

I attach a Draft of the first part of a memorandum I am completing on South West Africa. You will see the line I propose the Institute should take. I am not in favour of the Hereros going direct to United Nations and we should tell Michael Scott so. The first responsibility rests with the Union Government and he should not have gone past it.

The papers should go to the Action Committee and then to the General Purposes Committee. Any public statement should be submitted to the whole Executive by post.

SOUTH WEST AFRICA

There are two aspects of the South West Africa question which should be considered by the Institute. The first is the relationship of the Union Government to the United Nations following upon the acceptance by the General Assembly of the United Nations of the Opinion of the Permanent Court of International Justice. The second is the welfare of the indigenous population of the Territory.

1. Relationship of South West Africa to the United Nations.

The findings of the Opinion were as follows:-

1. South West Africa continues to be a territory under international mandate, involving -
 - (a) general obligations of the Union Government to promote the well-being and social progress of all the inhabitants as well as particular obligations in respect of such matters as forced labour, (unanimous vote);
 - (b) submission to supervision by the Council of the United Nations of the administration of the Territory to the extent that the General Assembly of the United Nations was competent to exercise it, (12 votes to 2);
 - (c) transmission to the United Nations of annual reports on the administration of the Territory and of petitions by or on behalf of inhabitants of the Territory;
 - (d) recognition of the right of members of the League of Nations to bring disputes relating to interpretation or application of the provisions of the mandate before the Permanent Court of International Justice, (unanimous vote).
2. Chapter XII of the Charter of the United Nations is applicable to South West Africa, (unanimous vote).
3. There is no legal obligation on the Union to submit South West Africa to trusteeship under Chapter XII of the Charter, (8 votes to 6).
4. The Union, acting alone is not competent to modify the status of the Territory, but competence to determine or modify the international status rests with the Union, acting with the consent of the United Nations, (unanimous vote).

/The General.....

The General Assembly on 13th December, 1950, passed two resolutions on South West Africa:-

(1) The General Assembly. 1.

Considering that the International Court of Justice, duly consulted by the General Assembly pursuant to resolution 338 (1V) of 6th 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 17th December, 1920,

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 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, 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.

(2) The General Assembly (11)

Considering that the General Assembly by its resolutions 65(1) of 14th December, 1946, 141(11) of 1st November 1947, 227(111) of 26th November 1948 and 337(1V) of 6th December 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(1V) of 6th December 1949, delivered the opinion that the Territory of South West Africa is under the international Mandate assumed by the Union of South Africa on 17th 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(1) of 14th December 1946, 141(11) of 1st November 1947, 227(111) of 26th November 1948 and 337(1V) of 6th December 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 effects of the Opinion and First Resolution, if carried into effect would be:-

1. South West Africa would continue to be administered under the mandatory conditions,
2. Supervision by the United Nations of the administration of the mandate,
3. Submission by the Union Government of annual reports on South West Africa Administration,
4. Submission to the United Nations of petitions by or on behalf of the inhabitants through the Union Government,
5. Consideration by the United Nations of such petitions from outside the territory as were approved by the Chairman for submission,
6. Possibility that oral hearing of petitioners would be arranged,
7. Formation of a Committee or Commission by the United Nations (but not the Trusteeship Commission) to consider all reports and petitions.

I feel that the Institute cannot be inactive on this matter. The points at issue should be considered independently of and without consideration of the

/Reverend.....

Reverend Michael Scott's agitation. I suggest that the Institute issue a statement on the following lines:-

"The Executive Committee of the Institute of Race Relations has given careful consideration to the Opinion of the International Court of Justice and the two Resolutions of the Assembly of the United Nations of December 1950 on the South West Africa question.

The Executive Committee does not consider that the placing of the Territory under Trusteeship at the present time is desirable in the present circumstances; it does appeal to the Union Government to accept the Opinion of the International Court of Justice as imposing a moral obligation to administer the territory in the terms of the mandate, to submit annual reports to the United Nations, and to seek agreement on the procedure to be adopted for consideration of the report and of petitions relating to the administration of the territory.

The Executive Committee has not associated itself, and does not now associate itself with the statements that have been made before the United Nations in regard to the administration of South West Africa. It holds that any representations which the Non-European population wished to make should have been directed in the first place to the Administration, in the second place to the Union Government, and in the third place to the Union Parliament. But it feels it to be its duty to concern itself with the manner in which the territory is administered, and has itself been making enquiries into the extent to which the spirit and the letter of the mandate are being observed, and will in due course express itself in these matters to the relevant authorities in the territory or in the Union. It has hitherto refrained from doing so to avoid being involved in a juridical dispute which has now been determined by the Opinion of the International Court of Justice.

(Section 11 on Administration to follow,
It is almost completed.)

J. D. Rheinallt Jones.

I attach a draft of the first part of a memorandum I am completing on South West Africa. You will see the line I propose the Institute should take. I am not in favour of the Hereros going direct to United Nations and we should tell Michael Scott so. The first responsibility rests with the Union Government and he should not have gone past it.

The papers should go to the Action Committee and then to the General Purposes Committee. Any public statement should be submitted to the whole Executive by post.

SOUTH WEST AFRICA

There are two aspects of the South West Africa question which should be considered by the Institute. The first is the relationship of the Union Government to the United Nations following upon the acceptance by the General Assembly of the United Nations of the Opinion of the Permanent Court of International Justice. The second is the welfare of the indigenous population of the Territory.

1. Relationship of South West Africa to the United Nations.

The findings of the Opinion were as follows:-

1. South West Africa continues to be a territory under international mandate, involving -
 - (a) general obligations of the Union Government to promote the well-being and social progress of all the inhabitants as well as particular obligations in respect of such matters as forced labour, (unanimous vote);
 - (b) submission to supervision by the Council of the United Nations of the administration of the Territory to the extent that the General Assembly of the United Nations was competent to exercise it, (12 votes to 2);
 - (c) transmission to the United Nations of annual reports on the administration of the Territory and of petitions by or on behalf of inhabitants of the Territory;
 - (d) recognition of the right of members of the League of Nations to bring disputes relating to interpretation or application of the provisions of the mandate before the Permanent Court of International Justice, (unanimous vote).
2. Chapter XIII of the Charter of the United Nations is applicable to South West Africa, (unanimous vote).
3. There is no legal obligation on the Union to submit South West Africa to trusteeship under Chapter XII of the Charter, (8 votes to 6).
4. The Union, acting alone is not competent to modify the status of the Territory, but competence to determine or modify the international status rests with the Union, acting with the consent of the United Nations, (unanimous vote).

/The General.....

The General Assembly on 13th December, 1950, passed two resolutions on South West Africa:-

(1) The General Assembly. 1.

Considering that the International Court of Justice, duly consulted by the General Assembly pursuant to resolution 338 (IV) of 6th 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 17th December, 1920,

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 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, 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.

(2) The General Assembly (11)

Considering that the General Assembly by its resolutions 65(1) of 14th December, 1946, 141(11) of 1st November 1947, 227(111) of 26th November 1948 and 337(1V) of 6th December 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(1V) of 6th December 1949, delivered the opinion that the Territory of South West Africa is under the international Mandate assumed by the Union of South Africa on 17th 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 Mandate System with the International Trusteeship System,

1. Reiterates its resolutions 65(1) of 14th December 1946, 141(11) of 1st November 1947, 227(111) of 26th November 1948 and 337(1V) of 6th December 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 effects of the Opinion and First Resolution, if carried into effect would be:-

1. South West Africa would continue to be administered under the mandatory conditions,
2. Supervision by the United Nations of the administration of the mandate,
3. Submission by the Union Government of annual reports on South West Africa Administration,
4. Submission to the United Nations of petitions by or on behalf of the inhabitants through the Union Government,
5. Consideration by the United Nations of such petitions from outside the territory as were approved by the Chairman for submission,
6. Possibility that oral hearing of petitioners would be arranged,
7. Formation of a Committee or Commission by the United Nations (but not the Trusteeship Commission) to consider all reports and petitions.

I feel that the Institute cannot be inactive on this matter. The points at issue should be considered independently of and without consideration of the

/Reverend.....

Reverend Michael Scott's agitation. I suggest that the Institute issue a statement on the following lines:-

"The Executive Committee of the Institute of Race Relations has given careful consideration to the Opinion of the International Court of Justice and the two Resolutions of the Assembly of the United Nations of December 1950 on the South West Africa question.

The Executive Committee does not consider that the placing of the Territory under Trusteeship at the present time is desirable in the present circumstances; it does appeal to the Union Government to accept the Opinion of the International Court of Justice as imposing a moral obligation to administer the territory in the terms of the mandate, to submit annual reports to the United Nations, and to seek agreement on the procedure to be adopted for consideration of the report and of petitions relating to the administration of the territory.

The Executive Committee has not associated itself, and does not now associate itself with the statements that have been made before the United Nations in regard to the administration of South West Africa. It holds that any representations which the Non-European population wished to make should have been directed in the first place to the Administration, in the second place to the Union Government, and in the third place to the Union Parliament. But it feels it to be its duty to concern itself with the manner in which the territory is administered, and has itself been making enquiries into the extent to which the spirit and the letter of the mandate are being observed, and will in due course express itself in these matters to the relevant authorities in the territory or in the Union. It has hitherto refrained from doing so to avoid being involved in a juridical dispute which has now been determined by the Opinion of the International Court of Justice.

(Section 11 on Administration to follow,
It is almost completed.)

J. D. Rheinallt Jones.

ALBA/14/1

1) Edeles : For your information

Mr. Haythornthwaite

is our correspondent

in SWA.

JWS
5/1/60

2) Levan

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

©2013

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document forms part of the archive of the South African Institute of Race Relations (SAIRR), held at the Historical Papers Research Archive at The University of the Witwatersrand, Johannesburg, South Africa.