

337. During this period the deficits considerably exceeded the amounts payable by the Administration for interest and guarantees. The Administration had, therefore, to borrow from the Mandatory the monies to pay for its interest and guarantees plus a good deal more, thus increasing the interest burden in each succeeding year. It is clear from this that unless revenue improves considerably there is no prospect of the Territory being able to meet the annual charge for the service of the debt, while the practice of borrowing for this purpose only makes the position worse from year to year. Without a reversal of the present trend, the situation must resolve itself in the not too distant future in absolute bankruptcy.

338. We have made an analysis of the revenue of the Territory from 1924, (when the payments on account of revenue collected or accrued during the period of occupation stopped), which throws further light on its ability to pay for its own government and development.

339. As far as we can judge at present, there seems to be little prospect of the Territory securing a sound financial position, unless there is a considerable increase in its mining revenue.

340. We give below the mining revenue in three periods of three years each—

Average annual mining revenue—

	£
1924-25 to 1926-27	290,000
1927-28 to 1929-30	86,000
1930-31 to 1932-33	43,000

341. We are informed that there is very little hope that the mining revenue will return in the near future to the high level of the period 1924-27. The average for the six years 1924-30 was £188,000.

342. A further calculation has been made on the assumption that for the next few years expenditure remains on the average level of the depression years 1932-35, when it was much lower than in the previous period. This would limit expenditure from revenue to £639,000, and capital expenditure to £91,000, making a total of £730,000.

343. The revenue for the year 1933-34 was £474,000 and this was considerably in excess of that for the year 1932-33 (£387,000). If, therefore, the mining revenue were to reach the average figure of the years 1924-30 other revenue would still have to improve to the extent of £113,000 to enable the Territory to maintain the level of expenditure of the depression years without recourse to loans from the Mandatory.

344. Mining has for many years been one of the chief sources of revenue for the Territory. The wide fluctuations in the receipts from this source are well illustrated by the fact that in 1925-26 (after the receipts from taxes accrued during the period of occupation had ceased to inflate the figure) they were £352,000 while in 1932-33 they fell to £10,000! In fact, the wide fluctuations in annual revenue make it difficult to arrange the budget of the Territory on the customary annual basis.

345. Even when the account is balanced over a long period, however, the final result has hitherto always been a substantial deficit. The fourteen years of the mandatory period which we have reviewed, consisting from a revenue point of view of ten prosperous years and four depression years, ended in a very large deficit.

346. It must, we consider, be clear from that what has gone before that the Territory has not hitherto been capable of defraying, on an autonomous financial basis, the level of public expenditure which has been incurred.

347. We proceed to consider the following methods of dealing with this problem—

Increased Taxation.

Reduction of Expenditure.

Financial support by the Mandatory.

(II.)—INCREASED TAXATION.

348. (a) *Income Tax*.—There is no income tax in the Territory. We consider that it is inequitable that the inhabitants should be free of this form of taxation, when year after year the budget requires to be balanced by loans from the Union, where it applies. It may be true that the yield of such a tax will not be large, but the Territory cannot afford to disregard even minor sources of revenue, and we can see no good reason why inhabitants of the Territory capable of paying an income tax should not do so.

(b) *Personal Tax*.—All the provinces of the Union have some form of personal tax. We consider that, before any assistance such as we recommend under paragraph 372 below, can be given from Union funds, and as a condition of such grant, the Territory should impose a personal tax.

(c) *Native Taxation*.—The Native pass fees have hitherto produced an insignificant return to revenue. While we do not consider that the imposition of a rate of tax equal to that of the Union could be justified in the Territory, we consider that, bearing in mind our recommendation that more should be done for the development of the Natives, there is room for an increase in Native taxation.

(III.)—REDUCTION OF EXPENDITURE.

349. The largest items in the Expenditure of the Territory from Revenue for 1933-34 were—

(a) Interest and Redemption.....	£164,000
(b) Education.....	105,000
(c) Police.....	86,000

(a) *Interest and Redemption*.—The principal returns on the revenue side for the capital expenditure which has been incurred are Interest on Loans (£44,000) and Rents of Government Properties (£15,000). Post Office Revenue includes an amount which represents interest on capital invested. Smaller amounts are possibly included under other heads of revenue. Even if these two amounts are deducted from the expenditure the resulting figure of £105,000 still ranks with Education as the largest individual votes. Savings on this vote are only possible at the expense of the Union Government. We deal with the financial relations between the Mandatory and the Territory in paragraphs 351 to 376 below.

(b) *Education*.—There can be little doubt that if the Territory had had to finance itself without assistance from the Mandatory, it would have been able to grant free education on the present scale only at the cost of taxing itself much more heavily than at present. There is much to be said for the view that these educational facilities are part of the pattern which the public life of the Territory has derived from its association with the Union. During the German regime public expenditure on education was low. After the Occupation more and more people came in who were accustomed to free education in the Union, until now they form a majority of the

European population. This service has thus come to be regarded as an ordinary state service. As long as free education obtains in the Union it is unlikely that it will be withheld in South West Africa, and there is, therefore, little prospect of reduction of Government expenditure on this score.

(c) *Police*.—The expenditure on police per head of population inside the police zone is more than double that of the Union. On the other hand, the expenditure per square mile is only eight per cent. of that in the Union. There are many complaints that the Territory is under-policed, and when one bears in mind the enormous size of the area, and the multifarious administrative duties devolving on the force in connection with scab inspection, locust destruction, and other routine work for Government Departments, it is clear that no savings are possible on this vote.

350. Vague charges are frequently made that the Administration is fashioned on too elaborate a scale for the needs of the Territory, but concrete indications of this, and suggestions as to how it could be remedied, were difficult to obtain. In the absence of such evidence, we cannot make any recommendations for the reduction of public expenditure by economies in the Administration.

(IV.)—FINANCIAL SUPPORT BY THE MANDATORY.

351. The terms of the Mandate require the presentation to the Council of the League of Nations of an annual report on the affairs of the Territory, and this makes it essential that the accounting of the revenue and expenditure of the Territory should be kept separate.

352. Owing to this consideration, the prevailing view is that the Territory should for all purposes be regarded as a unit and it is so regarded, not only from a financial, but also from an economic standpoint, in the report of the Economic and Financial Commission. Your Commissioners are of opinion, however, that adequate treatment of the question of financial support by the Mandatory makes it essential to go further, and to discuss not only the relations between the Territory and the Union as units, but also the economic interactions of the present close relationship between the two.

353. Due importance should be given to the fact that the Mandatory made use of only a part of the right of “ . . . full power of administration and legislation over the Territory subject to the present Mandate as an integral portion of the Union of South Africa . . . ”

354. The absence of customs boundaries between the two countries means, in effect, that economically this integration has been brought about. There is, however, no such integration in the administrative and fiscal spheres. Deficits in the accounts of the Territory have therefore, been met by loans from the Mandatory, and, as we have pointed out in paragraph 337, the resulting position is rapidly becoming untenable.

355. We consider, however, that sufficient weight has not been given to the fact that there is partial integration of the two countries, viz., in the economic field.

356. Both the majority and the minority reports of the Economic and Financial Commission have viewed the relationship between the two countries from the point of view of the Territory as a separate unit.

357. The Majority Report upholds the view that the drawbacks from which the Territory suffers as a result of the protective tariffs of the Union are fully compensated for by the losses on the railways which are made good out of the funds of the South African Railways, and, therefore, at the cost of the Union section of the economic unity. [Report paragraph 277 (1) and (6).]

358. The Minority Report gives a much higher estimate of the burdens suffered by the Territory from the effect of the protective tariffs of the Union, and gives reasons why railway deficits should not be set off against these. [Report paragraph 354 (1) and (4).]

359. Both reports, however, approach the subject from the point of view of the Territory and the Union as separate units, which means that losses suffered by certain sections in each unit can be made good by advantages gained by other sections, and that the accounts are settled by the balance of all the credits and debits on both sides.

360. Your Commissioners do not consider that on the data presented in the Report of the Economic and Financial Commission the claims of the Minority Report can be upheld *for purposes for which the Territory must be regarded as a separate unit.*

361. We would point out, however, that where our terms of reference instruct us "to consider from a . . . state financial point of view in what way the government of the Territory could best be regulated so as to secure a more efficient administration and a greater measure of content amongst the inhabitants . . .", they widen the scope of our investigation beyond that of the Economic and Financial Commission. We consider, therefore, that we are not confined to the narrower question of the claims which might come up for consideration if or when the termination of the mandate should take place, but that our scope is the wider one of reporting on a form of government which will meet present difficulties and place the Territory on a better financial basis for its development under the Mandate. From this point of view, we desire to draw attention to the interaction of economic and public financial policy.

362. The present trend all the world over is one of increasing regulation by the state of the economic life of the community. This produces interactions in the various phases of economic life which are the result of the inter-relation of state action and the dynamic forces which underlie the community's economic activities. When, therefore, a political boundary, like that between the Union and the Territory, cuts across a field in which there is no economic boundary (no customs barrier), further complications ensue.

363. To take a practical illustration, which will at the same time bring us face to face with the financial difficulties of the Territory, we shall discuss the repercussions of the Union's protective policy.

364. In so far as protection of an industry is an essential condition for maintaining it at a given level, it benefits the persons engaged in it at the expense of other classes of the community. While these classes are able to bear the burden thus imposed on them, they may continue to do so with no more grumbling than is generally reserved for measures imposed by the State.

365. If, however, a change comes about in economic relationships which deprives such classes of their ability to bear the burdens thus imposed, a new situation arises. By the same logic under which the State has helped other classes, they also come for assistance. Farming in the Union, which was predominantly economic before the great changes brought about by the last depression, sought and obtained shelter against them from the Government.

366. It is generally admitted that South West Africa suffers in higher prices from the protectionist policy of the Union. A large number of manufactures, and primary products, such as sugar, maize and wheat, of which the Territory produces little or nothing,

are more expensive as a result of the protective policy. The remedy which Union farmers obtained when high prices for articles purchased by them continued, while those of their own products fell sharply, was only available to a limited extent to the farmers of South West Africa. The Union Government was in a position to subsidise classes of the community which had suffered from the depression; the Government of the Territory was not in a position to do this to the same extent. Its revenues from mining fell even more sharply than those derived from the farming community. The fiscal boundaries which cut across the economic unity of the two countries, therefore, bore harshly on certain classes of the population of the Territory, notably on the farming classes, which represent the bulk of the community.

367. It should also be remembered that while in any given period, such as that examined by the Economic and Financial Commission, the balance of advantage of the existing Customs and Railway integration may lie with the Territory, there is no essential reason why this should always be the case. During the period investigated by that Commission, the credits for the Territory consisted in payments made by it for protected goods imported from the Union, while the debits were railway losses. With a considerable increase in demand for Territory products by countries other than the Union, its demand for Union products will increase, and, therefore, also its credits, while with improving railway revenue its losses will decrease, and therefore also its debits. It is thus possible that in some other period the balance of advantage may lie with the Union. The uncertainty on this point, and the controversies which might arise about it, are not in the interests of the good relationship between the Mandatory and the Territory.

368. Moreover, the partial economic integration now existing is more likely to work detrimentally to the interests of South West African farming. In the Territory climatic conditions make specialised farming, principally with cattle and Karakul sheep, the rule. The South West African farmers are, therefore, more dependent on imports than the farmers of the Union where mixed farming is more common. High prices for imports represent a more direct burden on the former than on the latter class.

369. We are forced to the conclusion that in following a policy of protecting industries which sell some of their products to the Territory, the Union cannot also pursue a policy of economic integration as between itself and the Territory without regard to the fact that the latter may from time to time be in need of financial assistance. *In short, economic integration postulates a certain measure of financial integration.*

370. We have pointed out that the expedient of relieving the immediate needs of the Territory by means of loans cannot continue much longer without involving it in out-and-out bankruptcy. We have also pointed out that there is no obvious scope of further reducing public expenditure, and while some additional taxation may equitably be levied before recourse is had to the coffers of the Union for financial assistance, it cannot be expected that this, together with reviving revenue, will in the near future put an end to the annual deficits.

371. We are of opinion that these considerations, together with those we have set out in connection with the conflict of fiscal and economic boundaries, *make it essential in the interests of good government for the Mandatory to afford the Territory some measure of financial assistance which would not entail annual appropriations from the Territory's revenue for the service of this debt.*

(V.)—FINANCIAL RECOMMENDATIONS.

372. We recommend that the Mandatory grant to the Mandated Territory such assistance as may be necessary to free it from its financial embarrassment, provided that steps be taken to change the system of taxation of the Territory in a manner which will make it equitable in comparison with that of the Union and its Provinces.

373. Since, for the purpose of the mandate, separate accounts must be kept of the revenue and expenditure of the Territory, the amounts expended by the Mandatory will continue to rank as expenditure by it on the Territory.

374. The form which such assistance may take should bear due regard to the character of the Territory as a Mandated Territory. The fact that the assets which may be created with the help of such financial assistance will not be assets of the Mandatory is a material point. We would favour the creation of a separate account which we would call the "Mandated Territory Development Account."

375. The ownership of the assets of this account should vest in the Union Government. All amounts voted by the Union Parliament for the assistance of the Territory should be credited to the account from which issues should be made under Parliamentary appropriation. Interest and redemption on loans made in the Territory out of monies so appropriated should be credited to the account. So also should any profits on the working of the Walvis Harbour.

376. As debits against the account we recommend that the following items (given in order of preference) should figure—

- (1) Such portions of the cost of services rendered by Union Government Departments to the Mandated Territory as are not met from South West African resources ;
- (2) Such interest on loans granted to the Territory as is not met out of South West African revenue ;
- (3) Payments under the Walvis Harbour guarantee ;
- (4) Payments under the Gobabis Railway Guarantee ;
- (5) Such other charges as the Mandatory may approve.

CHAPTER VII.

EFFECTIVENESS OF THE EXISTING FORM OF GOVERNMENT IN THE TERRITORY.

(I.)—GENERAL.

377. In assessing the effectiveness of the existing government of the Territory, we must again emphasise its characteristic dualism ; a separate Native administration which the Union Government discharges directly through its agent, the Administrator, and a limited representative government for Europeans with constitutional checks and safeguards intended to enable the Union Government to exercise that degree of control which its ultimate responsibility necessarily demands.

378. In judging the effectiveness of the present form of administration we have been mindful of the fact that its object must be the good government of the Territory in execution of the Mandate. Moreover, a form of government cannot be judged by abstract criteria. It cannot, in itself, be good or bad. This observation may sound trite, but most of the protagonists of constitutional reform, who have appeared before us, were inclined to overlook the fact that for government to be efficacious its framework must fit the circumstances, the character, and the temperament of the governed.

379. Taken as a whole, and in relation to its objects, the Administration has satisfactorily discharged the primary functions of government. Law and order have been established outside and maintained within the police zone. Life and the individual liberties are well protected, except in so far as a part of the population has recently come to lend itself to the curtailment of its political liberties (see paragraph 289). The special safeguards conceived in the interests of the indigenous population are enforced. Such slavery as existed before has been eradicated and traffic in arms and liquor is strictly controlled. There is no forced labour in the Territory, other than penal, and liberty in regard to religion is absolute.

380. As we have pointed out, however, it was not possible to carry on the administration on its own resources, and in this respect it has failed. It may be suggested that this could have been done if the Union had repatriated the Germans and administered the whole country, like Ovamboland, as a native reserve. Apart from humanitarian considerations, however, we are convinced that such a course would not have been possible. The mineral wealth of the country is unfortunately limited to commodities which are subject to violent fluctuations. These sources failing, the Administration is almost entirely dependent on the European as tax-payer.

381. In view of the present stage of development of the Native and the highly specialised nature of the only farming industries possible in the country, it is clear that any administration which is not merely negative in its effect, will, for a long time to come, have to be based on the European as a producer of revenue.

(II.)—NATIVE ADMINISTRATION.

382. The Natives generally are more contented and happy than they have ever been, save perhaps formerly, immediately after a successful raid and before they, in turn, could be made the victims of aggression. To the Ovambos protection of life and property is a new blessing, first experienced under Union rule. In the central and southern areas the contentedness of the Natives is not in proportion to what the Administration has done for them. The establishment of reserves and the introduction into the Territory of fencing laws, have somewhat restricted their liberty of movement, therefore diminishing their resistance, according to their habits of life, to the periodic droughts, but in view of the prevalent diseases of stock, the contraction of markets for pastoral products, and the diseases which ravaged the Natives themselves, the Administration had to choose between their reasonably constrained survival or allowing them to become extinct.

383. It is on the constructive side of government that Native administration in the Territory is not entirely satisfactory, i.e., in regard to those functions which go beyond the bare necessities of government and the maintenance of law and order. The Union has accepted the *tutelage* of the Natives as a *sacred trust*. It is, therefore, incumbent on the Union Government to make some effort to raise them from their present backward state. At present Native education in the Territory is largely in the hands of foreign missionaries over whom the Administration does not and cannot, in the existing circumstances, exercise much control. Much of the educational activity again is limited to religious instruction, and an attempt to teach the rudiments of reading, writing, and arithmetic—a method of elevation which experience has shown to be inadequate by itself to raise a primitive race to civilisation. Medical services for Natives are primitive and inadequate. In the north very little is done for the improvement of their daily lives. In so far as these matters may be questions of policy, they fall outside our terms of reference. They are, however, directly affected by the form of government.

384. The budgetary initiative, in respect of the whole Administration, Native as well as European, vests in the Administrator. He is the agent of the Union Government and subject to its directions. Only in the case of his conflict with the Assembly is the budget proclaimed by the Governor-General-in-Council. From the evidence of two former Administrators it would appear that in practice the Administrator is, to a large extent, a free agent. The Union Government was concerned more with the financial relations between the Union and the Territory, than with the details of the appropriations made for services in the Territory. The result is that the Administrator and the Legislative Assembly have always been disinclined to be too liberal with appropriations for services peculiarly in the interests of the Natives and were given in times of financial stringency to pruning such services first. This was done on the principle that it would be inequitable further to tax the European for services conceived entirely in the interests of the Natives, who hardly contribute to the revenue at all.

385. As we have intimated above, there is some justification for this attitude. One should not be unduly impressed by the argument however. The duality of the government is merely fortuitous and an administrative expedient. The subject of the Mandate is the Territory and its inhabitants as a single entity. For years mining revenue has been the mainstay of the Territory's finances. Such revenue is the yield of a capital and wasting asset, which belongs to the people of the Territory, Native as well as European. The European's initiative and technical equipment did not create, but merely exploited the wealth. To this Native labour contributed. Similarly, the Administration has been carried on for years with a mounting deficit, which is a charge on the exchequer of the country as a whole.

386. The present arrangement is unsatisfactory, therefore, and it appears to us that the Union Government will be able to discharge its obligations better by a more direct control of the allocation of funds to peculiarly European and Native services respectively.

(III.)—EUROPEAN ADMINISTRATION.

387. From what we have said in regard to the causes of dissatisfaction in the Territory, it must be obvious that the present Administration is not very satisfactory. Mr. Werth, a former Administrator, said in his evidence that the present form of government was calculated to cause dissatisfaction, and friction since the Legislative and Executive were only partly elected and in that to a large extent the Executive was not responsible to the Legislature. It is significant, however, that constitutional checks have not led to the present impasse.

388. The constitution was conceived as something organic, capable of development through limited representation to full representative and even responsible government, subject to certain essential safeguards. As we have already pointed out, under the Mandate the Union can delegate a controlled share in its responsibility only to loyal citizens. Moreover, this qualified representative government can function properly and develop only if there is an electorate capable of exercising political rights and willing to do so in a responsible manner. This degree of self-government was granted by the Union on the understanding that the German section of the population would show goodwill and co-operate in the administration of the Territory.

389. The German section were unaccustomed to democratic institutions and did not take to them kindly. Even if some of them may only subscribe to Nazi ideas under duress, the Germans in the Territory are now confessedly unanimous in giving enthusiastic

support to the *Deutsche Idee* or *Weltanschauung* with its exaltation of their race and of the principle of leadership. Consequently there is no scope in their ranks for democratic co-operation with another race. To illustrate the extent to which this process has developed, we may state that even in regard to our enquiries into the form of Government, no individual German views were put before us. Dr. Hirsekorn at Windhoek represented the German view on the form of government and everywhere on our travels in the Territory we were met by the reiterated assurance that all Germans stood foursquare behind the views expressed by him. Where the Germans are organised in such a solid block, any co-operation between groups of the German and Union sections whose interests are identical, becomes impossible, and where such a block is organised on autocratic lines, subject to external dictation, pledged primarily not to the interests of South West Africa, but to those of a foreign state, there is no room for such co-operation.

390. This form of Government, moreover, postulates the existence of a responsible electorate. So many of the European inhabitants, however, are indebted to the Government as settlers or debtors of the Land Bank, that a financially independent electorate can hardly be said to exist. A candidate for election or a member of the Legislature who will not support remissions of debt, or who would support taxation, incident on the voters, has small hope of election or political survival. If one considers, furthermore, that the country's customs policy is determined by the Union and that, apart from customs, the main sources of revenue are the mines and advances made by the Union, in other words, that the Legislature has not to find, and the electorate does not influence the exaction of, or pay the bulk of the revenue, it is not surprising that the Legislature and electorate have become, as Mr. Lardner-Burke put it, financially irresponsible.

(IV.)—FINDING.

391. The benefits to the European community of a share in the government are outweighed by far by the disadvantages of the present form of government. The form of government, though sound in conception *per se* has failed because it does not fit the character and circumstances of the governed. If one considers that it can continue only at the expense of the Union taxpayer, there seems to be no adequate reason why it should be maintained.

CHAPTER VIII.

JOINT RECOMMENDATIONS.

392. In so far as we have been able to arrive at common conclusions we have embodied these in a joint report and have also agreed to the following recommendations:—

393. We recommend that more active steps be taken by the Mandatory for the development of the Non-European races from their present backward condition in the direction enjoined by Article 22 of the Covenant of the League of Nations, and that financial appropriations be made for this purpose.

394. We have explained the unsatisfactory features resulting from the automatic naturalisation of Germans in the Territory, and we accordingly recommend that in future no further automatic naturalisation take place but that all naturalisation be effected under the provisions of the general law on the subject for the time being in force in the Union.

395. We recommend that steps be taken to demarcate reserves for Bushmen on the lines we have set out in paragraphs 115 to 118 of the report.

396. We recommend that research be undertaken into scientific problems regarding the most economic methods of farming in the Territory (see paragraph 169).

397. We recommend that the system of indirect rule in Ovamboland be continued and developed on the lines we have set out in paragraph 74.

398. We consider that the granting of the request of the Hereros for a poll tax to take the place of the present grazing fees would be a highly retrograde step and we recommend that this be not agreed to.

399. We further recommend that attention be given to the view that many mineral deposits could become a source of income to small miners if the necessary scientific guidance is made available by the Mines Department.

400. We make the financial recommendations to be found in paragraphs 372-376 of the Report.

401. After the most careful consultation and consideration, however, we regret that in regard to some of our recommendations we have been unable to find common ground. Our individual views we submit to Your Excellency in separate memoranda. Although we approach the matter from different angles we are in agreement that—

- (a) The present form of government of the Territory is a failure and should be abolished.
- (b) There is no legal obstacle to the government of the Mandated Territory as a province of the Union subject to the Mandate.

(Signed) H. S. VAN ZYL,
Chairman.

(Signed) F. P. VAN DEN HEEVER.

(Signed) J. E. HOLLOWAY,
Members.

(Signed) J. NESER,
Secretary.

Capetown, 2nd March, 1936.

CHAPTER IX.

INDIVIDUAL MEMORANDA CONTAINING
RECOMMENDATIONS.

(I.)—MR. JUSTICE VAN ZYL.

402. Arising out of our findings under the heading, " Effectiveness of the present form of Government ", I recommend the repeal of the South West Africa Constitution Act.

403. Before dealing with the question of what is to take the place thereof, I would like again to draw attention to the very unsatisfactory position which has arisen among the European inhabitants of the Territory.

404. The German section, supported by persons in authority in Germany, have for the last two or three years made no secret of their aspirations that South West Africa should revert to Germany in the near future. That this will soon come to pass as a result of international negotiations in Europe, is firmly believed and openly said by them. Moreover, they have associated themselves with persons of position in Germany who openly make propaganda for the return to Germany of her former colonies. This brings into the local politics of the Territory an international question with which, in view of the Territory's position under the terms of the Treaty of Versailles, and the Mandate, the residents of the Mandated Territory should not concern themselves. All this has had a very disturbing effect upon the Union section, who see therein an attempt to go behind the Mandate. On the other hand, the leading political organisation of the Union section has, since 1933, openly advocated the incorporation of the Territory in the Union as a fifth province subject to the provisions of the Mandate. This is resented by the Germans who regard it as the first step towards the annexation of the Territory by the Union.

405. As a result of these two opposing movements, the future of the Territory has become an all-absorbing question among the European population. The feeling of uncertainty which has always existed in regard thereto has now become so intense and disturbing that it is seriously interfering with the economic development and good government of the Territory. The further fact that the German section have now, under foreign guidance or dictation, organised themselves into a solid block, into which even unwilling members of their race are forced and from which freedom of political association and freedom of speech and action have been banished, has made a difficult situation practically impossible and has converted representative government into a farce.

406. It must be clear that no form of Government can be expected to function satisfactorily under the Mandate unless foreign interference in the affairs of the Territory ceases and residents in the Territory are safeguarded against intimidation and persecution for not subscribing to cultural, political and industrial precepts dictated by persons influenced and directed from a foreign country. In my opinion these are matters which, if they are to be properly regulated, will have to be taken charge of by the Union Government itself.

407. In considering the question of a more effective form of government to take the place of the existing one, it is necessary that regard should be had both to the public financial position of the Territory and to the terms and provisions applying to it as a mandated territory.

408. It will be clear from what is pointed out elsewhere in this report that financially the Territory, with its sparse and heterogeneous population, the large majority of whom are Natives in a very backward condition, is incapable of functioning by itself as a separate entity. Its inherent conditions and characteristics, physical, geographical and otherwise, make it economically unsound and unable to stand alone. From 1908 onwards, leaving out of account the five years of military occupation (1915-1920), the country received considerable contributions from outside towards its expenses. Thus during the last five years of the German regime, when there was no expenditure on Native wars, the Imperial contribution to the expenses of the Territory amounted to £3,396,000, or an average of £679,000 per annum. Likewise, although the Territory started under the Mandate with a credit balance of £984,933 derived from diamond revenue (vide para. 320), it is now in the position that it has a considerable annual deficit and cannot balance its budget (vide para. 337). Unless the Territory's revenue very materially improves, for which there seems to be no reasonable prospect, the present practice of borrowing money to meet the annual deficits must inevitably lead to bankruptcy before many years have passed.

409. The unsound financial position of the Territory was, therefore, the reason why many witnesses urged upon us the abolition of its present form of government, and its administrative incorporation as a fifth province of the Union, subject to the Mandate. This at once raises the question whether, under the Mandate, the Territory can legally be administered as a province of the Union.

410. It is clear from Article 22 of the Covenant of the League of Nations that the framers of the Covenant intended to create, and did create, three types of Mandates, which have come to be known as the "A", "B", and "C" Mandates. The "A" Mandates were designed for communities which had already reached such a stage of development that even at that time their emancipation could be envisaged; the "B" Mandates were for peoples, especially those in Central Africa, who "are at such a stage that the Mandatory must be responsible for the administration of the Territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals . . ." In neither of these classes of mandates was it contemplated that the Territories in question should be administered otherwise than as entities separate from the territories of the Mandatories. It was only in the case of the "C" Mandates, of which South West Africa was cited as a prototype, that provision was made for the administration of the mandated territory as an integral part of the territory of the Mandatory. The words specially referring to South West Africa are as follows—

"There are territories such as South West Africa, which, owing to the sparseness of their population, or remoteness from the centres of civilisation or the geographical contiguity of the Mandatory and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population."

411. Not only is there here special provision made for the administration of such territories as integral portions of the territory of the Mandatory, but, for reasons specifically set out and which peculiarly apply to South West Africa in its relation to the Union, it is stated that such territories "*can be best administered under the laws of the Mandatory as integral portions of its territory.*"

412. This position is not affected by the Mandate issued for South West Africa, the first paragraph of Article 2 of which reads as follows—

"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."

413. There is no limit placed on the extent to which South West Africa may be administered as part of the Union, as long as it is kept sufficiently distinct from the Union to enable the Mandatory to furnish, in terms of Article 6 of the Mandate, the annual report to the Council of the League of Nations. As stated in paragraph 351, of this report, it is essential for the presentation of this annual report, to the Council of the League of Nations that the accounting for the revenue and expenditure of the Territory should be kept separate. As long as that is done, and the safeguards and conditions of the Mandate are complied with by the Union, the territory of South West Africa may, for administrative purposes, be assimilated to that of the Union.

414. The fact that the Union has not, since it assumed the Mandate, administered South West Africa (except for customs and railways and harbours) as an integral portion of its territory, cannot stand in the way of its doing so now if, in the light of past experience and of present circumstances prevailing in the Territory, it considers it can in that way better carry out its obligations under the Mandate and give the inhabitants of the Mandated Territory a more suitable and effective form of government.

415. I am, therefore, of opinion that the Union could, from the time it assumed the Mandate, have administered South West Africa on the same provincial pattern as its constituent provinces are governed, and that it can still do so if it considers it in the best interests of the Territory. Such administration would, naturally, as indicated above, have to be subject to the provisions of the Mandate.

416. The unsatisfactory financial position of the Territory, no less than its present unsatisfactory political position, calls for a change in the form of government, and the change called for is one in the direction of more direct control and initiative by the Union Government and Parliament in the affairs of the Territory. The Territory cannot function properly without financial help from the Union and it is both in the interests of the Union and of the Territory that, in furnishing that help, the Union should be in close touch with, and have a thorough knowledge of, the actual needs and requirements and the peculiar circumstances of the Territory and its heterogenous population, and that the Union Government and Parliament should be in direct control of the revenue and expenditure of the Territory, which has suffered a great deal in the past from the Union's ignorance on these matters.

417. South West Africa would be in a very much better position if it were to be administered as an integral portion of the territory of the Union in the sense that the same attention is paid by the Union Government and Parliament to the needs and requirements of its inhabitants as is paid to the needs and requirements of the people of the Union.

418. The Natives in particular would benefit from such a manner of administration. A separate South West African Administration, hampered by lack of staff and funds, could be expected to do little more than maintain law and order. The present Administration has undoubtedly brought about improvements and has made praiseworthy efforts, e.g., in the Waterberg and Bondelswarts reserves and elsewhere to help the Natives to make better use of their land, but in my opinion the solution of the problem of uplifting the Natives goes beyond those measures. We have in our report pointed to the problem of how they are to adjust themselves to a settled life under civilised conditions (see paras. 99 and 110) to the ravages of venereal diseases amongst them (paras. 91 and 100), to the advisability of providing more European officers in Ovamboland and the Okavango, for instance, to represent the Administration (para. 76), and to the advisability of supporting, supervising and co-ordinating the

work of missionaries in educating the Natives (paras. 81-83). All these matters can be better studied and dealt with if tackled by the Department of Native Affairs of the Union. That department has experience of similar problems in the Union and has expert officers who could bring their attention to bear on problems in South West Africa similar to those they have been investigating in the Union. I feel sure that in this way the Union Government could better and more directly carry out its responsibilities under the Mandate towards the indigenous inhabitants of South West Africa.

419. When one considers, therefore—

That in so far as there are political questions or problems in South West Africa, these should be dealt with by the Mandatory itself ;

that the maintenance of law and order is a direct responsibility of the Mandatory and that it might be undesirable to delegate this responsibility to a local administration ;

that the Territory cannot function as a separate fiscal unit ;
that the Territory has not the means to appoint or maintain adequate and qualified staffs—

- (i) to investigate, study and deal with matters connected with the moral and social welfare of the Natives, such as their health, education and instruction and guidance in industrial and pastoral pursuits.
- (ii) to investigate farming problems in South West Africa and to furnish the farmers with expert advice (see para. 169).
- (iii) to deal with serious outbreaks of stock diseases and with large-scale locust invasions.
- (iv) to investigate mining problems and to make a survey of the minerals of the country so as to make available information which would assist prospecting and mining on a small scale (see paras. 195 to 199) ;

that the Union Government has well-organised departments which maintain staffs of experts qualified to deal with and advise on these matters ;

it seems clear that it would be of benefit to South West Africa if it were to be governed directly by the Mandatory through its parliament and administrative departments in the manner which the framers of the Covenant apparently envisaged.

420. It might be argued that all this would place too great a financial obligation on the Mandatory. The latter certainly did not, under the Mandate, assume any legal obligations to subsidise the Territory.

421. In so far, however, as the suggestions in paragraph 418 involve additional expenditure, I submit that, having regard to the responsibilities assumed by the Union Government under the Mandate, this is unavoidable and I am of opinion that if the unsatisfactory finances of the Territory do not permit of more generous appropriations, the Union, in order to carry out its obligations under the Mandate, should be prepared to supplement the funds required for this necessary and important work.

422. On the other hand, so far as extra expenditure on the Europeans is involved, it should be remembered that the presence of the European population in the Territory is the result of the policy followed by the Union since it assumed the Mandate (vide para. 131 of the report) and that more than 1,200 families of Union nationals have settled in South West Africa, and, as the Union Government is responsible for the administration of the Territory, the settlers have not unnaturally come to expect from the Mandatory services

and assistance similar to those afforded to their kith and kin in the Union. Furthermore, over 300 families of Angola Boers are also now permanently settled in the Territory. (Vide my reservations in paragraph 166 R. of this report.)

423. Moreover, under the Treaty of Versailles and the Mandate, the Union's position is such that as long as it carries out its obligations under the Mandate, nobody can question its position as Mandatory: in fact, for the reasons set out in paragraphs 249-250 of this report, the termination of the existing jural relations between the Union and South West Africa is a matter of speculation in regard to so distant a future that it is of no present importance. Thus for all practical purposes it may be assumed that the Union has been permanently entrusted with the administration of that Territory.

424. It would, accordingly, not be unreasonable to expect that the Union Government should, in its administration of South West Africa, set for that Territory the same standards of development, service and assistance as obtain in the Union. If the expenditure entailed in doing so is greater than the revenue of the Territory justifies, the Government might well regard this in the same light as expenditure on the less-favoured portions of its own territory. While a separate system of accounts will have to be kept, the liabilities of the Territory should, for all practical purposes, be regarded as those of the Union. If, however, for any reason the question of the termination of the Mandate should arise at some later date, it would be an easy matter to determine the amount spent on the Territory in excess of its revenue.

425. The Territory would benefit generally from the larger view which the Union Government would take of South African affairs as a whole in which South West Africa would take its natural part and not be treated in any respects as a foreign country as is now complained of. Under such a scheme, Walvis Bay, which is Union and not Mandate territory, may possibly yet play the important part in the export trade of southern Africa in cattle and chilled meat envisaged for it by Mr. Hofmeyr at the time when the harbour improvements there were effected.

426. In all the circumstances, I have come to the definite conclusion and I recommend that the Union should take direct charge of the administration of South West Africa and do so through the Union Parliament and the Union Ministerial Departments: i.e., that the Territory be administered as an integral part of the Union, that the Union Parliament legislate for it, that the Union Ministers, in and through their respective departments of State, assume in relation to South West Africa the same direct authority and functions as they do in relation to the Union, that provision be made for the election of members to represent South West Africa in the Union Parliament, 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 with executive, on lines similar to those obtaining in the provinces of the Union.

427. If the disturbed state of the Territory makes it undesirable under present circumstances to institute an assembly or council on the lines of a provincial council, I, nevertheless, recommend that provision be made for the election of members to the Union Parliament. The Territory undoubtedly suffers to-day from the fact that it is not better known to either the Union Government or the Union Parliament. That is a defect which will, to a very large

extent be remedied by giving it representation in the Union Parliament, and I would suggest that the election of representatives should be so devised as to ensure representation to the important German minority in the Territory.

428. It should be noted that while the observations made in paragraph 390 of the report apply to the existing form of representative government in South West Africa, they will not apply to a provincial form of government. Under the existing form the appropriation to the different services in the Territory has to be made in a budget to be passed by the local legislature. Under the system suggested, however, revenue and expenditure will be directly under the control of the Union Parliament, and even in so far as the local legislature may be empowered to make appropriations for local services, such matters as remission of debts should not be entrusted to it.

429. An Administrator and a nominated Advisory or Executive Committee could, in the absence of a local legislature, take charge of the functions which would ordinarily vest in the Administrator and Executive Committee of a province, while the local legislative functions could be exercised by the Governor-General-in-Council. My recommendations, of course, envisage that, subject to any necessary modifications, the Union Parliament and the Union Government respectively should take charge of all the functions which in the Union fall outside the scope of provincial authorities.

430. It is unfortunate that the Germans in the Territory are opposed to any form of government on this pattern. Their objection, however, seems to be based on the misconception that such administrative incorporation would mean either annexation or be the first step towards annexation. I do not suggest any departure from the provisions of the Mandate. On the contrary, my recommendations are based on the loyal adherence to the terms of the Mandate and are made because I feel convinced that in that way the Union's obligations under the Mandate could be best fulfilled in the best interests of the inhabitants. Besides, by being so administered, South West Africa will not become merged in the Union. On the contrary, under such a system it will not only retain its identity intact, but will also have plenty of scope for developing its own individuality and promoting its own interests in a manner best suited to its peculiar needs and circumstances.

431. We have pointed out in our report how necessary the European inhabitants are for the development of the Territory, inside the police zone. In that development the German section have played and are still playing an invaluable part. Many of them, like many of the Union section, have not only made their homes in South West Africa, but have also come to love it as the only country where they would like to live. Such people are a great asset to the country and it should not be difficult ultimately to obtain their support for measures which, although disliked by them at first, are subsequently proved to their satisfaction to be of real benefit to the Territory.

432. The point of view has been put forward that the administration of South West Africa as an integral portion of the Union will open the door to criticism by the League of Nations on laws passed by the Union Parliament, and on the policy followed by the Union Government. The League will, however, only be entitled to criticise such laws and policy in so far as they affect South West Africa and that it can do to-day under the existing arrangement. There is, furthermore, little substance in this contention, because the safeguards and conditions set out in the Mandate are such that the Union Government would naturally comply with them.

433. In conclusion, I would like again to refer to the question of the recognition of the German language in the Territory. From paragraph 229 it will be seen that, although it is not an official language, it is, in practice, well-nigh accorded the position of an official language. I feel that the desire of the Germans to obtain greater rights for their language should be sympathetically treated, and, while I do not consider that in the prevailing disturbed state of the Territory, it would at present be wise to take action in this direction, I would, nevertheless, strongly recommend that favourable consideration be given to this matter when the present disturbed political situation in the Territory has been sufficiently improved to permit of co-operation between the European inhabitants for the development of the Territory.

(Signed) H. S. VAN ZYL.

(II.)—MEMORANDUM BY MR. JUSTICE VAN DEN HEEVER.

434. Of the various proposals for a more satisfactory form of government submitted to us, two divided the substantial support of public opinion in the Territory. That emanating from the German community was that the existing constitution, after such reforms of the franchise as would confer political rights on all German immigrants, be developed to full autonomy. The main body of the Union section, on the other hand, advocated the incorporation of the Mandated Territory in the Union, to be administered as a fifth province, subject to the Mandate.

435. We have already indicated, in dealing with the complaints of the German section, why we cannot recommend either the grant of full autonomy or, what its supporters regard as a pre-requisite to such grant, electoral reforms on the lines they suggest.

ADMINISTRATIVE INCORPORATION IN THE UNION SUBJECT TO MANDATE.

436. It has been suggested that even purely administrative incorporation would be in conflict with the Covenant and the Mandate.

437. In Article 22 of the Covenant South West Africa is made the prototype of territories to be administered under a distinct class of Mandate. Of them it is said—

“ . . . they can be best administered under the laws of the Mandatory as integral portions of its territory . . . ”

The Mandate itself was issued pursuant to the provision in the Covenant empowering the Council explicitly to define the degree of authority, control or administration to be exercised by the Mandatory. It cannot and does not purport to contain dispositive provisions, which must be sought in the Peace Treaty and the Resolution of the Supreme Council.

438. Inherent in the conceptions “ mandate ”, “ tutelage ”, “ Trust ”, there is, of course—to continue the application, by analogy, of private law terms to international concepts—the implication of separateness or sequestration in the patrimonial sense. The obligation to submit “ 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 the special safeguards conceived in the interests of the indigenous population imply such a degree of administrative segregation as would render the due discharge of these obligations possible. The extent of the Union’s

authority is *explicitly* defined in the Mandate, which is wide enough to authorise the fullest degree of administrative assimilation subject only to the above-mentioned limitations. The extent of assimilation in practice was left to the discretion of the Mandatory and the circumstances of the Territory to be governed. To seek to derogate from the fullness of the Union's administrative authority, or sovereignty (in the sense in which the coiner of that expression used it) by inferences from notions as to what may be the "spirit" or "the fundamental principles of mandate" is a confusion of ideas.

439. If the Territory were to be administered as a province of the Union, such differentiation, as the special relations between the Mandated Territory and the Mandatory render necessary, could be made in the application of the legislative or executive acts of the Central Parliament and Government. In regard to provincial measures, no difficulty presents itself. Nor would there be insuperable difficulties in regard to accounting for the Territory separately. I am of opinion, therefore, that there is no legal obstacle to the administration of the Territory as a province of the Union subject to the Mandate.

440. The German section raise two further objections. They say that the Union Government has exercised its election and, having administered the Territory as a separate entity for so long, is now in some manner estopped from reverting to incorporation. Secondly, they contend that a separate administration was held out to them as an inducement to accept naturalisation. This barter they conceive as having been effected in the London Agreement of 1923 which they regard as a trilateral agreement between themselves, the Union Government and the German Reich. Administrative incorporation would, therefore, be a breach of this agreement.

441. The first contention need only be stated; the second has no foundation either in fact or in law.

ADVISABILITY OF ADMINISTRATIVE INCORPORATION.

442. In my opinion it would not be expedient to administer the Territory as a province of the Union. The advocates of this method of government hope that it would remove the present uncertainty. As I have pointed out, incorporation, subject to the Mandate, could only be an administrative measure and cannot, therefore, affect the uncertainty actually inherent in mandate, which uncertainty can only relate to its termination. In view of the circumstances of the Territory and its population, apprehensions on this score are comparable to those inspired by the cooling of the sun. On extra-legal reactions it is useless to speculate. In the first place, therefore, these apprehensions—concomitant with the aspirations of the German section—have no legal justification. Secondly, the proposed remedy would not be effective for it would leave the international status of the country unchanged.

443. In so far as the Union section expect financial benefits from incorporation, I think their hopes are too high. Because of the special relations between the two countries some regard must be had to the resources of the Territory and according to this criterion too liberal treatment would either be inequitable to the Union taxpayer or unduly charge the South West African account—which must continue to exist even after union—in the interests of its present European population. Even within the Union where these special relations do not come into consideration some areas have, in practice, more urgent claims on the Treasury than others and, by the same standards, it is difficult to visualise South West Africa as a pampered province.

444. I am not impressed by the suggestion that obligations devolve on the Union because of the settlement of Union subjects in the Territory. We have found that this step was justified in the

interests of the Territory. The Union is not over-populated. It has no cause to subsidise emigration. Any assistance which the Union renders in this direction would be supererogatory, would be dictated partly by sentiment and partly by the realities of the situation. The Mandated Territory can have no claim in this regard. It is not an attractive country to settle in ; it offers its future citizens the certainty of a hard and lonely existence, more subject to vicissitudes than most are prepared to suffer. It is niggardly in its gifts. The Union, in settling at its own expense in that country a population which is prepared to open up its resources and help to carry its burdens, has rendered the Territory a great service.

445. The entire German population, as well as a small minority of the Union section—nearly half the European population of the Territory—are strongly opposed to incorporation.

446. To advocate incorporation would be to ignore the causes of the failure of the existing constitution, which we have sketched in the joint report. We have shown that political cavils in South West Africa go beyond such differences of opinion as are tolerable in representative institutions and have given rise to an impossible and unreal situation. To govern the Territory as a province of the Union would be to extend the scope of the evil.

447. It has been suggested that the result of incorporation would be the disappearance of local animosities in the larger issues exercising the Union. The causes of these animosities are not local. This hope is based on an analogy between the German inhabitants of South West Africa and the subjects of the late South African Republics. To my mind, the analogy is entirely misleading. Whatever the sentiments of those subjects by conquest may have been towards the conqueror they had no divided allegiance towards South Africa. A more fitting comparison would be that between the German Section and the Reform Leaders in the South African Republic. The belief is too sanguine that the German section would be weaned of their Nazi persuasion by incorporation, especially if this be effected so that they labour under a sense of grievance. The probability is that an irredentist bloc would grow in the Union which would—especially in view of the anomalies resulting from automatic naturalisation—create a minority problem for the Union, embarrass the smooth working of its political institutions and endanger its external relations.

448. Administrative incorporation must tend in practice to uniformity of policy. I doubt whether this would in general, be in the best interests of the Territory or of the execution of the Mandate. The special relations between the Mandatory and the Territory would seem rather to call for differentiation. Again to have recourse to private law analogies, a father in the exercise of his parental power may genuinely—and perhaps wisely—act in the best interests of a child in a manner which would be improper in relation to a ward.

449. South West Africa is a new and undeveloped country. When the constituent portions of the Union had reached that stage of development their forms of government kept pace with their requirements. In the process of development the scope for *laissez faire* contracted and the state gradually extended the scope of its regulative function over the lives, the activities and the industry of its subjects. To apply the pattern of Union administration to South West Africa would be to put new wine into old skins. Many of the Territory's difficulties are due to the fact that its administration and its social services were to a certain extent modelled on those of the Union. To apply to it the forms of government and the policies of an older and more settled community would be to burden it with over-administration. It is more in want of peace and time to develop its resources.

450. This tendency towards uniformity, save in regard to matters in respect to which differentiation is inevitable, would, naturally, result in a merger of the Union's conduct as Mandatory in the conduct of its purely domestic affairs, which would then as of right be criticised by the organs and members of the League of Nations. Confusion of the two capacities of the Union would place it in an unenviable position, which again may be exploited for political purposes in the Union.

451. As it is, some of the departments of State in the Union have become rather cumbersome and in some a tendency towards decentralisation is noticeable. In view of the relative isolation of the Territory, which affects all functions of government, it seems to me obvious that in the interests of expedition and co-ordination it would be preferable that the country should for the present be administered as a separate entity rather than that decisions should be taken in Pretoria by various departments, which co-ordinate only through the Prime Minister's Office. Under such a system of administration the peculiar interests of South West Africa and the Union's obligations in respect to certain sections of its population may be lost sight of.

452. It is true South West Africa would be represented in Parliament and in our form of government ministerial responsibility to the Legislature and that of the representative to his electorate is a guarantee against arbitrary government. The effectiveness of this guarantee, so far as the Territory is concerned, would largely depend on political chance and in any event the very interests, in the protection of which the Union's honour is involved, would be unrepresented.

453. Such an association would place the Union in a false position. It would be bound to South West Africa in a leonine partnership from which the Union may expect to suffer the disadvantages of Mandatory as well as of sovereign, without benefit of inventory.

454. For these reasons it seems to me that it would be inexpedient to administer South West Africa as a province of the Union and, in so far as one may assess future probabilities in the light of present tendencies, I see no likelihood of these grounds for hesitation being removed within a reasonably near future.

455. If one considers, furthermore, that in entering upon this onerous association the Union will incur the odium of nearly half the European inhabitants of the Territory who, like public opinion abroad, is bound to take a prejudiced view of the expedient and refuse to be persuaded that it is anything but a veiled annexation, one may well pause to consider whether it is wise to dispense charity at such a cost.

MODIFIED FORMS OF ADMINISTRATIVE INCORPORATION.

456. My colleagues agree with me that the abrogation of the present Constitution would be in the interests of good government. Their recommendations, however, contemplate the suspension of the Constitution merely as a temporary measure. Thereafter they envisage some form of integration on different patterns. They consider, further, that during the period of suspension various governmental functions in the Territory should be transferred to departments of state of the Union so as to give the Union Government direct control over the administration of the Territory.

457. The present division of governmental functions between the central government and the provinces in the Union is based on expedience. Apart from the difference in texture of the populations of the colonies at Union and apart from the importance of the mines as a source of revenue, there is no compelling reason why, for example, education should not be administered by a Union Department and

Mines be controlled by the provinces. If South West Africa be given representation in the Union Parliament and be administered by Union departments, then whatever the division of functions may be, in effect it would be incorporated in the Union. The pattern of the association may be slightly different, it may go under a different name, but in principle it would be administrative union.

458. Any proposal for such administrative union either during the suspension of representative institutions or after the grant of representation in the Union Parliament seems to me to bear no relation to the ailments from which, according to our diagnosis, South West Africa is suffering and could be justified only on the *a priori* assumption that such incorporation is in itself a desirable end.

459. My colleagues advocate this transfer of governmental functions to Union Departments during the suspension of the Constitution, or thereafter, on the ground that the Union Government should take direct control. Through an Administrator the control is just as direct as it could be through a number of departments. Moreover, if dissipated in a number of departments conceived to regulate the Union's domestic affairs, this "direct control" may become an illusion. The former method has the advantage that such control would be co-ordinated. If the South West African complaint that the Territory has not in the past received the amount of attention from the Union Government which was its due—an allegation difficult to prove or disprove—has any foundation in fact, a mere rearrangement of the conduit-pipes of authority is not going to remedy the evil. Appreciation of the "sacred trust" assumed in the acceptance of the Mandate is not dependent on such formal adjustments, but on the character of the Government, the public spirit of Members of Parliament and on the conscience of the Nation.

RECOMMENDATIONS.

460. The Mandated Territory is a new and undeveloped country, weak in resources, with a community not yet firmly established. The circumstances do not warrant an elaborate form of administration. Moreover, because of its comparative isolation, and its special relations to the Union, its position is comparable to that of Territories for the Transfer of which to the Union provision was made in Section 151 of the South Africa Act, rather than to a province. It seems to me that the Schedule to the Act of Union was conceived to provide for a system of government under circumstances very similar to those of South West Africa and to regulate similar relations. *Mutatis mutandis* it could be satisfactorily applied to the Territory therefore. For convenient reference the Schedule to the South Africa Act, 1909, is printed at the back of the report.

461. In our form of government the Prime Minister is always the leader of a great party. Quite apart from his onerous duties *qua* Prime Minister, he is, therefore, perhaps the most harassed individual in the Cabinet. I would suggest, therefore, that another Minister be charged with the administration of the Territory. There is no reason why the Minister for External Affairs should not continue to represent the Territory *vis-a-vis* the League of Nations or in general, externally, seeing that he does so in respect of all departmental activities.

462. I would suggest that the Commissioners be appointed for five years, not ten, and that they be selected on the basis of their ability to represent the various industrial interests in the Territory. They should not be public servants except perhaps in the case of the Commissioner to represent Native interests. Provision should be made for the submission to the Government by each of the various industrial organisations in the country of the names of two or more acceptable persons for nomination. The submissions should be made, for example, by organisations representing farming, mining, and

commercial interests. This would cut clean across racial and political divisions. Subject to a few consequential amendments in sections 2, 3, 4, 12, 13, 14, 17, 21 and 25, the Schedule could well be applied to South West Africa.

463. In the evidence heard by the Commission, as well as in the deliberations of your Commissioners, the suggestion to revert, even temporarily to some form of government analogous to that which was in force in the Territory prior to the commencement of the present Constitution Act, was deprecated as a retrograde step. The objectors seemed to me to be unduly impressed with the undesirability of vesting in any official such autocratic powers as the Administrators formerly enjoyed and even now enjoy under the present Constitution.

464. I cannot help feeling that such objections are based on idealistic notions that certain forms of government are *per se* noxious. Sir Howard Gorges had more untrammelled powers than any subsequent Administrator, yet your Commission heard not a word of criticism of his period of office. In regard to the terms of office by two of his successors, witnesses who were intent on making an *ex parte* case against such alleged autocracy were unable to adduce any serious instance of the abuse of such power. Apart from the instance of the Angola Settlement, in regard to which the Administrator admittedly acted on the instructions of the Union Government, complaints as to the exercise of this excess of power referred to a few isolated cases of non-feasor in regard to insignificant administrative details.

THE ADMINISTRATOR.

465. The success of such a form of administration depends of course largely on the person of the Administrator, and on the degree of actual control exercised over him by the Union Government. I have lived in the Territory under four Administrators and cannot do otherwise than import my personal knowledge and experience into these recommendations.

466. During that time it was significant that while the Administrator was away at Geneva or in the Union, the country had peace and the inhabitants settled down and applied their energies to the advancement of their own interests. On his return the Administrator would hold public meetings, advocating wide and sometimes impractical policies, and thereby unsettle the country and stimulate factions. During his absence the Secretary for South West Africa would quietly govern the country. I would suggest, therefore, that the post of Resident Commissioner or Administrator should not be a matter of political patronage. The office would be much more suitably filled by a public servant with administrative experience. These criticisms do not apply to the present Administrator, who has been commendably conservative in administration and utterance.

THE CONSTITUTIONAL POSITION OF THE ADMINISTRATOR.

467. During the administration of the Territory by an Administrator with Advisory Council, the Administrator was sometimes allowed to negotiate, on behalf of the Territory, with the Union Government as if he were the head of an independent government. In that character he assumed liabilities and pledged the revenue of the Territory. Instances, which may be cited, are the arrangements come to in regard to the construction of the Gobabis Railway line and the Walvis Bay Harbour Works. That practice is apt to obscure the fact that the Union's administrative measures in the Territory could not have any contractual basis. The Administrator was merely the agent of the Union Government, and the responsibility for his administrative acts did not, by reason of his formal intervention, weigh less heavily on the Union. The practice referred to, however, is not attributable to the Administrator's constitutional powers, but rather to confusion in regard to these.

Collection Number: AD1715

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (SAIRR), 1892-1974

PUBLISHER:

Collection Funder:- Atlantic Philanthropies Foundation

Publisher:- Historical Papers Research Archive

Location:- Johannesburg

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