbour and Gobabis Railway, on the

ground that the people were not consulted. I do not consider that such a system would lead to peace and contentment among the majority of the white population, accustomed as they are to having a share in their government.

482. I am in agreement with the Chairman that there should be closer administrative integration with the Union. On one important phase of such integration, however, I do not find myself in agreement with him. He recommends that, ". . . as regards the subject matters which in the Union are delegated to the provinces, provision be made to delegate such subject matters with such modifications as circumstances may require, to a local Assembly and Administrator, on lines similar to those obtaining in the provinces of the Union."

483. Now, education is the corner-stone of the whole provincial edifice. Yet to place education under the control of a local legislature would be to make it a political football, and this would be disastrous from the point of view, both of the interests of the children, and of the good relations between the two major sections of the white population. The essential characteristics of the provincial system cannot, therefore, to my mind, be introduced into the Territory for a long time to come, and I cannot support the request of the Legislative Council that the Territory be administered as a fifth province.

484. Like the Chairman, I visualise the re-establishment of representative institutions when political liberty and freedom of speech and of political association shall have been restored. While the form which such representative institutions will then take will have to be determined in the light of the conditions which will then obtain, I consider that our investigation has brought to light certain broad considerations, which are likely to endure for some time to come, and which cannot be disregarded in determining the most suitable form of government for the Territory. In setting these out below, I do so not only for purposes of record, but also because, in discussing thereafter the interim form of government which should succeed the repeal of the Constitution Act, it is necessary to bear in mind the desideratum that such temporary measures should be capable of smooth adaptation to some future form of representative government.

485. These considerations are as follows—

- (1) The Mandate visualises the political development of the people of the Territory, and makes it desirable that there should be representative institutions to give them the necessary experience in self-government. Moreover, as the Union is ruled on a democratic basis and as the majority of the European inhabitants of the Territory are accustomed to democratic institutions, these cannot indefinitely be withheld without creating difficulties of administration for the Mandatory, and discontent amongst the larger section of the Europeans in the Territory.
- (2) Under the Mandate a system of government holding within itself the germ of development to responsible government, under which political power may be vested in the white minority of the population, is not contemplated. (See paragraph 213.)
- (3) The obligations, which the Mandatory has undertaken as trustee of the indigenous peoples, are not likely to be properly discharged if vested in a local legislature. (See paragraphs 213 and 384.)
- (4) The absence of a financially independent electorate makes it essential that land settlement, with its concomitant of an electorate largely indebted to the Government, should not be entrusted to a local legislature, but should be controlled by the Mandatory. (See paragraph 390).

- (5) It will be desirable for a considerable period to come, to withhold from the competence of the local parliament any subjects which are prone to become racial issues.
- (6) The Union Parliament passes legislation on various matters, which directly affect the Territory, but its membership does not include representatives of the Territory. It is very desirable that when representative government can again be introduced in the Territory, provision should be made for its representation in the Union Parliament in a way which will ensure that the Germany minority shall likewise be represented.
- (7) The poor prospects of the Territory being able to function as an autonomous fiscal unit makes a fairly close supervision of its budget by the Union Government essential. (See Chapter VI passim.)

486. If, at the time when representative institutions can be restored, these considerations should still be as valid as they appear to-day, the following subjects would not be suitable for the competence of the local legislature: *Native Affairs, Land Settlement, Education*. I discuss the position of Education more fully below, but I consider the process of integration could start with Native Affairs and Land Settlement.

487. For other reasons I consider that *Mining* might also be integrated with the Union immediately. The Union has a Mines Department well-equipped for the technical services required for the development of this industry. As the Territory is not able to afford such a department for its own purposes alone, nothing but advantage can result to it if Mining were integrated with the administration of the Union.

488. The position in regard to the *Administration of Justice* and the *Policing* of the Territory requires special consideration.

489. In his evidence before us, Mr. Werth put forward the view that, as the maintenance of law and order is peculiarly a responsibility of the Mandatory, the Departments of Justice and Police should vest directly in the Union Government. On the other hand, from the public point of view, they have run smoothly for many years under the local government, except in so far as there have been complaints (see paragraph 202), that the present arrangements have not always conduced to the appointment of officials for the administration of justice of the type necessary worthily to uphold the prestige of the Mandatory. No such complaints were received about the police force of the Territory, but from the point of view of the members of that force it would undoubtedly be a beneficial change for them to be incorporated in the police of the Union. Incorporation of these departments in the corresponding departments of the Union would tend to do away with the complaints about the organisation of the Public Service, to which we have referred in paragraph 202, and would certainly tend to maintain the prestige of the Mandatory, a matter of very considerable importance in dealing with former subjects of a great nation.

490. The position with regard to these two services is on a somewhat different footing from those mentioned before; for while, in regard to the latter, there are good reasons inherent in the conditions of the Territory for the proposed integration, in regard to these two the matter may be regarded as more especially one of policy. My own conclusion, for what it is worth, is that incorporation of these services would conduce both to the good government of the Territory, and to the maintenance of the prestige of the Mandatory.

491. *Control of the Budget.*—This has been exercised by the Union Department of Finance for a number of years, since it has had to finance deficits. I consider that while representative institutions are in suspense, the budget should be prepared by that department. I consider too that in view of the considerable likelihood that, even should the Territory succeed in balancing its budget in good years, it will almost certainly fail to do so in future depressions, a certain measure of control should be exercised by the Department of Finance even when, with the restoration of representative institutions, the local legislature will vote the budget.

492. Education stands in a category by itself. On the one hand, it is so likely to become a political football in the local legislature, and it is so largely a field in which public funds, which will frequently have to be supplied, at least in part, by the Union, can be diverted to the private benefit of the electorate, that it is quite an unsuitable subject to be placed within the competence of the local Parliament. On the other hand, there is no Union Department dealing with education other than higher education.

493. I consider that this subject, which requires for its administration an unbiased non-political control, under the guidance of technical advice on education, should under the present peculiar circumstances be vested in the Administrator, who will be subject to the financial control exercised by the Union Government through the Budget.

494. This leaves over *Agriculture, the Postal Services, Public Works, Hospitals, Roads and Bridges, Game Preservation, and other Local Government activities.*

495. All these governmental activities have this in common, that they are not prone to excite racial passions. A future local legislature, if it is to gain any experience in self-government must have within its competence sufficiently important functions for this purpose. I consider that these activities can form an excellent basis, on which racial co-operation between the German and the Union sections can be established, without the evil of racial strife, from which the Territory has suffered so much.

496. I consider, therefore, that these subjects should be reserved for the competence of a future local legislature. In the meantime, while representative institutions are in suspense, they should be controlled by the Administrator, acting with advice from a nominated advisory council, and under close supervision of the Union Government.

497. As regards the other governmental activities, detailed above, they should, subject to what has been said about Justice and Police, be immediately integrated with the administration of the Union.

498. In conclusion, I wish to add a few remarks about the claim of the German section for acknowledgment of German as an official language. As pointed out in the report, it is already an official language in practice, and I consider that at the present juncture no further steps should be taken in this regard. I consider, however, that when an atmosphere for political co-operation has been re-established, and representative institutions can again be introduced, sympathetic consideration should be given to their claim. Three qualifications are, however, necessary in regard to the practical application of trilingualism.

(i) The *first*, already agreed to in the Cape Town Agreement, is that officials qualified in any two of the three languages of the country should be held to be properly qualified.

(ii) The *second*, arising in practice directly from this, is that correspondence from and with a Government Department shall be held to comply with the requirements of the law, if it is conducted in any one of the official languages, and should not be liable to be refused if it is not conducted in a particular language at the option of the recipient.

(iii) The *third*, relates to the publication of laws, *Government Gazettes*, and similar Government Notices. It can hardly be fairly claimed that for the benefit of some 14,000 Germans in the Territory all the laws of the Union and the *Government Gazettes* should be published in three languages. The delay involved in this would cause its breakdown, and the cost would be out of proportion to the number of persons concerned. It should, however, be sufficient if the publications of the local Administration in the Territory continue to be issued as they now are, in the three languages.

(Signed) J. E. HOLLOWAY.

ANNEXURE.

(Letter.)

AFSKRIF/MN.

DEUTSCHE GESANDTSCHAFT.

PRETORIA,

Nr. 3138/3.

den 7 November, 1935.

I Anlage.

Herr Staatssekretär,

Ich habe die Ehre Ihnen folgendes mitzuteilen :

Der unter dem Vorsitz des Herrn Oberrichters Van Zyl stehenden S.W.A. Commission ist während ihrer Arbeit in Südwestafrika eine Zusammenstellung von Schriftsstücken vorgelegt worden, die seinerzeit in dem südwester Büro der Nationalsozialistischen Deutschen Arbeiter-Partei beschlagnahmt worden sind. Diese Schriftsstücke sollten, soweit hier bekannt, unter anderem den Beweis der Einmischung der frühern deutschen Partei-Organisationen in die inner-politischen Verhältnisse des Mandatsgebiets Südwest erbringen.

Einige deutsche Zeugen haben demgegenüber die Auffassung vertreten, dass die vorgelegten Schriftsstücke einseitig zu Ungunsten des deutschen Standpunktes ausgewählt worden seien, und haben diese Auffassung durch Vorlage von Auszügen aus Briefen der Auslands-Organisation der N.S.D.A.P. in Deutschland an die Landesgruppenleiter in Südwest nachzuweisen gesucht. Da die Originale dieser Schriftstücke jedoch in Südwest nicht vorhanden waren, hat der Vorsitzende der Kommission, Herr van Zyl, die deutschen Zeugen gebeten, bis zum Wiederzusammentritt der Kommission beglaubigte Abschriften dieser Auszüge zu beschaffen.

Da die betreffenden deutschen Zeugen hierzu nicht in der Lage waren, hat mich die Auslandsorganisation der N.S.D.A.P. ersucht, Ihnen die in der Anlage beigelegten Auszüge aus den Briefen dieser Auslands-Organisation, deren Uebereinstimmung mit den Original Briefen von der Süd-afrikanischen Gesandtschaft in Berlin beglaubigt worden ist, zu übersenden. Aus diesen Auszügen werden Sie, Herr Staatssekretär, ersehen, dass die Auslands-Organisation der N.S.D.A.P. in Deutschland den Landesgruppenleitern in Südwest stets die strengste Weisung erteilt hat, sich von jeder Einmischung in die innere Politik des Gastlandes Südwest fern zu halten. Wenn diese klare Weisung nicht durchweg befolgt worden sein sollte, so haben die Landesgruppenleiter in Südwest gegen den ausdrücklichen Befehl der Parteileitung gehandelt.

Ich wäre Ihnen sehr dankbar, wenn Sie diese beglaubigten Auszüge aus Briefen der Auslands-Organisation der N.S.D.A.P. dem Vorsitzenden oder Sekretär der S.W.A. Commission aushändigen würden.

Genehmigen Sie, Herr Staatssekretär erneut die Versicherung meiner ausgezeichnetsten Hochachtung

(Get.) WIEHL.

Gesandter des Deutschen Reichs.

TRANSLATION.

(Letter.)

GERMAN LEGATION.

PRETORIA,

No. 3138/3.

7th November, 1935.

Mr. Secretary,

I have the honour to inform you of the following :—

A collection of documents, which were seized at the time in the South West Office of the German National Socialist Labour Party was produced before the South West Africa Commission, under the chairmanship of Mr. Justice van Zyl, during its enquiry in South West Africa. These documents should, so far as is known here, inter alia, furnish evidence of the interference of the former German Party Organisations in the inner political affairs of the Mandated Territory of South West.

Some German witnesses have, in contrast thereto, expressed the opinion that the documents produced were selected partially to the prejudice of the German standpoint, and have attempted to prove this contention by the production of extracts from letters of the Auslands Organisation of the N.S.D.A.P. in Germany to the territorial group leader in South West. As, however, the originals of these documents were not available in South West, Mr. van Zyl, the Chairman of the Commission, requested the German witnesses to procure certified copies of these extracts by the time the Commission reassembles again.

As the German witnesses in question were not in a position to do so, the Auslands Organisation of the N.S.D.A.P. has requested me to forward to you the attached extracts from the letters of this Auslands Organisation, which extracts have been certified by the South African Legation in Berlin to correspond with the original letters. You, Mr. Secretary, will see from these extracts, that the Auslands Organisation of the N.S.D.A.P. in Germany has always given the strictest instructions to the territorial group leaders in South West to refrain from every sort of interference in the internal politics of the country of residence, South West. If this clear instruction should not have been obeyed throughout, the territorial group leaders have acted contrary to the express order of the Party Executive.

I shall be very grateful if you will transmit these certified extracts from the letters of the Auslands Organisation of the N.S.D.A.P. to the Chairman or Secretary of the South West Africa Commission.

Please accept, Mr. Secretary, the renewed assurance of my highest consideration.

(Sgd.) WIEHL,

Minister Plenipotentiary of the German Republic.

EXTRACTS.

Auszüge aus Briefen der Auslands-Organisation an die Landesgruppenleiter von Südwestafrika.

(Extracts from letters of the Auslands-Organisation to the Country Group Leader of South West Africa.)

20 Juli 1932.

“Soeben erhalte ich von dem Landesvertrauensmann der Union, Pg. Prof. Dr. Bohle, die Nachricht, dass Sie in Südwest augenblicklich sehr stark öffentliche Propaganda machen für die Rückgabe der Kolonie an Deutschland. Ich war über diese Nachricht umsomehr überrascht, als ich aus Ihren bisherigen Berichten nichts derartiges entnommen habe.

Ich habe daher sofort ein Telegramm an Prof. Dr. Bohle in Kapstadt gerichtet, folgenden Inhalts: BEAUFTRAGT WANDKE PROPAGANDA RÜCKGABE EINSTELLEN.”

TRANSLATION.

Letter of 20/7/32.

“I have just received news from the ‘Landesvertrauensmann’ (Territorial Confidential Agent) for the Union that you are at present making very strong public propoganda in South West for the return of the colony to Germany. I was all the more surprised at this information, as I did not gather anything thereanent from your reports received up to now.

I, therefore, immediately sent a telegram to Prof. Dr. Bohle in Capetown as follows:—

‘Order Wandke to stop propoganda return South West.’”

25th August, 1932.

“Betreffs der Propaganda für die Rückgabe Deutsch-Südwests habe ich Ihnen bereits früher geschrieben, dass eine öffentliche Propaganda für die Rückgabe der Kolonien an Deutschland noch verfrüht ist, da Sie immer bedenken müssen, dass Sie sich in einem Mandatsgebiet befinden und es sehr leicht zu einem Verbot oder gar Ausweisung unserer Parteigenossen durch die Unionsregierung kommen kann unter der Begründung, dass Sie sich in die Politik der fremden, augenblicklich herrschenden Macht mischen. Wir alle hoffen, dass Südwest einst wieder deutsch wird, doch, wie bereits gesagt, wird die Entscheidung über diese Frage nicht dort, sondern hier in Europa gefällt werden.

Ihnen von hier aus genaue Instruktionen zu geben, wie Sie sich politisch dort verhalten sollen, ist ausserordentlich schwierig. Grundprinzip für unsere ausländischen Parteigenossen ist, sich nicht in die Politik des betreffenden Landes zu mischen. In Südwestafrika liegt die Sache insofern ja anders, als es ein Mandatsgebiet ist. Dennoch ist es gefährlich für eine Bewegung wie die unsrige, sich in die Politik der Mandatsherren zu mischen. Die Macht liegt auf Seiten der Unionsregierung, und es ist meiner Ansicht nach am besten, vorläufig sich abwartend zu verhalten und die Ereignisse an sich herantreten zu lassen. Sind wir hier erst einmal in Deutschland an der Regierung, dann lässt sich über alle diese Fragen, die Sie anschnelden, besser urteilen, und wird dann auch von hier aus wohl eine zielbewusste Auslandspolitik betrieben werden.”

TRANSLATION.

25th August, 1932.

"I have already written to you in regard to propaganda for the return of German South West, that public propaganda for the return of the colonies to Germany is premature. For you must always be mindful of the fact that you are in a mandated territory, and that it could very easily lead to a prohibition, or the deportation of our party associates by the Union Government, on the ground that they interfere with the politics of a foreign power, which rules momentarily (augenblicklich). We all hope that South West Africa will again be German, but, as I have already said, the matter will be determined not there, but here in Europe.

It is remarkably difficult to give you detailed instructions from here as to how you should conduct yourself in politics there. The fundamental principle is that our party associates abroad should not interfere in the politics of the country in question. In South West Africa the position is different in that it is a mandated territory. Still it is dangerous for a movement like ours to interfere in the politics of a mandatory state. Authority is on the side of the Union Government, and, in my opinion, it would be best temporarily to adopt a waiting attitude, and to allow things to develop. As soon as we are in power in Germany these questions, which you raise, can be better judged, and a more teleological external policy will no doubt be followed."

12 Oktober 1932.

"Wie ich Ihnen schon früher schrieb, wird das Geschick Deutschsüdwests nicht dort, sondern hier in Europa zur gegebenen Zeit entschieden werden."

TRANSLATION.

12th October, 1932.

"As I previously wrote to you, the destiny of German South West will not be decided there but here in Europe at the appropriate time."

27 Juli 1933.

"Sie kennen den Grundsatz der Auslandsabteilung, sich unter keinen Umständen in die innere Politik des Gastlandes einzumischen. Staatspolitisch ist Südwestafrika gegenwärtig für unsere Landesgruppe in diesem Sinne Gastland."

TRANSLATION.

27th July, 1933.

"You know the principle of the Auslandsabteilung under no circumstances to interfere in the internal politics of the country of residence.

From a state political point of view, South West Africa is at present in this sense a foreign country for our territorial group."

1 November 1933.

"Aus gegebener Veranlassung mache ich nochmals mit aller Eindringlichkeit darauf aufmerksam, dass von Seiten der Landesgruppe, der Ortsgruppen und der Stützpunkte der N.S.D.A.P. im ehemaligen Schutzgebiet jede Agitation zu unterbleiben hat, die den Anschein erwecken könnte, als ob das neue Deutschland Südwestafrika an sich reißen wird.

Ich ersuche, sämtliche Gruppen und Parteigenossen nochmals hierauf aufmerksam zu machen und dafür zu sorgen, dass Kundgebungen dieser Art restlos unterbleiben. Sie kennen den Standpunkt der Auslandsabteilung, dass jede Einmischung in die innere Politik des Gastlandes verboten ist und wissen, dass Südwestafrika staatspolitisch als Gastland betrachtet werden muss. Den Parteigenossen muss klar und deutlich vor Augen geführt werden, dass Deutschland an irgendeine gewaltsame Wiedergewinnung der Kolonien überhaupt nicht denkt."

TRANSLATION.

1st November, 1933.

"Moved thereto by certain reasons, I again bring to your notice in the most pointed manner that on the part of the territorial group, the local group and the cells (Stützpunkte) of the N.S.D.A.P. in the former protectorate, all agitation, which could create the impression that the new Germany will seize South West Africa, must cease.

I apply to all groups and party members again to direct attention to this, and to see to it that such announcements cease entirely. You know the attitude of the Auslandsabteilung that all intervention in the domestic policy of the country of reception is prohibited, and you know that from a public political point of view South West Africa is to be regarded as a country of reception (Gastland). It should be made absolutely clear to party members that Germany does not even contemplate the violent recapture of the colonies."

17 Januar 1934.

“Ich mache ferner auf meine wiederholten Anordnungen aufmerksam, die besagen, dass unsere Parteigenossen nur Reichsdeutsche werben dürfen und dass sie sich von jeder Einmischung in die innere Politik des Gastlandes fernzuhalten haben. Es ist notwendig, dass die strikte Durchführung dieser Anordnung beachtet wird.”

TRANSLATION.

Letter of 17/1/34.

“I further draw attention to my repeated orders which state that our party members are only allowed to canvass German nationals and have to refrain from every interference in the internal politics of the country of residence. It is necessary that the strict compliance with this order is observed.”

13 Februar 1934.

“Bei ihren Besuchen in den verschiedenen Ortsgruppen und Stützpunkten bitte ich, nochmals mit aller Entschiedenheit darauf hinzuweisen, dass kein Parteigenosse berechtigt ist, sich in die Politik des Gastlandes einzumischen.”

TRANSLATION.

Letter of 13/2/34.

“On your visits to the various local groups and points of support, I beg you to point out again with all firmness that no party member is entitled to interfere in the politics of the country of residence.”

1 März 1934.

“Das Resultat der Unterhaltung mit Herrn Generalkonsul Brehmer war dass er den führenden Politikern in der Union nochmals klar vor Augen hält, dass die N.S.D.A.P. sich grundsätzlich nicht um die Politik des Gastlandes kümmert und die Zusammenfassung der Reichsdeutschen in N.S.D.A.P.-Gruppen eine rein deutsche Angelegenheit ist.”

TRANSLATION.

Letter of 1/3/34.

“The result of the conversation with Consul-General Brehmer was that he again impresses upon the leading politicians of the Union that the N.S.D.A.P. on principle does not concern itself with the politics of the country of residence and that the grouping together of German nationals in N.S.D.A.P. groups is a purely German matter.”

6 März 1934.

“Wenn der Deutsche Bund gegen die Bestrebungen der Afrikaner, Südwest an die Union anzuschliessen, Front machen will, so ist es Sache des Bundes, dies in einer Form zu tun, die nicht zu politischen Konflikten führt. Aber unter keinen Umständen dürfen sich Parteigenossen hieran durch öffentliche Reden beteiligen. Es ist nicht im Interesse des Deutschen Reiches, wenn Pg. Matthiessen die von ihm geplante Rede halten würde. Als Parteigenosse kann er unter keinen Umständen als Redner auftreten, oder er muss schon die notwendig werdende Aktion den Leiter des Deutschen Bundes, Dr. Schwietering, überlassen. Ich bin der Ansicht, dass die Zukunft Südwestafrikas Überhaupt nicht in Südwest entschieden wird, sondern hier in Deutschland.”

TRANSLATION.

6th March, 1934.

“If the Deutsche Bund wishes to resist the aims of the Afrikaners to link up South West Africa with the Union, that is a matter for the Bund, to be done in such a manner as not to lead to political conflict. But members of the Party (Nazi) may under no circumstances take part therein, by means of public speeches. It is not in the interests of the German Reich that Party Member Matthiessen should make the speech he proposes to do. He may under no circumstances deliver an address as party member, but must leave the action, which already becomes necessary, to the Leader of the Deutsche Bund, Dr. Schwietering. I am of opinion that the future of South West Africa will not be decided in South West Africa at all, but here in Germany.”

TRANSLATION.

21st September, 1934.

"On the occasion of the party day at Nuremberg, and the session of the Auslands-Organisation in Nuremberg, the deputy-Fuehrer Party Member Hess made a speech, which in part dealt also with the Colonial question.

In spite of the recognition of the importance of colonial sources of raw materials, and of colonial markets for Germany, he could in regard to the question whether Germany demands back her former colonies, only say, what he replied to an Englishman who recently himself put this question, and on that occasion stressed that to-day already leading Englishmen are interceding for a return. I explained more or less the following to him:—

'It is self-evident that in Germany one warmly welcomes it if competent circles abroad recommend the return of our colonies. We, however, have no reason to undertake active steps in this question.'

25 Oktober 1934.

"... dass unter keinen Umständen die nationalsozialistische Regierung es nötig hat, in irgendeinem Lande getarnt aufzutreten. Es ist jeder Regierung klargemacht, dass die N.S.D.A.P. im Auslande rein deutsche Angelegenheiten verfolgt und sich niemals um die Politik des Gastlandes kümmert."

TRANSLATION.

25th October, 1934.

"... that under no circumstances is it necessary for the National Socialist Government to appear disguised in any country. It has been made clear to every Government that the N.S.D.A.P. pursues purely German affairs overseas, and never concerns itself with the politics of the country of residence."

I hereby certify that the foregoing are true and faithful extracts from copies of letters produced to me by the Leitung der Auslands-Organisation of the Nationalsozialistische Deutsche Arbeiterpartei.

Legation of the Union of South Africa, Berlin, Germany, this 23rd day of October, 1935.

(Sgd.) W. D. VAN SCHALKWYK.

Attaché.

SCHEDULE TO THE SOUTH AFRICA ACT, 1909.

To which reference is made by Mr. Justice van den Heever in his recommendations.

It is printed here for favour of convenient reference. (Sections 20 and 25 which would be out of place in regard to South West Africa have been omitted.)

SCHEDULE.

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General-in-Council shall be the legislative authority, and may by proclamation make laws for the peace, order, and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within seven days after the issue of the proclamation or, if Parliament be not then sitting, within seven days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session request the Governor-General-in-Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General-in-Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the commission shall be appointed by the Governor-General-in-Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall not be qualified to become, or to be, members of either House of Parliament. One of the members of the commission shall be appointed by the Governor-General-in-Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General-in-Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or other Minister of State nominated by the Prime Minister to be his deputy for a fixed period, or, failing such nomination, the vice-chairman shall preside at all meetings of the commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the commission shall consist of four or more members, three of them shall form a quorum.

5. Any member of the commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the commission.

6. The members of the commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the commission, and shall convene a meeting of the commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the dispatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the commission or proposes to take some action contrary to their advice, he shall state his views to the commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor-General-in-Council, whose decision in the matter shall be final.

10. When the recommendations of the commission have not been accepted by the Governor-General-in-Council, or action not in accordance with their advice has been taken by the Governor-General-in-Council, the Prime Minister, if thereto

requested by the commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor-General-in-Council shall transmit to the commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.

11. The Governor-General-in-Council shall appoint a resident commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary to the commission for the consideration of the commission and of the Prime Minister. A proclamation shall be issued by the Governor-General-in-council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General-in-Council the force of law.

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the three completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor-General-in-Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the natives reserves in the Bechuanaland Protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognized forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this Schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor-General-in-Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this Schedule from the Treasury of the Union towards the cost of administration of the territory bears to the total customs revenue of the Union on the average of the three years immediately preceding the year for which the contribution is made.

20. (Omitted.)

21. The members of the commission shall be entitled to such pensions or superannuation allowances as the Governor-General-in-Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King-in-Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories, which shall, when approved by the Governor-General-in-Council, be laid before both Houses of Parliament.

25. (Omitted.)

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