

External Affairs
Supplementary Paper

No. 53/49 THE QUESTION OF SOUTH WEST AFRICA

Text of a statement given on November 12, 1953, by Mr. A.R. Crepault of the Canadian Delegation, in the Fourth Committee of the eighth session of the United Nations General Assembly, on Agenda item 36.

Note: The text of the two resolutions passed at the Fourth Committee on November 12, 1953, on this subject and the results of the voting are included at the end of the Canadian statement.

Question of South West Africa

It is the eighth time that our Assembly has been called upon to examine the question of South West Africa. We may therefore safely assume that the main issues of South West Africa have already been thoroughly examined. Canadian Delegations have had occasions in the past to explain in detail the Canadian position on this item. The Canadian intervention this year is accordingly limited to a brief explanation of vote, on the resolutions which this Committee has just adopted.

My Delegation has abstained on paragraphs 2 and 4 of the operative part of the resolution, because it is of the view that a more conciliatory language might have contributed more to the main objective of the resolution.

We have abstained on sub-paragraph (c) of paragraph twelve because of some misgivings about the scope of the proposed activities of the new Committee with regard to reports concerning conditions in the territory of South West Africa. My Delegation has also found it necessary to abstain on paragraph 12 as a whole. I wish to state, however, that our abstention had of course nothing to do with the establishment of the new Committee, but was prompted by the inclusion in that paragraph of the words "until such time as an agreement is reached between the United Nations and the Union of South Africa". We would have preferred these words to be deleted. This wording might attach to the establishment of the Committee a notion of permanency which we do not consider necessary or useful.

We doubt the value of being so specific about the terms of tenure of the Committee, when paragraph 14 provides for the Committee to report annually to the Assembly and when these annual reports will afford the Assembly the normal opportunity of review. My Delegation indeed considers, Mr. Chairman, that this right of review is necessarily implied in paragraph 14.

The Canadian Delegation has voted in favour of Resolution A as a whole (i.e. the Fifteen Power Resolution) as embodied in Document L. 305, Revision 1, since the substance of the proposal is chiefly aimed at the

implementation of the advisory opinion of the International Court of Justice with regard to South West Africa. The Canadian Government has always entertained the greatest respect for opinions rendered by the International Court of Justice; we are, of course aware that such judgements are not legally binding, but we look upon them as authoritative expressions of International Law. We feel that in the interests of promoting the rule of law and enhancing the prestige of the Court, due consideration should be paid to these opinions.

As we have often stated in this Committee, it is the sincere wish of the Canadian Government that a solution, satisfactory to all parties concerned, will ultimately be reached on South West Africa, a solution which would respect the just rights of the South African Government in South West Africa in the same manner as it would allow the people of South West Africa to fulfil their legitimate aspirations. My Delegation believes that it is most important that satisfactory progress be continued to be made towards a final settlement of this question.

In this connection, Mr. Chairman, my Government has much appreciated the efforts made by the Ad Hoc Committee in its attempts to find common grounds of agreement with the Union Government, and I wish to take this opportunity to express to its distinguished Chairman and its members the gratitude of the Canadian Delegation for their valuable work. We are very pleased that the great majority of this Committee has now found it possible to have the work of the Ad Hoc Committee continue and we hope that the new Committee provided for in the fifteen-power resolution will be successful in pressing forward with the task that is being assigned to it. It is our earnest hope that the new Committee will find a sound and fair solution to the question of South Africa and thereby finally eliminate this item from our agenda.

With regard to the second resolution (i.e. the Eleven-Power resolution) Mr. Chairman, my Delegation doubted whether it was necessary and in these circumstances decided to abstain. It may of course be successfully argued that the normal way of modifying the international status of South West Africa would be to place it under a trusteeship agreement; this is a statement, however which has already been re-affirmed several times by the Assembly, and my Delegation has always believed that the practice of repeatedly re-affirming General Assembly resolutions is not a particularly desirable nor practical procedure.

Voting Results -- The Fourth Committee adopted the fifteen-power draft resolution (Doc. A/C.4/L.305/Rev. 1 and Add. 1) calling for the formation of a new nine-member committee by a vote of 41 in favour (including Canada), 1 against (Union of South Africa) and 11 abstentions (Soviet bloc and Administering Powers). Voting on individual paragraphs preceded the vote on the resolution as a whole. The fifteen delegations sponsoring this resolution were as follows: Afghanistan, Brazil, Burma, Denmark, Egypt, India, Indonesia, Iraq, Liberia, Pakistan, Philippines, Saudi Arabia, Syria, Thailand and Uruguay.

The Fourth Committee adopted the eleven-power draft resolution (Doc. A/C.4/L.306 and Add.1) by a vote of 42 in favour, 1 against (Union of South Africa) and 10 abstentions (including Canada). Voting on individual paragraphs preceded the vote on the resolution as a whole. The eleven powers sponsoring this resolution were as follows: Afghanistan, Burma, Egypt, India, Indonesia, Iraq, Pakistan, Philippines, Saudi Arabia, Syria and Uruguay.

Text of the Fifteen-Power Resolution

The General Assembly,

Having accepted, by resolution 449 A (V) of 13 December 1951 and by resolution 570 (VI) of 19 January 1952, the advisory opinion of the International Court of Justice with respect to South West Africa,

Recalling that the advisory opinion of the International Court of Justice with respect to the Territory of South West Africa sets forth, inter alia, that:

(a) The Territory of South West Africa is a Territory under the International Mandate assumed by the Union of South Africa on 17 December 1920,

(b) The Union of South Africa acting alone has not the competence 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,

(c) The Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations to which the annual reports and the petitions are to be submitted,

Considering that, in accordance with the opinion of the International Court of Justice, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court as provided by Article 37 of the Statute of the International Court of Justice, by Article 80, paragraph 1, of the Charter of the United Nations and by Article 7 of the Mandate for South West Africa,

Having reconstituted the Ad Hoc Committee on South West Africa consisting of the representatives of Norway, Syria, Thailand, the United States of America and Uruguay by General Assembly resolution 570 A (VI) of 19 January 1952, and by General Assembly resolution 651 (VII) of 20 December 1952 continued it on the same basis as before,

Having considered the reports of the aforesaid Ad Hoc Committee, document A/2261 submitted on 21 November 1952 and document A/2475 submitted on 16 September 1953,

1/ Note - The present document incorporates the changes made in document A/C.4/L. 305/Corr.1, which has been distributed in the provisional form only.

1. Commends the Ad Hoc Committee on South West Africa for its earnest and constructive efforts to find a mutually satisfactory basis of agreement;

2. Records with deep regret that the Government of the Union of South Africa continues in its refusal to assist in the implementation of the advisory opinion of the International Court of Justice concerning South West Africa, and continues to maintain that the Union of South Africa has no international commitments as the result of the demise of the League of Nations, and that the Government of the Union of South Africa is prepared only to enter into new arrangements for the Territory of South West Africa with the Principal Allied and Associated Powers of the First World War (France, the United Kingdom and the United States of America), and not with the United Nations;

3. Notes with concern that as required by paragraph 6 of General Assembly resolution 570 (VI) the Ad Hoc Committee was unable to examine reports on the administration of the Territory of South West Africa because again no such reports were submitted by the Government of the Union of South Africa;

4. Notes with further regret that the Union of South Africa has refused to co-operate with the United Nations concerning the submission of petitions in accordance with the procedures of the Mandates System;

5. Notes the contents of the communications relating to South West Africa received by the Ad Hoc Committee in 1951, 1952 and 1953 from sources within and outside the Territory of South West Africa and contained in the aforesaid reports of the Ad Hoc Committee;

6. Reaffirms that in order to implement the advisory opinion of the International Court of Justice with regard to South West Africa,

(a) The supervision of the administration of South West Africa though it should not exceed that which applied under the Mandates System, should be exercised by the United Nations; judicial supervision by the International Court of Justice which the Union Government is prepared to accept is not in accordance with the advisory opinion expressed by that Court and accepted by the General Assembly;

(b) The Union Government should assume its obligations to the United Nations and not, as proposed by the Union Government, to the three Powers (France, the United Kingdom and the United States of America) as principal

7. Appeals solemnly to the Government of the Union of South Africa to reconsider its position, and urges it to continue negotiations with the Committee on South West Africa in accordance with the aforesaid principles for purposes of concluding an agreement providing for the full implementation of the advisory opinion of the International Court of Justice; and urges it further to resume submission of reports on the administration of the Territory of South West Africa and to transmit to the United Nations petitions from individuals or groups of the population of the Territory;

8. Recalls and reaffirms that the Territory of South West Africa is a Territory under the International Mandate assumed by the Union of South Africa on 17 December 1920;

9. Reaffirms further that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations to which the annual reports and the petitions are to be submitted;

10. Considers that without United Nations supervision the inhabitants of the Territory are deprived of the international supervision envisaged by the Covenant of the League of Nations;

11. Believes that it would not fulfil its obligations towards the inhabitants of South West Africa if it were not to assume the supervisory responsibilities with regard to the Territory of South West Africa which were formerly exercised by the League of Nations;

12. Establishes, until such time as an agreement is reached between the United Nations and the Union of South Africa, a Committee on South West Africa consisting of nine members and requests this Committee to:

(a) Examine, within the scope of the Questionnaire adopted by the Permanent Mandates Commission of the League of Nations in 1926, such information and documentation as may be available in respect of the Territory of South West Africa;

(b) Examine, as far as possible, in accordance with the procedure of the former Mandates System, reports and petitions which may be submitted to the Committee or to the Secretary-General;

(c) Transmit to the General Assembly a report concerning conditions in the Territory taking into account, as far as possible, the scope of the Reports of the Permanent Mandates Commission of the League of Nations;

(d) Prepare for the examination of the General Assembly a procedure for the examination of such reports and petitions which should conform as far as possible to the procedure followed in this respect by the Assembly, the Council and the Permanent Mandates Commission of the League of Nations;

13. Authorizes the Committee to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice regarding the question of South West Africa;

14. Requests the Committee to submit reports on its activities to the regular sessions of the General Assembly.

Text of the Eleven-Power Resolution

The General Assembly,

Having recommended by its resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948, 337 (IV) of 6 December 1949, 449 B (V) of 13 December 1950, and 570 B (VI) of 19 January 1952 that the Mandated Territory of South West Africa be placed under the International Trusteeship System and repeatedly invited the Government of the Union of South Africa to propose, for the consideration of the General Assembly, a Trusteeship Agreement for South West Africa;

Having accepted by resolution 449 A (V) of 13 December 1950 the advisory opinion of 11 July 1950 of the International Court of Justice concerning South West Africa, inter alia, to the effect that:

(a) While "the provisions of Chapter XII of the Charter do not impose on the Union of South Africa a legal obligation to place the Territory under the Trusteeship System", they are applicable "to the Territory of South West Africa in the sense that they provide a means by which the Territory may be brought under the Trusteeship System";

(b) "The Union of South Africa acting alone has not the competence 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 in accordance with Chapter XII of the Charter all mandated territories which have not achieved independence have been brought under the Trusteeship System with the sole exception of the Territory of South West Africa,

1. Reiterates its resolutions 65 (I) of 14 December 1946, 141 (II) of 1 November 1947, 227 (III) of 26 November 1948, 337 (IV) of 6 December 1949, 449 B (V) of 13 December 1950, and 570 B (VI) of 19 January 1952, to the effect that the Territory of South West Africa be placed under the International Trusteeship System;

2. Reasserts 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.

13. Authorizes the Committee to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice regarding the question of South West Africa;

14. Requests the Committee to submit reports on its activities to the General Assembly.

