

28.2.23

REPORT OF UNITED NATIONS DEBATES ON
SOUTH-WEST AFRICA - 1950.

At the Fifth Session of the United Nations at Lake Success, the Fourth Committee of the General Assembly began its discussion of the "Question of South-West Africa: advisory opinion of the International Court of Justice" on 29th November 1950. The following account is based on extracts from United Nations reports of the proceedings.

The Committee had before it three draft resolutions all of which accepted the International Court's opinion, but which differed in the means of implementing that opinion. Brazil, Cuba, Mexico, Syria and Uruguay (A/C.4/L.116/Rev.1) suggested that a Commission of 10 should be established to follow, as far as possible, the procedure adopted by the Permanent Mandates Commission of the League of Nations, with a representative nominated by the Union of South Africa on the Commission. They enumerated some of the responsibilities of this Commission, including the consideration of reports on the administration of South-West Africa and the reception of petitions from inhabitants of the Territory.

India, Indonesia and the Philippines (A/c.4/L.121) put forward a somewhat similar resolution establishing an ad hoc committee. Later in the debate they supported Resolution L.116/Rev.1 after making minor amendments to it.

Denmark, El Salvador, Iraq, Norway, Peru, Thailand, the United States and Venezuela (A/c.4/L.124) submitted a draft resolution to establish a Committee of three to confer with the Union of South Africa concerning measures necessary to implement the advisory opinion of the International Court, and to report its findings and make its recommendations to the next session of the General Assembly. The Committee to consist of the President of the Trusteeship Council, Chairman of the Fourth Committee and the present Chairman of the Interim Committee.

A further resolution proposed by Cuba, Ecuador, Guatemala, Mexico and Uruguay was subsequently amended by India, Indonesia and the Philippines. It reiterated the recommendation that the Union of South Africa should place South-West Africa under the Trusteeship System.

The debate opened with a detailed legal analysis of the question in the light of the International Court's opinion by Mr. Rao of Brazil. He pointed out that in establishing the mandate system as an international institution, the Member States of the League of Nations had accepted a "sacred trust of civilisation" for the benefit of humanity, and that the Mandate for South-West Africa therefore imposed obligations upon the Union of South Africa towards the international community. The obligations assumed by the Union under the Mandate included a commitment to send annual reports to the United Nations and to transmit petitions from South-West Africa to the General Assembly. Although the Union was not bound by any legal obligation to conclude a Trusteeship Agreement, and despite the fact that there was no means of compelling the Union to enter into negotiations with a view to such agreement, there was nevertheless a moral obligation for such negotiations to be undertaken without delay.

He concluded, "Assuredly the Union of South Africa, with its tradition of scrupulous respect for international commitments, and which loyally participated in the debates in the International Court of Justice, will not delay in embarking upon the necessary negotiations, thus fulfilling the obligation of confidence and conscience towards the United Nations."

M. Coquet of Mexico, also mentioned that the right of the population of South-West Africa to submit petitions was fundamental, and recalled that the Herero people had asked the United Nations to take steps so that the lands which had always belonged to them should be returned, and that the tribal and social organisations should be restored.

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The following day Dr. Donges (Union of South Africa) began by saying that, although greatest respect should be shown to the advisory opinion of the International Court, it did not constitute a judgement binding on the parties concerned. He would listen with great attention in order to report to his government, which would consider most carefully any resolution adopted. "The nature of the resolution will have an important effect on my Government's decision, and while we are not prepared to slam the door on any attempt to find an amicable solution of a question which has vexed us for so long, we sincerely hope that the Organisation on its part will not do so either." At a time when the international atmosphere was particularly tense, it was essential to show the greatest political wisdom. In comparison with the grave events taking place, the question of South-West Africa was almost academic.

He concluded that this was the time to seek points of agreement - not difference; to unite and not divide; "to place first things first, and think, and act, 'big'."

Speaking for the United Kingdom, Lord Ogmores said: "We believe that of all the dangers which face the Committee in its search for a solution the greatest danger is that of forcing the pace to an extent which will cause a breakdown in the negotiations."

Lord Ogmores stressed the importance that the United Kingdom attached to the International Court whose opinion they accepted in toto and, with regard to the practical measures to be taken, he quoted a passage from the Court's opinion that "the degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. These observations are particularly applicable to annual reports and petitions." Consequently, a system of supervision should be devised through negotiations with the Union of South Africa, which would be as near as possible to the terms of the Mandate. In his view, this could best be done by establishing a body to discuss the question of how the terms of the advisory opinion were to be put into practice with the Union of South Africa.

"I wish to emphasize to the Committee that our proposal is for negotiations with the Union Government not on the substance of the Court's opinion but on the procedure for implementing it. Not on whether reports and petitions should be submitted but on how they should be handled by the United Nations." Lord Ogmores felt that a draft resolution setting up a supervisory body in an arbitrary way would be far less likely to be accepted by the Union of South Africa.

In sponsoring Resolution L.124 Mr. Cooper of the United States subscribed to this view and invited other delegations to consider that, even at the risk of delay, the United Nations would better discharge its duty by a method ensuring implementation of the Court's recommendations than by a method which might jeopardise that result.

This point of view was further supported by the Belgian delegate, Mr. Ryckmans, who pointed out that if the Union of South Africa could not make a unilateral decision to alter the international status of South-West Africa, nor could the United Nations modify unilaterally the obligations imposed on the Union of South Africa. And that, he considered, was precisely what resolutions L.116/rev.1 and L.121 did.

Here Mr. Rao of India recalled the South African Delegate's remark that his Government did not recognise the advisory opinion of the Court as binding, and said that in the absence of any assurance that the Union accepted the Court's view that reports and petitions should be transmitted, he thought it difficult to see what could be achieved by negotiations between the proposed Committee of three and the Government of the Union of South Africa.

M. Garreau (France) considered Resolution L.124 to be a very wise one, and Mr. Kernkamp of the Netherlands, hoped that the Union of South Africa would do everything in its power to satisfy the requirements of the
United/...

United Nations. The debate had shown there was no desire to create difficulties for the Union Government.

A proposal was put forward by the Soviet delegate Mr. Tajibaev, censuring the Union Government for passing the South West Africa Affairs Amendment Act, 1949, which he said violated the Charter as, under the pretext of making the territory self-governing, it transformed it into a mere province of the Union, and 90 per cent of the population, being indigenous inhabitants, could not participate in the election of representatives to the Union parliament.

The moral aspect of the whole question was stressed by M. D'Orsinville of Haiti. He begged members of the Committee, before adopting any decision, to recall the statement made the previous year on the conditions suffered by the inhabitants of South-West Africa. He felt that special rights should be reserved to permit the representatives of those inhabitants to participate in the work of any committee which might be established. The Haitian delegation would be disposed to be conciliatory if it could convince itself of the good faith of the Union Government, but the first words of the South African representative had seemed to indicate that they were not prepared to alter their position. He still hoped for an indication that the Union would conform to the wishes of the General Assembly and place South West Africa under the Trusteeship System.

Advocating draft resolution L.116/rev.1, the Brazilian delegate, M. Jobin, said its terms did not go beyond the advisory opinion in any way. South Africa was still governed by the mandates system, and the rules of procedure of the proposed Commission for South West Africa should conform as far as possible to the procedure followed by the League of Nations. On the other hand, he said, the sponsors of resolution L.124 were taking a contradictory attitude. Although they proclaimed the advisory opinion sacrosanct, they were not prepared to accept all its implications and preferred to negotiate with the Mandatory Power. He hoped that some compromise might be reached, and Mr. Lannung (Denmark) also pointed out the necessity for some compromise if a two thirds majority were to be ensured in the General Assembly.

Dr. Perez Cisneros of Cuba said the whole question was closely bound up with the essential aims and objectives of the United Nations as regards the elimination of racial discrimination. In defiance of the Declaration of Human Rights, laws were being applied in South-West Africa which made any freedom of movement on the part of the indigenous inhabitants virtually impossible and 90 per cent of the people had no weapon with which to combat the racial discrimination which had become a grave problem as a result of official Government policy. Moreover, there was no evidence that any real political education of those inhabitants was taking place.

He deplored the fact that in an era in which the United Nations was struggling for the preservation of the principles of democracy, such political, racial and economic discrimination was being practiced in a territory which had been placed under the protection of an international Mandate - this could hardly be treated as an academic question. Dr. Cisneros quoted a passage from a recent book by Mr. John Foster Dulles, which pointed out that the discriminatory and repressive current official policy of the South African Government was favourable to the spread of Communism and the unleashing of a third world war.

Judge Ingles (Philippines) remarked that the Council of the League of Nations had had full power to constitute the Permanent Mandates Commission, determine its rules of procedure and appoint its members, and that the Union of South Africa, not having been a member of the Council, had had no voice in that process. Now, however, according to resolution L.121, the Union would be in a much more favourable position for, as a member of the United Nations, it would have a voice in the creation and composition of the new Commission. All that the Union Government was entitled to ask was that the degree of supervision exercised by the General Assembly or by this Commission, did not exceed the supervision exercised under the Mandate System.

A reminder came from Mr. Ali of Pakistan that the Territory of South-West Africa had been placed under an international mandate in order that it might prepare itself, with the assistance of the Mandatory Power, to achieve autonomy and independence, and Mr. Magana (El Salvador) referred to previous assurances from the Union Government that it would "continue to render reports to the UNO as it had done heretofore under the Mandate", and that the Union Government would not regard the dissolution of the League of Nations as in any way diminishing its obligations under the Mandate.

At this point, on 4 December, Dr. Cisneros of Cuba repeated an earlier request by the Brazilian Delegate that certain communications relating to South-West Africa, and listed as received by the Secretary-General, should be translated and circulated. Upon enquiry, the Secretariat stated that the following had been received:-

1. letter and memorandum dated 3 Oct 1950 from Rev. Michael Scott,
2. letter dated 23 Oct 1950 from Unitarian Fellowship for Social Justice, Los Angeles B ranch.
3. cable dated 25 November 1950 from Hosea Kutako and David Witbooi,
4. letter dated 22 September 1950 from the African National Congress,

This resulted in a long debate in which Mr. Jooste (South Africa) protested against the circulation as official documents of communications received from private individuals, probably dealing with the internal legislation of the Union. The Committee had the International Court's opinion before it and it was difficult to see how the Rev. Michael Scott or any other private individual could be of assistance to the Fourth Committee in considering that opinion. It was not unreasonable to conclude that the proposal was an attempt to embarrass the South African delegation, or to suggest that it might even be inspired by hostility towards the South African Government. That was how it would be interpreted in South Africa.

Mr. Jooste pointed out that the advisory opinion of the Court had not yet been translated into Spanish and it was difficult to see why communications relating to South West Africa should receive preferential treatment. The Union had no reason to prevent information on the territory from reaching the outside world, but a question of principle was involved.

Dr. Cisneros assured the Committee that his proposal was not based on hostility towards any delegation. It was the Committee's duty to inform itself of the contents of communications relating to South West Africa under para 1 of Article 80 of the Charter. Then Mr. Shiva Rao of India's suggestion that this question be adjourned to give time for reflection was adopted, and subsequently the Cuban Delegate agreed that the matter be left in abeyance, but reserved the right to raise the question again later.

Dr. Donges (South Africa) continued the general debate and analysed the Statute of the Court to show that an advisory opinion was not automatically binding as a judgement, in the strict sense of the term, would be. He reiterated that his Government would define its position later. The Union Government had always carefully and fully discharged its obligations under the Mandate, establishing an enviable record for administration between 1920 and 1939 when the Permanent Mandates Commission ceased to function. Even since then South Africa had continued to administer the Territory in accordance with the spirit of the Mandate and there had been no detrimental effect on the maintenance of the well-being and development of the people.

Dr. Donges then took up the decision by 12 votes to 2 of the Court that South Africa continues to have "international obligations" and that supervisory functions are to be exercised by the UN to which annual reports and petitions are to be submitted. He maintained that the Court was "swayed" by the provisions of the final League resolution adopted in April 1946 which pre-supposed that such supervisory functions would be transferred to the United Nations. But, according to him, the Court was unaware of the circumstances leading up to the adoption of that particular resolution. He then reviewed the history of the resolution, based on a text introduced by the Chinese Delegation, and said it had not been the understanding of his Government that the text of the final resolution pre-supposed the

transfer/...

transfer of functions to the United Nations, and if that had been the intention, South Africa would have voted against its adoption, and no resolution would then have been adopted since the rule of unanimity applied.

He believed that had the Court been aware of the real intentions of this resolution, it would not have taken the view expressed in the Advisory Opinion. In the light of this new development, for the researches which had made known the facts had only recently been concluded, the South African Government would consider the full problem in all its aspects.

Commenting on Dr. Donges' statement, Judge Ingles of the Philippines said it was strange that the representative of South Africa had attended the discussions of the International Court of Justice if he had doubted the effect of its advisory opinion upon decisions which would be taken by the General Assembly. With regard to the argument that new evidence had been discovered, there was a legal principle that newly-discovered evidence must not have existed at the time of the trial. As the information given by Dr. Donges was contained in the files of the League of Nations, it could not be regarded as newly-discovered.

Mr. Liu (China) observed that the South African representative had stressed the draft resolution submitted to the League of Nations by the Chinese Delegation; he feared that his remarks might create a wrong impression on the Fourth Committee. The resolution finally adopted by the League of Nations did not, it was true, contain any specific provision for the transfer of supervisory functions, but neither did it forbid their transfer. In view of the importance of that point, he wondered why the South African Government had not considered it earlier, but had waited until the advisory opinion of the Court had been discussed in the Fourth Committee.

The debate on resolutions was then closed and a vote was taken on draft resolution L.116/Rev.1 as amended by L.129, and the resolution as a whole was adopted by 26 votes to 21, with 4 abstentions.

Explaining his delegation's vote in favour of this resolution, Mr. Shiva Rao of India, drew attention to statements made on various occasions by the Prime Minister of the Union of South Africa. On April 14, 1950, for instance, Dr. Malan had said in Parliament that he was still determined to reject any demand from the United Nations that South-West Africa should be placed under the Trusteeship System, or that the Union should be forced to submit annual reports, or to repeal certain of its legislative provisions. On 7 August 1950, he again stated that he had no intention of yielding to the demands of the United Nations, adding that the League of Nations had been a reasonable organisation, but that the United Nations wished to impose its ideas, particularly with regard to the equality of the white and the coloured races; "we must protect the natives from the United Nations" Dr. Malan had said.

Mr. Shiva Rao thought it important to refer to those statements for the benefit of members of the Committee who still advocated negotiations, so that they would be fully aware of the results likely to be achieved in that field.

To this, Mr. Ryckmans of Belgium, who had voted against the draft resolution, replied that he wondered whether there was really any hope that the Union of South Africa would be persuaded to submit annual reports and transmit petitions without any initial negotiations.

Resolution L.128, recommending that South-West Africa be placed under the Trusteeship System, was then considered. Judge Ingles pointed out that the International Court, in its advisory opinion, page 140, had stated -

"It/...

"It may thus be concluded that it was expected that the mandatory States would follow the normal course indicated by the Charter, namely, conclude Trusteeship Agreements"

and, on page 141:

"Before answering this question, the Court repeats that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship system by means of a Trusteeship Agreement in accordance with the provisions of Chapter XII of the Charter."

Other delegations, including the United Kingdom, Australia, Belgium, Canada, France, Greece and the Netherlands, felt there was no legal obligation for a Trusteeship Agreement being undertaken.

The resolution was put to the vote, and adopted by 27 votes to 12 with 8 abstentions. The debate in the Fourth Committee was concluded on 8 December.

On 13 December the question of South West Africa came before the General Assembly. Realising that resolution L.116/Rev.1 was unlikely to get the two-thirds majority necessary in the Assembly, Delegates had submitted a compromise resolution. Before the vote on this resolution was taken, Mr. Jooste (South Africa) rose to explain that his delegation had taken no part in discussions leading to the compromise, which was simply a compromise between a more extreme and less extreme resolution. His delegation would therefore vote against it.

The resolution was as follows:-

(Sponsored by -

Brazil, Denmark, Peru, Syria, Thailand, United States of America:)

X 1 The General Assembly

Considering that the International Court of Justice, duly consulted by the General Assembly pursuant to resolution 338(IV) of 6 December 1949, reached the conclusion that the Territory of South West Africa is a Territory under the international Mandate assumed by the Union of South Africa on 17 Dec 20,

Considering that the International Court of Justice is of the opinion that the Union of South Africa continues to have the international obligations laid down in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa,

Considering that the International Court of Justice is of the opinion that the functions of supervision over the administration of the Territory of South West Africa by the Union of South Africa should be exercised by the United Nations, to which the annual reports and the petitions from the inhabitants of the Territory are to be submitted,

Considering that the International Court of Justice is of the opinion that the Union of South Africa acting alone is not competent 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,

Considering that the Government of the Union of South Africa should continue to administer the Territory of South West Africa in accordance with the Mandate conferred by the Principal Allied and Associated Powers upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa,

Considering/...

Considering that it is incumbent upon the Government of the Union of South Africa to promote to the utmost in the administration of the Territory the material and moral well-being and social progress of its inhabitants as a sacred trust of civilisation, subject to the existing Mandate, and to give effect to the obligations which it assumed under the Mandate;

1. Accepts the advisory opinion of the International Court of Justice with respect to South West Africa;
2. Urges the Government of the Union of South Africa to take the necessary steps to give effect to the opinion of the Court, including the transmission of reports on the administration of the territory of South West Africa and of petitions from communities or sections of the population of the Territory;
3. Establishes a committee of five consisting of the representatives of Syria, Thailand, Denmark, United States of America and Uruguay, to confer with the Union of South Africa concerning the procedural measures necessary for implementing the advisory opinion of the International Court of Justice; and to submit a report thereon to the next regular session of the General Assembly.
4. Authorizes the Committee, as an interim measure, pending the completion of its task referred to in paragraph 3, and, as far as possible in accordance with the procedure of the former Mandates System, to examine the report on the administration of the Territory of South West Africa, covering the period since the last report, as well as petitions and any other matters relating to the Territory that may be transmitted to the Secretary-General, and to submit a report thereon to the next regular session of the General Assembly. X

The vote was as follows:-

Para 1	was adopted by 43 votes to 6 with 7 abstentions.
2	38 6 8
3	43 6 8
4	39 6 7

The whole resolution was voted on by roll-call as follows:-

In favour: United Kingdom, United States, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Argentina, Brazil, Burma, Canada, Chile, China, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Netherlands, Norway, Pakistan, Paraguay, Peru, Philippines, Saudi Arabia, Sweden, Syria, Thailand, Turkey.

Against: Union of South Africa, Union of Soviet Socialist Republics, Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Ukrainian Soviet Socialist Republic.

Abstaining: Australia, Belgium, Bolivia, Colombia, New Zealand.

The resolution was adopted by 45 votes to 6, with 5 abstentions.

In the explanation of votes, Mr. Jooste (South Africa) said that at the outset of the debate the leader of the delegation expressed the hope that in this matter an attempt would be made by the United Nations to find points of agreement instead of points of difference in the face of the grave crisis facing the world. Progressively their hopes had deteriorated and their expectations had been all but shattered. It seemed as if there was a spirit prevalent among certain member states, which unfortunately they had succeeded in indoctrinating in others, to eschew the way of consultation and agreement and to prefer to ride roughshod over the fundamentals of international cooperation and the sensibilities of a fellow member. The compromise resolution practically closed the door to a calm and objective consideration of the problem. He felt that the preamble to the resolution was a one-sided, partial and incomplete recapitulation of the Court's advisory opinion, and that
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the provision of interim machinery to examine reports and petitions before the next session of the General Assembly could not be reconciled with the principle of conferring with the Union on measures necessary to implement the advisory opinion of the International Court.

Mr. Shiva Rao (India), in explaining acceptance of the compromise, said his delegation had been impressed by the point of view of the United Kingdom representative who had said in the Fourth Committee "Our proposal is for negotiations with the Union Government, not on the substance of the Court's opinion but on the procedure for implementing it, not on whether reports or petitions should be submitted but on how they should be handled by the UN." That was what the General Assembly expected the negotiating Committee to do. The next regular session of the Assembly would, it was hoped, have the report of the negotiating Committee before it on three main topics: on the administration reports of the Government of the Union of South Africa for the years 1947 to 1950; petitions from the territory of South-West Africa, and the procedure to be followed in the future.

Lord Ogmore (UK) placed on record that his Government considered the provisions contained in paras 2 and 4 of the resolution may be held to prejudice to some extent the procedure for the submission of reports and petitions. "I do not say that it will so prejudice the procedure, but it may do so. We hope it will not." The United Kingdom had therefore abstained from voting on those paragraphs, while supporting the resolution as a whole.

The vote was then taken on resolution II as follows:-

The General Assembly

Considering that the General Assembly by its resolutions 65(I) of 14 Dec 1946, 141 (II) of 1 November 1947, 227(III) of 26 November 1948 and 337(IV) of 6 Dec 1949 recommended that the Mandated Territory of South West Africa be placed under the International Trusteeship System and invited the Government of the Union of South Africa to propose for the consideration of the General Assembly a trusteeship agreement for the aforesaid territory,

Considering that the International Court of Justice, duly consulted by the General Assembly in pursuance of resolution 338(IV) of 6 Dec 1949, delivered the opinion that the Territory of South West Africa is under the international Mandate assumed by the Union of South Africa on 17 December 1920,

Considering that in accordance with Articles 75, 77a, 79 and 80, paragraph 2, of the Charter of the United Nations the Trusteeship System has been applied to all mandated territories which have not achieved independence, with the sole exception of the territory of South West Africa,

Considering that, under the terms of the Charter of the United Nations, it is clear that the International Trusteeship System takes the place of the former system of mandates instituted by the League of Nations and, further, that there is no specific provision indicating the permanent co-existence of the Mandates System with the International Trusteeship System,

1. Reiterates its resolutions 65(I) of 14 Dec 1946, 141(II) of 1 Nov 47, 227(III) of 26 Nov 1948 and 337(IV) of 6 Dec 1949 to the effect that the territory of South West Africa be placed under the International Trusteeship System;
2. Reiterates that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a trusteeship agreement in accordance with the provisions of Chapter XII of the Charter

The vote was as follows:-

In favour: Union of Soviet Socialist Republics, United States, Uruguay, Venezuela, Yugoslavia, Afghanistan, Brazil, Burma, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Ecuador,

In favour: Egypt, Guatemala, Haiti, Honduras, Indonesia, India, Iraq,
(Contd) Lebanon, Liberia, Mexico, Pakistan, Paraguay, Philippines,
Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist
Republic.

Against: Union of South Africa, United Kingdom, Australia, Belgium,
Canada, Ethiopia, Greece, Netherlands, Peru, Sweden.

Abstaining: Yemen, Argentina, Bolivia, Chile, Colombia, Costa Rica,
Denmark, France, Iceland, Iran, Israel, New Zealand,
Nicaragua, Norway, Thailand, Turkey.

The resolution was adopted by 30 votes to 10, with 16 abstentions.

Mr. Jooste of South Africa said that this invitation to South Africa to submit a trusteeship agreement had been extended on different occasions in the past and they had always categorically declined it. Nothing had happened in the meantime to cause South Africa to reconsider its attitude.

NOTE ON PERMANENT MANDATES COMMISSION
PROCEDURE WITH REGARD TO PETITIONS.

Petitions fell into two categories:-

1. Petitions from the territory were to come to the Secretariat through the mandatory governments, and a petition coming in any other way had to be returned to the signatories for resubmission through the mandatory government.
2. Petitions from sources outside the territory were submitted to the chairman of the Commission, who took a decision on the receivability of the petition, rejecting petitions which were obviously trivial.

Petitions against the Covenant or the mandates were regarded as unreceivable, as were anonymous petitions, and usually those containing violent or objectionable statements. Moreover, any petition, no matter what its source, was regarded as non-receivable if it attempted to use the Commission as a court of appeal in the case of a dispute which local courts were competent to handle or had already judged. But the Commission reserved the right to consider appeals in a case where a judgment had been based on legislation which itself might not be in conformity with the principles of the mandates. (Duncan Hall - Mandates, Dependencies and Trusteeship - page 200.)

In case (1) the Mandatory Power was expected to make comments before forwarding the petition, and no acknowledgement of receipt was sent by the Secretariat to the signatories. In case (2) the mandatory power was asked to submit any comments within a maximum period of 6 months from the receipt by them of the petition, copy of which was forwarded to them as soon as the Commission deemed it receivable. In case (2) the Secretariat acknowledged receipt. In both cases, the results of the discussion was communicated to the petitioners direct.

With regard to the oral hearing of Petitioners, no provision was made in the Rules of Procedure. In 1925 the Commission reached an understanding as to the correct procedure. M. Rappard formulated it - "All the members of the Commission were entitled to hear persons who applied to them for an interview...." But neither the chairman nor the members could make official use of anything unless it was formally submitted in writing, through the correct channels. The Council of the League of Nations in 1926 opposed the hearing of petitioners, but as the rapporteur observed, it was always possible for the Council to take a different view in an exceptional case,

to
It would therefore seem to be open decision by the newly established Committee on South-West Africa, as to how they grant a hearing to the petitioners from that Territory.

COPY OF LETTER DATED 2 December 1950, TO SOME
MEMBERS OF THE FOURTH COMMITTEE

1 Woodview Road,
West Hemsptead,
Long Island, N.Y.

2 December 1950.

Dear Sir,

A cable has, I am informed, been transmitted to the Secretary-General from those of the indigenous population of South West Africa whom last year I had the honour to represent before the Fourth Committee. This is to the effect that the Nama, Herero and Berg-Damara tribes support the representations I am making at the United Nations, confirm their petitions, and request that African representatives should be allowed to be present before any final decisions are reached or, alternatively, that a Commission should be sent to South West Africa from the United Nations. It is signed by Hosea Kutako and David Witbooi.

From this it will be realised with what anxiety the African people are awaiting the outcome of the General Assembly's deliberations.

It is evident that the Fourth Committee is anxious to arrive at a settlement of the question. In all the resolutions before it, the advisory opinion of the International Court of Justice is accepted as the basis of any future arrangement. In Resolution A/C.4/L.124 a proposal is made for the establishment of a body to negotiate the methods and means of implementing the Court's opinion. Resolutions A/C.4/L.116/Rev.1 and L.121 propose the establishment of a commission or ad hoc committee for the immediate discharge of the obligations enumerated in that opinion.

If, however, there is to be delay in arriving at some permanent arrangement for implementing the advisory opinion of the Court some interim provision could be made to safeguard the rights and interests of all parties. A resolution, or an amendment to a resolution, could be introduced making such interim provision for the receipt and examination of any reports and petitions that may be forthcoming from the Union Government and the inhabitants of South West Africa respectively. Without this it would seem that a hiatus would be created, denying the inhabitants any form of expression on the all important questions regarding their future which you are now considering.

I feel, therefore, that I should have failed in the task entrusted to me if I did not call your attention once again to the petition of these African people vide A/C.4/94,95,96,97 and at the same time try to find a means whereby this sacred trust of civilisation can be continued in respect of these African people until a permanent arrangement is made.

I trust that this suggestion will commend itself to you or that some other way will be found whereby a reconciliation of points of view which appear to be at variance in the Committee can be effected without denying even temporarily to your petitioners or the others the rights and privileges which, as the Court has confirmed, belong to them.

The request which your African petitioners have made cannot in any sense be regarded as an excessive or exorbitant demand, having regard to those ideals of justice and freedom to which they have been encouraged to aspire through the media of the United Nations, and which the inhabitants of many other territories in Africa are on their way to achieving.

Yours sincerely,

Sgd. Michael Scott,
Rev.

EXTRACT FROM A LETTER DATED 14 December 1950,
to the SECRETARY-GENERAL, UNITED NATIONS,
from Rev. Michael Scott.

1 Woodview Road,
West Hempstead,
Long Island, N.Y.

14 December 1950.

The Secretary-General,
United Nations,
Lake Success.

Dear Sir,

Following the adoption by the General Assembly on Dec. 13, 1950 of a Resolution on South West Africa authorising a Committee of five which it appointed to receive petitions, I have the honour to enclose herewith a photostat copy of a letter which I have received from the two senior Chiefs of the Herero people of South West Africa requesting that their own spokesmen should be allowed to be present 'before any final decision is reached' and also that the 'United Nations should send a commission to come and investigate the conditions here'.

I am very much hoping that it may now be possible for these African people to be allowed to make an oral presentation of their views to the Committee which has now been established and that they should be allowed to attend future debates at the United Nations at which their affairs are discussed.....

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