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#### THE SOUTH WEST AFRICA QUESTION.

## UNO RESOLUTION (1946).

At the 1946 session of the United Nations Organisation (UNO) the following resolution was adopted by thirty seven votes with ten abstentions and seven absentees.

THE GENERAL ASSEMBLY,

HAVING CONSIDERED the statements of the Delegation of the Union of South Africa regarding the question of incorporating the mandated territory of South West Africa in the Union;

NOTING WITH SATISFACTION that the Union of South Africa, by presenting this matter to the United Nations, recognize the interest and concern of the United Nations in the matter of the future status of territories now held under mandate:

RECALLING that the Charter of the United Nations provides in Articles 77 and 79 that the trusteeship system shall apply to territories now under mandate as may be subsequently agreed; Dovonant

> REFERRING to the resolution of the General Assembly of 9 February, 1946, inviting the placing of mandated territories under trustceship;

DESIRING that agreement between the United Nations and the Union of South Africa may hereafter be reached regarding the future status of the mandated territory of South West Africa;

ASSURED BY the Delegation of the Union of South Africa that, pending such agreement, the Union Government will continue to administer the territory as heretofore in the spirit of the principles laid down in the mandate.

CONSIDERING that the African inhabitants of Bouth West Africa have not yet secured political autonomy or reached a stage of political development enabling them to express a considered opinion which the Assembly could recognize on such an important question as incorporation of their territory;

### THEREFORE, THE GENERAL ASSEMBLY,

IS UNABLE TO ACCEDE to the incorporation of the territory of South West Africa in the Union of South Africa; and

RECOMMENDS that the mandated territory of South West Africa be placed under the international trusteeship system and invites the Government of the Union of South Africa to propose for the consideration of the General Assembly a trusteeship agreement for the aforesaid territory.

1. This resolution in paragraph 3 recognises that the application of the trusteeship system to any particular territory is not obligatory but subject to agreement between UNO and the administering Power.

### MANDATE PRINCIPLES:

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seven votes with ten abstentions and seven absentess.

- From paragraph 6 it will be seen that the Union Government gave the assurance that it would continue to administer the territory in the spirit of the principles laid down in the Mandate. principles are set out in Article 22 of the Covenant of the League of Nations as follows: -
- "(1) To those Colonies and territories which as a consequence of the late war have ceaused to be under the sovereignty of the State which formerly governed them and which are inhabited by peoples not "yet able to stand by themselves under the "strenuous conditions of the modern world; "there should be applied the principle that "the well-being and development of such
  "peoples from a sacred trust of civilization
  "and that securities for the performance of
  "this Trust be embodied in this Covenant
- "(6) There are Territories, such as "South West Africa and certain of the "South west Allied and beltaling to "South Pacific Islands, which, owing to "the sparseness of their population, or "their small size, or their remoteness" "from the centres of civilization, or "their geographical contiguity to the "territory of the Mandatory and other "circumstances, can best be administered "under the laws of the Mandatory as integral "portions of its territory, subject to the "safeguards mentioned above, in the inter-"ests of the indigenous population ....."

The Articles of the Mandate set out these principles, more especially the methods to be used in operating of the Mandate:

"Article 2. The Mandatory shall have full "power of administration and legislation "over the territory subject to the present "mandate as an integral portion of his territory.

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

The terms of the Mandate constitute the fundamental law of South West Africa.

# UNION'S CASE. HIV SELECTION OF BRIDE BALLOT

3. On the 7th May, 1945, the Delegation for the Union of South Africa at the United Nations Conference on International Organisation at San Francisco, said that "when the disposal of enemy territory under the Treaty of Versailles was under consideration doubt was expressed as to the suitability of the Mandatory form of administration for the territory". In the white paper issued by the Government to the Union Parliament, entitled Documents relating to the consideration by the United Nations General Assembly on the statements by the Government of the Union of South Africa on the outcome of their consultations with the Pooples of South West Africa as to the Future Status of the Mandated Territory and the implementation to be given to the wishes thus expressed. (B6262/1/47). A quotation is given in support of this view from a volume Africans Questions at the Paris Peace Conference - Dr. G. L. Beer (who was the alternate United States member of the Commission on Mandates and Chief of the Colonial Division of the American Delega-

an 4 an tion to the Versailles Conference) in which he says: "for various reasons the mandatory principle "is inadvisable and really inapplicable in "this case, In other areas, we are concerned "mainly with derelict peoples, here ossentially "mainly with derelict peoples, here essentially with land. This vast, inhospitable region "of 322,450 square miles had in 1913 only a "native population variously estimated at from "231,000 to 281,000 and a white population no "more than 14,830 including the relatively "large Gorman military and administrative "staffs. Doducting the latter and also the "foreign elements, there were in the Colony "only 9,597 Germans. The development of "this territory would be gravely handicapped "this territory would be gravely handicapped
"if it were administered entirely apard from
"the adjoining Union of South Africa with dis-"tinct native, fiscal and railwoad policies and "systems." 4. The Union Delegation at San Francisco submitted the following reasons for terminating the mandate and incorporating South West Africa as part of the Union of South conce Africa: - tres a thit one se convert dance to notify "(e) The territory is in a unique position when compared with other territories under the same form of Mandate. "(f) It is geographically and strategically a part of the Union of South Africa, and in World War I a rebellion in the Union was fomented from it, and an attack launched against the Union." It is in large measure economically "(g) dependent upon the Union, whose railways serve it and from which it draws the great bulk of its supplies." Its dependent native peoples spring from the same ethnological stem as the great mass of the native peoples of the Union." "(h) 4(1) Two-thirds of the European population are of Union origin and are Union Nationals, and the remaining one-third are Enomy Nationals, "(1) The territory has its own Legislative Assembly granted to it by the Union Parliament, and this Assembly has submitted a request for incorporation of the territory as part of the Union." The Union has introduced a progressive policy of Native Administration, including a system of local government through Native Councils giving the Natives a voice in the management of their own "(k)

affairs; and, under Union Administration, Native Reserves have reached a high state of economic development.

- In view of the contiguity and similarity 11 (3.) in composition of the native people in South West Africa the native policy followed in South West Africa must always be aligned with that of the Union, three-fifths of the population of which is nativo."
- "(m) There is no prospect of the territory ever existing as a separate state, and the ultimate object of the Mandatory principle is therefore impossible of achievement.
- These arguments formed the basis of the 10 molt 5. Union Government's case for incorporation presented to the General Assembly of UNO in 1946. argued on these grounds the Union Government claimed that
- folds out is "(a) "(a) The fundamental principle of the Mandates System and its success and in the Trusteeship System is ultimate political self-government and separate statehood. The low economic potential of the territory and the backwardness of the vast majority of the population render this impossible for achievement."
  - "(b) The immediate aim of the Mandate is the development of the Territory and its people. This development can only be satisfactorily carried out at an expense to the Mandatory which, in the nature of things, it cannot undertako: "
    - "(c) The uncertainty as to the ultimate future of the Territory inevitably militates against racial tranquility and the optimum development of the

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6. It should also be pointed out that there appears to have been no legal obstacle under the League of Nations Mandate to the incorporation of South West Africa as a province of the Union (as distinct from annexation). Although doubt was expressed as to

where sovereignity lay over South West Africa, the overwhelming weight of opinion, during the League's existence, supported the view that it lay with the League of Nations, and that incorporation could not remove severeignty from the League of Nations, and incorporation would thus have been subject to the sovereignty of the League of Nations and to the League's power to revoke the Mandaie.

## THE ARGUMENTS AGAINST.

- 7. The arguments against the incorporation of South West Africa in the Union which were outlined at the 1946 Assembly of UNO can be summarised as follows: -
- (a) The proposal is tantamount to annexation, which was approved at Versailles in 1919, and is contrary to the principles of both the Mandate and Trusteeship Systems, which aim at the development of the peoples of the territories placed under Mandate or Trusteeship towards self-government or independence.
- (b) The validity was questioned of the Union Government's claim that 208,850 of the Native inhabitants of South West Africa out of 298,860 had voted: -
  - (i) in favour of the Union Government continuing to rule them;
  - (ii) against any other country or people ruling them; and
    - (iii) in favour of their country becoming part of the Union of South Africa;

and that in any case the people are too under-developed to appreciate the full significance of the issues put before them.

- (c) The discriminatory practices against Africans in the Union, and the legal, economic, social, and political disabilities imposed upon them would be extended to South West Africa if that territory were incorporated in the Union.
  - (d) The Union's Native policy and the treatment of Africans in the Union showed that the Union could not be entrusted with the administration of South West Africa without the control of UNO.

#### PRESENT POSITION:

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- As shown in the resolution quoted at the beginning of this memorandum, UNO opposed the incorporation of South West Africa in the Union, and the Union Government has given the assurance that it will not take this step, but will continue to administer the Territory as if it were still under Mandate. It has also offered to transmit to UNO a copy of its Annual Report on the Territory. The report for 1946 is now before UNO.
- 9. Exest reports of the proceedings at UNO during the current (1947) reunion indicate that UNO will again ask the Union of South Africa to submit a draft agreement, for placing South West Africa under the Trusteeship Legislature, and consequently under the sovereignty of UNO operating through the Trusteeship Council, whose membership consists, on the one hand, of one representative of each State administering Trust Territories, and, on the other hand, one representative of each of these members of the Security Council which are not administering Trust Territories and of States elected to the Trusteeship Council to even up the number of those which do not administer Trust Territories with those which do.

#### EFFECTS OF TRUSTEESHIP SYSTEM:

10. What would be the effect of placing South
West Africa under the jurisdiction of the Trusteeship
Council? Articles 87 and 88 of the United Nations
Charter set out the functions of the Trusteeship
Council as follows: -

## "Functions and Powers

<sup>&</sup>quot;Article 87. The General Assembly and: under "its authority, the Trusteeship Council; in "carrying out these functions, may: --

- "(a) Consider reports submitted by the Administering Authority.
- "(b) Accept petitions and examine them in consultation with the Administering Authority.
- "(c) Provide for periodic visits to the respective Trust Territories at times agreed upon by the Administering Authorities, and
- formity with the terms of the Trusteeship agreements.

"Article 88. The Trusteeship Council shall "formulate a questionnaire on the political, "economic, social, and educational advancement "of the inhabitants of each Trust Territory, "and the Administering Authority for each Trust "Territory within the competence of the General "Assembly shall make an annual report to the "General Assembly, upon the basis of such a "questionnaire,"

specific duties and more definite powers than the Permanent Mandates Commission of the League of Nations. There was considerable reluctance to entrust the Commission with any function or power that went beyond advising the Council of the League of Nations on "the observances of the mandate". Even this function had to be carried out with circumspections when the Commission presented its report to the Council. Nevertheless, members of the Commission did not hesitate to express their personal opinions at sessions of the Commission on matters coming before the Commission.

12. The Trusteeship Council is, on the other hand, competent to accept petitions and to examine them in consultation with the Administering Authority (the equivalent of the Mandatory Power under the Mandate System).

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The permanent Mandates Commission could only receive petitions from the inhabitants of the Mandate Territory if they had been submitted through the Mandatory Power. This power brings the Trusteeship Council into much more direct relationship with the inhabitants of Trust Territories; and would entitle the inhabitants of South West Africa to go straight to the Trusteeship Council with any complaints they may have against the Union Government.

to inspect Mandated Territories, but this power is specifically included in the functions and powers of the Trusteeship Council.

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Although the Union Government invited members of the Permanent Mandates Commission to visit South West Africa, and one of them actually did so, it will be appreciated that such visitors had to regard themselves as the guests of the Mandatory Powers and act accordingly while in the Territory. A delegation from the Trusteeship Council would, however, be on an entirely different footing, and it is not unlikely that friction would be created if members of the delegation pursued their enquiries to the extent of catechising tribal leaders as well as Government Officials.

14. These differences are in themselves sufficient to explain the reluctance of the Union Government to place South West Africa under the Trusteeship System. They do not necessarily justify the exclusion of South West Africa from the jurisdiction of UNO. Indeed, they may provide arguments in favour of exclusion, but the probable effects

upon the prestige and authority of the governing power have to be considered carefully.

## THE "OPEN DOOR" POLICY.

- 15. An important effect of placing South West Africa under the Trusteeship System would be that under Article 76 (d) of the Charter of UNO, the "open door" policy would be applicable to the Territory, that is, equal opportunity in social, economic, and commercial matters would have to be afforded to all members of the United Nations Organisation and their nationals, provided this did not prejudice the attainment of the basic objectives of the Trusteeship System. This policy was deliberately kept out of the C Mandate (applicable to South West Africa) on General Smuts' strong representations at Versailles in 1919. This is an issue of great importance. Fears of "unlimited, undesirable immigration" were expressed by General Smuts, and in the present tension between the nations the possibilities of South West Africa being used for subversive purposes are not to be ignored. The "open door" would permit of Indians settling there in great numbers.
- 16. On the other hand, the "open door" policy night make more possible the conomic development of the Territory, for "material progress may be accelerated by the importation of goods, capital, and technical skill. By confining trade or loans to its own markets the Mandatory might compel the natives to pay higher prices for their requirements and gain a profit for himself or his people...." (Wright: Mandates under the League of Nations, p. 249). The economic and social development of the mandated territory and its people should not

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be made subservient to the economic interests of the Mandatory. The policy of the "open door" may well involve
close examination of the economic relations between the
Union and South West Africa, and, in this connection, it
should be noted that the report of the South West Africa
Commission said that : -

"It is generally admitted that South West Africa "suffers in higher prices from the protectionist "policy of the Union" (par. 366).

### DEFENCES

17. Another difference between the Mandate and Trusteeship Systems is the provision in the latter enabling the Administering States to use volunteer forces, facilities, and assistance from the Trust Territory in carrying out their defence obligations to the Security Council of UNO.

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- United Nations express more specifically than did the Covenant of the League of Nations the concern of the United Nations for the well-being and advancement of the inhabitants of Trust Territories. Paragraph 76 (b) seeks to promote their political, economic, social, and educational advancement, and paragraph 76 (c) is concerned about their "human rights" and "fundamental freedoms."
- Commission was at no time satisfied with the steps taken by the Union Government "to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the Territory" as required in Article 2 of the Mandate. Indeed, when World War II broke cut; the Union's administration of South West Africa in these respects was under severe criticism from the Commission,

more especially in respect of the Union's attitude towards expenditure on the social welfare of the natives. Chairman of the Commission, during its last sitting in 1938, said that the implication of the views expressed at an earlier session by the Union's accredited representative must be taken as the final view of the Administration also. The implication seemed that, contrary to the practice in most civilised countries, taxpayers desired benefit from public expenditure in proportion as, being rich or poor, they contributed to revenue. This, of course, was a policy pressed on the Administration by the European community in the territory. The Administration's defence was that it would be unwise unduly to accelerate. development beyond the absorptive capacity of the Native. . Account however must be taken of the fact that the Commission on South West Africa, appointed by the Union Government, in its Report (1936) expressed itself quite strongly on this attitude, and recommended "that more active steps be taken by the Mandatory for the development of the non-European races from their 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" (par. 393).

- 20. If South West Africa were brought under the Trustee-ship System, the political, economic, social, and educational welfare of its non-European peoples would be under the surveillance of the Trusteeship Council, without, however, the Council having any financial responsibility for securing their advancement.
  - 21. The extent to which an administering Authority should assume the financial burden for the advancement of

sidered. The right given in the C Mandate to the Mandatory Power to administer the Mandated Territory as an internal part of its own territory might be interpreted as indicating that the financial responsibility should be the same for both. South West Africa, however, has been treated as a distinctly separate territory from the Union in respect of its finances. Any agreement placing South West Africa under the Trusteeship System should make quite clear where financial responsibility for the advancement of the territory lies.

## CIVIL STATUS OF NON-EUROPEANS:

22. Lastly, the civil status of the Non-European inhabitants of South West Africa would require to be established. Under the Mandate System their status was never defined. While the European inhabitants are either Union Nationals (having remained so on entering the territory) or have become such under the South West Africa Naturalization of Aliens Act of 1924 (except those who signed a declaration that they did not wish to become naturalized and asked to be excluded, and so remained aliens), the Non-Europeans have remained in the negative status described in the following resolutions of the Council of the League of Nations of April 23, 1923: -

- "(1) The status of the Native inhabitants of a Mandated Territory is distinct from that of the nationals of the Mandatory Power and cannot be identified therewith by any process having general application."
  - "(2) The Native inhabitants of a Mandated Territory are not invested with the nationality of the Mandatory Power by reason of the protection extended to then."

- "(3) It is not inconsistent with (1) and
  (2) above that individual inhabitants
  of the Mandated Territory should voluntarily obtain naturalization from
  the Mandatory Power in accordance with
  arrangements which it is open to such
  power to make with this object under
  its own law."
  - "(4) It is desirable that Native inhabitants who receive the protection of the Mandatory Powers should in each case be designated by some form of descriptive title which will specify their status under the mandate."

23. No further action was taken to give the Native inhabitants of Mandated Territories a title to describe their status, although the term "protected persons" was suggested. It was also suggested that a form of "Mandate citizenship" be established. The civil status of the Native inhabitants of South West Africa is therefore undetermined.

The Coloured inhabitants are in the same condition. The Annual Report for 1928 of the Union Government on South West Africa said that the Natives of the Territory "are regarded as persons without nationality under the protection of the Mandatory Power in terms of Legal opinion. The Natives of the Territory enjoy the same guarantees as regards the protection of their persons and property in the Territory by the Mandatory Power as the inhabitants of the latter" (i.e. the Union). They were protected by the terms of the Mandate and by Article 22 of the Covenant; They had the right to petition to the. League of Nations against any act of the Mandatory Power. The League of Nations is dead, It is claimed by the Union Government that UNO is not the legal successor of the League, and has no jurisdiction over the Territory or its people. Whatever may be the legal position,

is there any doubt that the moral right of these "people without status" to appeal to world opinion for protection remains?

24. The Non-Europeans in South West Africa have no voice in the government of the Territory, other than is given to the Native tribes of Ovamboland, where a certain degree of "indirect rule" obtains. Political representation in the Legislative Assembly of South West Africa is limited to Europeans. Native Affairs, it is true, are excluded from the jurisdiction of the Legislative Assembly, being in the hands of the Administrator. The Assembly, however, concerns itself with the provision and financing of public services for Non-Europeans as well as Europeans. The Union Parliament is competent to legislate for South West Africa, including matters affecting the Non-European population, but the Non-Europeans of South West Africa have no representation in the Union Parliament.

25. A Trusteeship Agreement would have to define the civil status of the Non-European peoples of South West Africa, and make some provision for their representation in the governing legislatures.

#### POSITION SUMMARISED:

- 26. The position may be summarised as follows: -
- 1. The Union Governing holding that South West Africa is not a suitable territory to place under the Trusteeship System and that there is nothing in the Charter of the United Nations to compel it to submit a Draft Agreement to UNO, intimated to UNO at ist 1946 session that it proposed to incorporate South West Africa.

- 2. UNO expressed its opposition to incorporation, and invited the Union Government to submit a Draft Agreement placing the territory under the Trusteeship System of the United Nations.
- The Union Government has at the 1947 session of UNO announced its decision not to proceed with incorporation, but also not to submit a Draft Agreement, still maintaining that it was not obligatory to do so. It, however, declared its intention to transmit annual reports on the administration of South West Africa to the United Nations for its information.
  - 4. UND is likely to repeat its request to the Union Government to submit the Draft Agreement.

## POSSIBLE LINES OF ACTION:

27. How should the Union Government respond to the repeated and pressing request of the United Nations Organisation?

It may adopt one of the following courses: -

- 1. Repeat its refusal to submit the Draft Agreement and on the same grounds.
- 2: Ask UNO to agree to the following points being referred to the International Court of Justice: -
  - (i) Upon what authority did sovereighty in respect of South West Africa devolve on the demise of the League of Nations?
  - (ii) Does the Charter of the United Nations impose any obligation upon the Union of South Africa to submit the terms of a Trusteeship Agreement in respect of South West Africa to the United Nations?
- 3. Submit a draft Agreement but -
  - (i) with the following stipulations: -

whole matter for a period of years, say three

or five years, the period to be used in exhaustive consideration of the lines along which the development and the "political, economic, social and educational advancement" of the inhabitants of the Territory, both European and Non-European can best be achieved.

- be appreciated that the Union of South Africa now stands alone at UNO on this issue, and that the pressure to submit South West Africa to the Trusteeship System is now greater than ever, and, if UNO survives the stresses and strains of the present world tension, the pressure upon the Union will grow rather than diminish. This issue is likely to be regarded as a test of UNO's efficacy. There may be other tests, such as Palestine, which may be the cause of the downfall of UNO, but the Union of South Africa will bear a heavy share of responsibility for such disaster. It is difficult to believe that we will assume that responsibility by blankly refusing to submit to the urgent request of UNO.
- 29. As regards the second possible course, while there is considerable likelihood that the desisions of the International Court of Justice would favour the Union's case on juristic grounds, it is not likely that it would alter in any way the determination in UNO that South West Africa shall come under the Trusteeship System.
- There are strong arguments in favour of a modification of the conditions of Trusteeship, as laid down in the Charter, in respect of South West Africa, and the Union can reasonably embedy the stipulations in the Draft Agreement. It would find considerable support among the

nembers of UNC. On the other hand, it must offer assurances regarding the treatment of the Non-Myropean peoples of the Territory. Justifiable indignation over the exaggerations in the accusations at UNO against the Union must not blind us to the facts that

- (a) the Union's case for incorporation laid the Union open to attacks upon her Native policy and her treatment of Non-Europeans, and
- (b) there is a substantial case against the Union, justifying demands for guarantees that the Union's discriminatives against Non-Europeans will not be extended to South West Africa.

  Indeed, many of the discriminations do apply at present,
- Lastily, it would not be unreasonable for the Union 31. to ask for time in which to put forward a policy and a programme for the development of the Territory in conformity with the principles of the old Mandate, if not of the Charter. Besides, there are strong indications that social and oconomic forces have rendered the Union's racial policies out of date. Every authoritative enquiry into the Union's social and economic conditions in recent years has drawn attention to this, and during the next few years there will have to be greater changes in these policies. The social and economic changes affecting all sections of the population will call for new policies and now programmes, and if the Union Government's claim that South West Africa's social and economic problems should be doult with in line with those of the Union, the case for postponement of any definite decision in regard to the control of the Territory is a strong one.

At no time should it be forgotten that not only have we to satisfy world opinion as represented at UNO, but also we have to reconcile the interests of the various racial sections of South West Africa and the Union and to find ways by which they can live together in peace and goodwill and work together for their sommon "political, economic, social, and educational advancement."

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