Chapter IV

Beginning of More Open and Direct confrontation with the United Nations
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BEGINNING OF MORE OPEN AND DIRECT CONFRONTATION WITH THE UNITED NATIONS

Due to the persistent refusal of the Union Government to meet the viewpoint of the United Nations in order to settle the future of the mandate territory of South West Africa once for all, the stage was gradually being set for an open and direct confrontation between the two. Still, before such a situation became no more avoidable, the Fourth Committee wished to exhaust all possibilities for a negotiated settlement.

A. THE EFFORTS OF THE GOOD OFFICES COMMITTEE

In 1957 the General Assembly, on the recommendation of the Fourth Committee, set up a Good Offices Committee, vide Resolution 1143 (XII) of 25 October 1957, in addition to the Committee on South West Africa which also continued to be in existence without any change in its terms of reference. Thus from 1957 onward two committees - the Committee on South West Africa and the Good Offices Committee - were in existence simultaneously. While the instructions to the Committee on South West Africa to 'continue negotiations with the Union Government' were not withdrawn, the new

Committee, that is the Good Offices Committee, under its terms of reference, was asked to discuss with the Government of the Union of South Africa "a basis for an agreement which would continue to accord to the Territory of South West Africa an international status". The Good Offices Committee consisted of three members - Brazil, United Kingdom, and United States of America. Thus one Committee was there to find a "basis" for an agreement, while the other Committee, that is the Committee on South West Africa, was there to hold actual negotiations. The Fourth Committee seems to have realized its mistake of not having discovered first the common basis of a possible agreement with South African Government over the question of South West Africa before holding actual negotiations with that Government. It has already been pointed out in the previous Chapter that no success could be achieved in negotiations thus far because the two parties had different objectives in mind while holding negotiations on the question of South West Africa. The common basis should be there to show the direction in which the negotiations should proceed. It was, therefore, necessary to see the result of the efforts of the Good Offices Committee.

2 The said resolution mentioned only two members - U.K. and U.S., while the third member was to be nominated by the then President of the General Assembly. Therefore, at the 714th plenary meeting of the General Assembly, the President of the General Assembly nominated Brazil as the third member of the Committee.
Committee to find a "common basis" for an agreement. Moreover, it would have amounted to duplication of efforts if both the Committees had held negotiations with the Union Government simultaneously. Hence, the Committee on South West Africa rightly decided not to hold any negotiations with the Union Government till the results of the negotiations by the Good Offices Committee were known.

One advantage which the Good Offices Committee enjoyed but which neither the former Ad Hoc Committee which was wound up in 1953 nor the existing Committee on South West Africa enjoyed was the fact that it was not asked to search for the 'basis' within the scope of the 1950 Advisory Opinion of the International Court of Justice or the Charter of the United Nations. From this point of view the terms of reference of the Good Offices Committee were quite broad and liberal. The Good Offices Committee was, therefore, at liberty to explore all possible solutions.

Another advantage in favour of the Good Offices Committee was that it was not encumbered with any other responsibility so that it could concentrate on the single task of finding a common 'basis' for an agreement.

A third advantage in favour of the Good Offices Committee was that it included among its members United

Kingdom and United States also which were South Africa's close allies and trading partners. Such a Committee was bound to command greater respect, attention and cooperation of the Union Government than did the former Ad Hoc Committee wound up in 1953 or the existing Committee on South West Africa. Thanat Khoman, the Thai delegate, stated in the Fourth Committee that the United Kingdom and the United States had been selected 'because they were in a particularly suitable position to perform the functions which would be entrusted to them'.

The work of the Good Offices Committee can be grouped under four heads:— (a) the offer of a new proposal, (b) the consideration and rejection of the 'partition' proposal of the Union Government, (c) the search for a common basis, and (d) fresh efforts to start negotiations.

(a) **The Proposal of the Good Offices Committee**

The Good Offices Committee held discussions with the leaders of the Union Government during the course of which

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4 U.S.A. was a member of the Ad Hoc Committee on South West Africa which was wound up in 1953 but U.K. was never a member of the Ad Hoc Committee or the Committee on South West Africa. In any case, both U.K. and U.S.A. together became members of a Committee dealing with South West African affairs for the first time in 1957.

it offered a new proposal in respect of South West Africa, which envisaged the setting up of two organs - a South West Africa Council and a South West Africa Mandates Commission.

The proposed South West Africa Council was to be composed on the lines of the Council of the League, taking into account the changes in its permanent membership which had occurred during its existence and the fact that the Union of South Africa was entitled to participate and vote in its proceedings as far as they concerned South West Africa. Thus, according to the Good Offices Committee, it would consist of three permanent members, that is, France, United Kingdom and United States, and two non-permanent members to be elected by the General Assembly from among States members of the United Nations who were members of the League of Nations also at the time of its dissolution.

The proposed South West Africa Mandates Commission would consist of 5 members appointed by the South West Africa Council on the basis of their personal merits and competence a majority of whom would be nationals of states not administering territories formerly held under Mandate, and all of whom should be nationals of Members of the League of Nations at the time of its dissolution.

Regarding the functions of the proposed institutions,

6 Ibid., 13th sess., 1958, Annexes, Agenda Item 39 (UN Doc. A/3900), paras 16-21, pp. 4-5.
the proposal of the Good Offices Committee envisaged that the Union Government would not transmit direct to the General Assembly necessary information concerning South West Africa. Reports or information transmitted by the Union Government would be received and examined by the proposed South West Africa Mandates Commission in the manner followed by the former Permanent Mandates Commission. The duty of the proposed South West Africa Council would be to review the working and performance of its subsidiary body, viz., the proposed South West Africa Mandates Commission from which it would receive necessary reports and other relevant information relating to South West Africa. The proposed South West Africa Council, in its turn, would formulate its conclusions and prepare its reports and transmit them to the General Assembly which would be guided by the Special Rules it had already adopted in regard to the recommendation of the Committee on South West Africa and would base its own decisions on the recommendations of the proposed Council.

The Good Offices Committee, as part of its proposal, also suggested that a period of time would be fixed at the end of which the arrangements arrived at would be open to review at the request of either the Union Government or the

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7 Vide Resolution 844 (IX) of 11 October 1954.
8 UN Doc. A/3900, n. 6, para 20, p. 5.
General Assembly.

It should be recalled that the Ad Hoc Committee during its existence from 1950 to 1953 had submitted a scheme for the solution of the problem of South West Africa, which came to be known as 'Counter Proposal' the details of which were mentioned earlier in Chapter III. The new proposal now submitted by the Good Offices Committee should be considered as distinct improvement upon the said 'Counter Proposal' due to some entirely new features that it contained. These new features were as follows:

1. The proposed South West Africa Council was to be a more compact body than the Committee on South West Africa proposed under the 'Counter Proposal' discussed in the previous Chapter, since the former was to consist of six members only instead of 15 members as were proposed for the latter body. The inclusion of United States, United Kingdom and France which were the principal trading partners of South Africa and which were also the remaining of the Principal Allied and Associated Powers, besides the inclusion of South Africa itself, could go a long way to assure the Union Government that nothing damaging to her vital interests would be decided upon by the proposed South West Africa Council which would be the principal supervisory and policy-making body under the new proposal. As we saw in the

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9 Ibid., para 21, p. 5.
previous Chapter, the Union Government, under her 'proposal' submitted to the Ad Hoc Committee, had herself offered to conclude an agreement with the remaining Principal Allied and Associated Powers.

2. The second new feature of the proposal of the Good Offices Committee was that the proposed South West Africa Mandates Commission would not consist of government delegates but of experts selected on the basis of their personal competence and merits as used to be in the case of the Permanent Mandates Commission. One of the objections of the Union Government to the United Nations' involvement, as we saw earlier in Chapter III, was that the Organization did not contain any organ analogous to the Permanent Mandates Commission the distinguishing character of which was described to be as "a body of individual experts and not of government representatives". Now, this objection of the Union Government was largely met by the proposal of the Good Offices Committee.

3. The third new feature of the proposal of the Good Offices Committee was that both the proposed bodies - the South West Africa Council and the South West Africa Mandates Commission - would consist of member States or nationals from those States only which were members of the League of Nations as well. The implication of this feature for South Africa would be that most of the African States, now members of the United Nations, would be excluded. This
provision was not there in the 'Counter Proposal' considered in the previous Chapter.

4. A fourth feature of the proposal was that the General Assembly, in taking decisions relating to South West Africa, would be guided by, and would base its decisions on, the recommendations of the proposed South West Africa Council only. The main supervisory body would be the proposed South West Africa Mandates Commission consisting of individual experts doing their work in accordance with the procedure of the Permanent Mandates Commission. The role of the General Assembly was to be nominal, since it would have no freedom to take decisions which were not based on the recommendations of the proposed South West Africa Council.

5. The fifth and the last important feature of the proposal was that it was open to review at the initiative of either of the two parties after a fixed period of time. This would give a chance to both the parties to improve upon the scheme in the light of difficulties, if any, experienced during the working of the proposal.

There seemed to be nothing in the proposal of the Good Offices Committee to which the South African Government could convincingly object. And yet, that Government did not accept it. Her categorical reply was that she found herself unable to consider the proposal of the Good Offices Committee concerning the nature, composition and functions of
supervisory organs which might be established within the framework of the United Nations since she was not prepared to accept the United Nations as the second party to an agreement concerning the Territory or to accept any commitment making her responsible to the United Nations for the administration of the Territory. The Union Government also pointed out that the relationship which had developed under the Mandates System between the Union and the Territory would, in her view, make her acceptance of United Nations' authority impracticable. According to the Union Government, the United Nations was a body totally different from the League in its composition, functions and powers and in its approach to questions such as that of South West Africa. Moreover, the unanimity rule had afforded the Union Government under the League a protection which she would no longer have under the United Nations. The Union Government also expressed her inability to accept any form of trusteeship as the basis of an agreement concerning the Territory. The Union Government also reiterated that it was impossible for her to agree to the submission of a formal
annual report to the United Nations but was prepared to forward her various official publications containing all the information required on the Territory.

Besides rejecting the new scheme, the Union Government listed some reasons for not accepting any separation between South Africa and South West Africa. These reasons were as follows:

(i) The Union Government regarded South West Africa as essential to the security of the Union of South Africa and the security of the Union as essential to that of Southern Africa.

(ii) The interests of the Union of South Africa and South West Africa were inextricably bound up with each other.

(iii) The two territories - South Africa and South West Africa - inhabited the same types of people.

(iv) South West Africa by itself could not be economically viable.

(v) The Union Government could not ignore the public opinion in the Union and the Territory - the opinion of the people who had borne financial responsibility for the Territory throughout its administration by the Union.

(vi) The Bantu inhabitants had in the past indicated their satisfaction with the Union's administration of the Territory and did not desire a change in the position.

Most of these reasons were not new since the Union

14 Ibid., paras 36 and 37, p. 7.
15 Ibid., para 41, pp. 7-8.
Government had already given them on various occasions in the past and we have already referred to them in the previous Chapters. The first reason, as we might see, was potentially dangerous because, if it was accepted, any State could easily lay claim on its neighbouring State on the plea that it was essential to its security. The second reason was unconvincing because in the modern world of interdependence not only the interests of the Union of South Africa and South West Africa were "inextricably bound up" but of many other countries also. The third reason also lacked force because persons of the same type inhabited not only South Africa and South West Africa but other neighbouring lands also in other parts of the world. For example, Arabs were scattered over many States in West Asia and north Africa. Similarly, people of Chinese origin resided in very large numbers in Malasiya and Singapore and the people of Mongoloid origin as a whole were spread over many Eastern States. Should similarity in the type of the people alone be the determining factor for deciding whether or not two neighbouring States should merge together and form one State? Why should other factors not favourable for a merger be ignored? The fourth reason also was not convincing because South West Africa, with its vast earnings through the export of diamonds and minerals, could easily meet its requirements and stand on its legs without outside assistance. The fifth reason was weaker than all the four reasons preceding it.
because the so-called "public opinion" was, in fact, a minority opinion of the "whites" only since the opinion of the natives constituting the majority had not been ascertained in an open and impartial manner under the auspices of an international authority or institution like the United Nations. The same argument applied to the sixth reason also. Thus the reasons advanced by the Union Government for opposing the separation of South West Africa from South Africa were wholly untenable.

The rejection of the proposal of the Good Offices Committee and the untenable reasons advanced by the Union Government for not favouring any separation between South Africa and South West Africa further proved that the Union Government was not interested in the solution of the problem of South West Africa on the lines acceptable to the United Nations, even if the same supervisory institutions were created as had existed under the League. The Union Government was determined to block every reasonable proposal by putting forth unreasonable objections. She was not ready to accept any scheme by the application of which there would be even remotest chance that her undiminished desire to annex South West Africa would be thwarted. Once again it was obvious that what divided the Union Government and the United Nations was a difference in their respective objectives in relation to South West Africa. There was absence of a "common basis" for an agreement between the two parties.
The Good Offices Committee had indulged in actual negotiations with the Union Government with a view to arriving at an agreement instead of being engaged in the endeavour to find a 'basis' for an agreement as she was asked to do. Thus the Good Offices Committee had departed from its terms of reference.

(b) The 'Partition' Proposal

When the Union Government asked the Good Offices Committee as to what other possible approaches had been considered by it, the latter replied that it had considered the whole range of alternatives including trusteeship, annexation, the question of judicial supervision, a suggestion that the partition of the Territory might provide a basis for a solution and the possibility of applying Article 1673 (e) of the Charter. As the Good Offices Committee reported, the Union Government showed interest in the 'partition' proposal and she desired that this particular possibility should not be discarded by the Committee without further examination. The 'partition' proposal was not in detail but the Minister of External Affairs of the Union Government observed that, if partition were agreed to, the southern portion of the Territory would presumably be annexed to the Union of South Africa and the northern portion

16 Ibid., para 47, p. 8.
17 Ibid., para 48, p. 8.
would be placed under trusteeship and administered as an integral part of the Union.

The Union Government felt that the advantage that would accrue to her from the partition of the Territory would be that discussions on the multi-racial situation in the Union would be obviated because the area to be placed under trusteeship would contain only Bantu races.

The Union Government wanted to investigate the possibility of partition of the Territory of South West Africa. The recommendation of the Good Offices Committee was that the General Assembly should encourage the Union Government to investigate the practicability of partition on the understanding that the Union Government would submit proposal for the partitioning of the Territory if such a proposal was found to be practicable after full investigation.

At this stage it might be recalled that the Good Offices Committee was asked to find a basis for an agreement which would 'continue to accord to the Territory of South West Africa an international status'. This naturally meant that the international status was to be accorded to the whole territory and not to any part of it. Acceptance of the 'partition' proposal would have meant that only half of

18 Ibid., para 49, p. 8.
19 Ibid., para 50, pp. 8-9.
20 Ibid., para 52 (7), p. 10.
the territory of South West Africa would be accorded an international status since only half the territory was proposed to be placed under trusteeship under the 'partition' proposal.

Moreover, the General Assembly on the advice of the Fourth Committee, had already rejected the South African Government's request for the annexation of South West Africa in the very first session of the General Assembly held in 1946 vide Resolution 65 (I). Acceptance of the 'partition' proposal would have meant that the United Nations had now reversed, or at least modified, its 1946 decision and that it was now ready to permit annexation of at least half the territory of South West Africa.

Finally, the obligations of the United Nations were towards the whole people of South West Africa and not towards some or part of them. Acceptance of the 'partition' proposal would have tantamounted to the abandonment of United Nations' responsibility towards that part of the population who were to be compelled to join the Union of South Africa against their will.

The General Assembly, therefore, decided not to accept the 'partition' proposal, vide Resolution 1243 (XIII) adopted on 30 October 1958 on the recommendation of the Fourth Committee. Before it did so, the 'partition' proposal had

already received severest condemnation at the hands of the members of the Fourth Committee. It was variously condemned as 'a denial of the legal and humanitarian principles of the United Nations', as 'incompatible with the functions of trustee assumed by the Union Government as the mandatory Power', as 'flagrant violation of the most sacred principles of international law', as 'inconsistent with the principles on which trusteeship was based', as economically, socially and politically unacceptable', and also as 'inconsistent with the hopes of the Africans as well as with the hopes of those non-Africans whose only desire was to put an end to the injustices from which the African peoples had been suffering for centuries.' However, the view of the British delegate, Gilbert Longden, was that the partition proposal was useful since it would result in extending the benefits of the Trusteeship System to at least some of the

22 Ibid., 4th cttee., 756th mtg., p. 58 (Views of Ahmed Osman, the U.A.R. delegate).
23 Ibid., 759th mtg., p. 72 (Views of Lorenzo Sumulong, the delegate of Philippines).
24 Ibid., p. 74 (Views of Majid Rahnema, the Iranian delegate).
25 Ibid., 763rd mtg., p. 94 (Views of Ako-Adjei, the delegate of Ghana).
26 Ibid., 766th mtg., p. 104 (Views of O.H. Camilion, the delegate of Argentina).
27 Ibid., 763rd mtg., p. 94 (Views of Ako-Adjei, the delegate of Ghana).
inhabitants.

Though we might disapprove of the Good Offices Committee recommending the investigation into the practicability of the 'partition' proposal, yet the proposal itself was useful in the sense that it exposed the hollowness of the so-called juridical position of the Union Government. Justifying her refusal to sign a trusteeship agreement in respect of South West Africa, the Union Government had stated in the past that she had not made any commitment, during the closing session of the League of Nations, to place South West Africa under trusteeship, that she had made reservations in this regard even at the San Francisco Conference in 1945, that the United Nations was not heir to the League of Nations, that she was not legally obliged to place South West Africa under trusteeship since trusteeship provisions of the United Nations Charter were permissive and not obligatory, that she was not accountable to the United Nations for her administration of South West Africa since that Organization had no locus standi in the matter and that the fathers of the Mandates System had never contemplated the territory of South West Africa becoming an independent political unit since, due to sparseness of its population, the meagreness of its resources, geographical and economic conditions of the Territory and general backwardness of the
people, it had been considered fit only for becoming a part of the Union of South Africa. All these arguments could no more be validly sustained since the Union Government was now ready to place half of South West Africa under trusteeship of the United Nations. If these arguments were at all valid, they were valid for the whole Territory and not for half, or they were not valid at all. Since the Union Government was now ready to consider favourably the 'partition' proposal, it appeared that she herself did not believe in those arguments strongly. It was obvious that those arguments were advanced mainly to block a solution which conflicted with the intention of the Union Government to annex South West Africa. All those legal arguments of the Union Government, the so-called juridical position, vanished into the air the moment the 'partition' proposal was mooted.

The Iraqi delegate, Adnam Pachachi, aptly remarked in the Fourth Committee that 'with the mention of partition all reasons of principle, law, national security and local politics were forgotten by the Union Government'. The Union Government was now prepared to sacrifice her so-called juridical position if a price was paid - the price being the authority to annex the southern half - that is, the

29 These views of the Union Government have been mentioned before in Chapters II and III on pp. 66-70, 150-51.

richer half of South West Africa which was very rich in diamonds and minerals.

Another ground advanced by the Union Government for not placing South West Africa under trusteeship was that it was essential to the security of South Africa itself. This argument also seemed to hold no validity any more for the Union Government if 'partition' was agreed upon by the United Nations as a solution for the problem of South West Africa.

The Union Government had also stressed upon the economic dependence of South West Africa upon the Union of South Africa due to her lack of material wealth. She considered South West Africa as an economic part of the Union. This means that the Union Government did not regard South West Africa as an economically viable State. If the whole Territory was not economically viable, it was difficult to conceive of half of it being economically viable particularly when the richer half was separated from it.

Thus we see that after the 'partition' proposal, the Union Government stood fully exposed, and her case on South West Africa extremely weakened. It was quite obvious now

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31 The Union Government first advanced this reason at the Paris Peace Conference as we saw in Chapter I, p. 26. It was repeated by that Government while presenting her case to the United Nations for the incorporation of South West Africa. (See Chapter II, p. 74)

32 This view of the Union Government was referred to in Chapter II, pp. 67, 69 and 73.
that her opposition to place South West Africa under trusteeship was due to her interest in, and attraction towards, the southern half of the territory of South West Africa which contained abundant underground wealth.

(c) The Search for a 'Common Basis'

In the previous pages it has been pointed out that what was needed was a "common basis", an identity of goal or an agreement about the objective before negotiations between the two parties could be successfully concluded. The Good Offices Committee was, therefore, asked to find out a "common basis" but, instead of doing so, it had indulged in actual negotiations, an ostensible departure from its terms of reference. Its proposal not being acceptable to the South African Government and the 'partition' proposal of the latter not being acceptable to the Fourth Committee, the need was once again felt for searching the "common basis". Accordingly, the General Assembly, on the recommendation of the Fourth Committee, asked the Good Offices Committee to negotiate with the Union Government to find a 'basis for an agreement' vide Resolution 1243 (XIII) adopted on 30 October 1958. Its relevant paragraph was as follows:

Invites the Committee to renew discussions with the Government of the Union of South Africa in order to find a basis

33 UN Doc. A/3959 And Add. 1 and 2, n. 21, para 36, p. 17.
for an agreement which would continue
to accord to the Mandated Territory of
South West Africa as a whole an inter-
national status, and which would be in
conformity with the purposes and prin-
ciples of the United Nations.

Through this resolution the Fourth Committee empha-
sized that in any solution to the problem of South West
Africa two things will have to be borne in mind; firstly,
the territory of South West Africa as a whole will have to
be accorded an international status; and, secondly, the
solution proposed must be in conformity with the purposes
and principles of the United Nations.

The Good Offices Committee in 1959 failed to produce
any solution on the lines indicated above. Time being short
for holding detailed negotiations, the Good Offices Committee
proposed to the Union Government the following formula within
the framework of which future negotiations should took place:

It is agreed that further talks might be
concentrated on the negotiation of some
form of agreement to which the United
Nations must be a party for the supervi-
sion of the administration of South West
Africa in a manner which would not impose
greater responsibilities on the Union
Government or impair the rights enjoyed
by it under the Mandate. 34

The above formula was not accepted by the Union
Government which submitted, in return, her own formula in

34 G.A.O.R., 14th sess., 1959, Annexes, Agenda Item 38,
UN Doc. A/4224, para 10, p. 3.

35 Ibid., para 12 (8), p. 3.
the following terms:

It is agreed that further talks with the Union Government should be concentrated on negotiation with the United Nations, through its Good Offices Committee, of some form of settlement regarding South West Africa, which would not impose greater (or more onerous) responsibilities on the Union Government or impair any of the rights conferred upon it by the Mandate in 1920, it being understood that such discussions will be without prejudice to the juridical position taken up by the Union in the past. 36

This formula was rejected by the Good Offices Committee. Having done so, the Good Offices Committee reported to the General Assembly its failure to find a common basis of agreement. 37

The two formulae showed the distance between the positions of the two parties - the United Nations and the Union Government. The formula put forward by the Good Offices Committee aimed at safeguarding the supervisory role of the United Nations, while at the same time, neither imposing greater responsibilities on the Union Government nor impairing any of her rights. The formula of the Union Government, on the other hand, was clearly one-sided inasmuch as it made no reference to the supervisory role of the United Nations, while securing to the Union Government

36 Ibid., para 14, p. 3.
37 Ibid., para 15, p. 4.
38 Ibid., para 16, p. 4.
all her rights under the 1920 mandate. The formula of the Union Government made no sacrifice of her so-called juridical position which would have been compromised if the 'partition' proposal had been accepted. With such divergence of views between the two parties a negotiated settlement of the problem seemed to be a far cry.

(d) Fresh Efforts to Resume Negotiations

In spite of the obvious uselessness of having any further negotiations, there was still a sizable section in the Fourth Committee which favoured the continuance of negotiations. For example, the delegate of New Zealand, P.K. Edmonds, said in the Fourth Committee in 1959 that to accept the suggestions that the question was one which could not be solved by negotiations, either wholly or in part, would augur ill for negotiations on other more complex, extensive and important international issues. The Chinese delegate, Chiping H.C. Kiang, also believed that negotiations constituted the only practicable means of reaching a solution. The Union Government delegate, B.G. Fourie, also offered to hold fresh negotiations with the United Nations after having failed to discover even the "common basis" for an agreement during negotiations with the Good Offices Committee so

39 Ibid., 4th cttee., 916th mtg., p. 171.
40 Ibid., 919th mtg., p. 192.
recently. The exact words used by him were as follows:

...that the Union Government was ready to enter into discussions with an appropriate United Nations Ad Hoc body that might be appointed after prior consultation with the Union Government, on the assumption that such a body would show the necessary goodwill and would approach its work in a constructive fashion, not ruling out the fullest exploration of all possibilities. 41

Encouraged by such a statement of the Union Government the General Assembly adopted Resolution 1360 (XIV) on 17 November 1959 on the recommendation of the Fourth Committee. The resolution, inter alia, invited the Government of the Union of South Africa to enter into negotiations with the United Nations through the Committee on South West Africa or through any other Committee which the General Assembly might appoint with a view to placing the mandated territory under the International Trusteeship System. It also requested the Union Government to formulate for the consideration of the General Assembly at its 15th session, proposals which would enable the mandated territory of South West Africa to be administered in accordance with the principles and purposes of the Mandate, the supervisory functions being exercised by the United Nations according to the terms and intent of the Charter. Resolution 1360 (XIV) thus made it amply clear that

41 Ibid., 924th mtg., p. 221.
42 Ibid., Annexes, Agenda Item 38, UN Doc. A/4272 Add. 1, para 43, p. 20.
the United Nations would not sacrifice its supervisory duties. It appears that perhaps due to this reason the External Affairs Minister of the Union Government, in a letter dated 29 July 1960, declined to enter into negotiations, saying that

...the Union Government could not see any possibility of fruitful results flowing from negotiations which required the Union to place "South West Africa under the International Trusteeship System" - terms of reference which prescribed the end result in advance.... 43

The Union Government, as the above letter amply makes it clear, was not prepared to negotiate because the only solution which was acceptable to the United Nations was not acceptable to her, viz., placing of South West Africa under the trusteeship of the United Nations. We thus see that the door to fruitful negotiations was closed by the Union Government herself.

No further extension was granted to the Good Offices Committee. Therefore, the task of holding negotiations with the Union Government reverted to the Committee on South West Africa which had not held any negotiations with the Union Government due to the formation of the Good Offices Committee for the same purpose.

B. THE FILING OF A CONTENTIOUS CASE

The possibility that negotiations might not yield fruitful results had become clear to the Fourth Committee as early as 1957 when the Committee on South West Africa was instructed to study and recommend suitable legal actions that were open to the organs of the United Nations, to the former members of the League of Nations and to the members of the United Nations in order to ensure compliance by the Union Government with her obligations in relation to South West Africa, vide Resolution 1060 (XI) adopted on 26 February 1957.

The Committee on South West Africa, after examining the above question, advised that only two categories of legal action were available, one to the organs of the United Nations and the other to the members of the United Nations.

In the view of the Committee the organs of the United Nations could not themselves be parties in contentious cases before the International Court of Justice because Article 34 of the Statute of the International Court of Justice provided that 'only states may be parties in cases before the Court'. However, the Committee also advised that an organ of the United Nations could take legal action in the form of securing

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44 Ibid., 12th sess., 1957, Supplement No. 12A (UN Doc. A/3625), Sections IV, V and VI, pp. 3-6.
45 Ibid., Section IV, para 17, p. 3.
advisory opinion on various legal aspects of the supervisory procedure such as those put to the Court in 1954 and 1955. Besides, questions might also be put to the Court as to whether specific acts of the Mandatory State were in conformity with the obligations assumed by her under the Mandate, for example, whether the status of the Territory had been modified in a manner or to a degree incompatible with the obligations of the Mandate.

In 1958, the Committee on South West Africa gave further consideration to the question of securing advisory opinions from the International Court of Justice about the administration of the Territory. The Committee on South West Africa advised in its report that a general question regarding the fundamental policy of the mandatory power might be asked of the International Court of Justice and that it could cover two aspects, namely, the status of the Territory and the material and moral well-being and social progress of the inhabitants of South West Africa.

The Committee further advised that under the head 'Status of the Territory' the Court might be asked whether a change in the status of the territory of South West Africa had occurred as a result of the following measures of the

46 Ibid., para 18, p. 3.
Union Government:

1. Representation of the Territory in the Union Parliament

2. The degree and nature of integration of the Territory with the Union, including progressive integration of services

3. The administrative separation of the Eastern Zipfel from the rest of the Territory and its administration as an integral part of the Union.

4. The vesting of South West Africa Native Reserve Land in the South African Native Trust.

The Committee on South West Africa also advised that under the head 'Material and moral well-being and social progress of the inhabitants of South West Africa', the Court might be asked whether the following measures taken by the Union Government indicated that she was contributing to the material and moral well-being and social progress of the people as she was expected to do under the 1920 Mandate:

1. Application of the practice of apartheid, or racial separation

2. Application of racially discriminatory legislation in the political, economic, social and educational fields

3. Application of restrictions on freedom of movement and vagrancy legislation

4. Allocation and alienation of land

48 Ibid., para 39, p. 7.
49 Ibid.
5. Legislation providing for the expulsion from the Territory of persons under the protection of the Mandates System.

The Committee also advised in its report that some questions like the question of South African Native Trust might be considered as the subjects of separate requests to the Court for advisory opinion.

In 1959, the Fourth Committee gave further consideration to the question of seeking more advisory opinions from the International Court of Justice. At that time it had also in its possession a report of the Sub-Committee set up by the Committee on South West Africa to study further the question of taking legal action. This report of the Sub-Committee of the Committee on South West Africa, in fact, supplemented the earlier recommendations of the Committee on South West Africa regarding the advisory opinions that might be sought from the International Court of Justice in regard to the question of South West Africa. The report of the Sub-Committee went to the extent of even drafting questions on which more advisory opinions of the International Court of Justice might be sought. The suggested questions were as follows:

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50 Ibid., para 41, p. 7.
51 UN Doc. A/AC. 73/2 dated 31 August 1959 (Mimeoigraphed), para 20, pp. 7-8.
52 Ibid.
1. Is the nature and extent of the integration of the administration of the Mandated Territory of South West Africa with the administration of the Union of South Africa, in the manner or to the degree as exercised in relation to the Territory, consistent with the obligations of the Mandate?

2. Is it consistent with the obligations of the Mandate for the Union of South Africa, in the manner or to the degree as exercised in relation to the Territory, to

   x) administer as an integral portion of the Union of South Africa, the Eastern Caprivi Zipfel, a part of the Territory, as distinct from the administration of the Mandated Territory as a whole;

   xx) provide for the representation of the Territory in the parliament of the Union of South Africa;

   xxx) integrate native administration, as distinct from the administration of other groups of the population of the Territory, with the administration or with the native administration of the Union of South Africa?

3. Is it consistent with the obligations of the Mandate for the Union of South Africa to incorporate or administer the Territory as a province of the Union of South Africa?

In spite of the fact that the question of seeking more advisory opinions from International Court of Justice had been considered at length and also in spite of the fact that even the questions for a fresh advisory opinion had been drafted, no new advisory opinion was sought by the Fourth Committee. The Fourth Committee was more interested in the other type of legal action, viz., filing of a
contentious case against the Union Government by a member State or States. Moreover, the Committee on South West Africa had also desired that certain questions of principle should also be considered before a particular type of legal action was initiated, and those questions were whether it could be regarded as useful to refer to the International Court of Justice matters on which the General Assembly had already exercised its judgement for further review and whether the General Assembly would wish to embark upon the advisory opinion procedure concurrently with the other and different courses of action which it was following towards solving the problem of South West Africa. The Fourth Committee seems to have caught the hint contained in this advice and, therefore, it did not seek a fresh advisory opinion for the time being. The Fourth Committee obviously wished to try a new line of action since the three advisory opinions of 1950, 1955 and 1956 had failed to make a dent into the problem of South West Africa.

Regarding the question of legal action open to the former members of the League of Nations, now members of the United Nations, the Committee on South West Africa advised in 1957 that there was no doubt that at least the former members of the League of Nations who were now members of the United Nations could initiate a contentious case against the

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Union of South Africa under Article 7 of the Mandate under the following three conditions:

1. that there should be a dispute between South Africa on the one hand and the former member or members of the League of Nations instituting the case on the other

2. that the dispute to be referred to the International Court of Justice must be one of interpretation or application of the mandate; and

3. that the dispute in question should be one which can not be settled by negotiation.

Acting on the heels of the above report of the Committee on South West Africa, the General Assembly adopted Resolution 1142A (XII) on 25 October 1957 on the recommendation of the Fourth Committee, drawing the attention of Member States to the failure of the Union Government to render annual reports to the United Nations and to the legal action provided for in Article 7 of the Mandate read with Articles 37 of the Statute of the International Court of Justice. The obvious implication of drawing the attention of the member States to the legal action provided for in Article 7 of the Mandate was that the Fourth Committee desired that some member State or States might launch contentious proceedings against the Union of South Africa, if

54 UN Doc. A/3625, n. 44, Section VI, para 32, p. 5.
55 UN Doc. A/3701, n. 1, para 36, p. 8.
they met the above mentioned conditions laid down by the Committee on South West Africa for a legal action by a Member State.

The General Assembly, on the recommendation of the Fourth Committee, adopted Resolution 1361 (XIV) on 17 November 1959 drawing the attention of Member States again to the legal action available to them against South Africa, thus confirming that its final decision was in favour of a contentious case and not in favour of more advisory opinions. The Fourth Committee wished to embark upon a new course to achieve its objective in relation to South West Africa. A binding judgement, so it was thought, might help in cutting the Gordian knot which the problem of South West Africa was proving to be.

Accordingly, the Governments of Liberia and Ethiopia, in identical applications, instituted proceedings of contentious nature against the Government of the Union of South Africa before the International Court of Justice on 4 November 1960. Thus began a new chapter in the history of the problem of South West Africa. The records of the International Court of Justice are full of cases of contentious nature filed by one State against another but so far

56 UN Doc. A/4272 and Add. 1, n. 42, para 43, p. 20.
no effort had been made to liquidate colonialism in any part of the world through a binding judgement obtained from the International Court of Justice.

The Memorials of Ethiopia and Liberia contained in brief the following nine submissions (i.e. claims advanced by the parties and issues which they wished the Court to adjudge or declare):

(1) South West Africa is a territory under Mandate.

(2) The Union Government continues to have the international obligations mentioned in Article 22 of the Covenant and in the Mandate, with supervisory functions to be exercised by the United Nations to which annual reports and petitions are to be submitted.

(3) The Union Government has practised apartheid, in violation of Article 2 of the Mandate and Article 22 of the Covenant, and it has the duty forthwith to cease such practice.

(4) The Union Government has violated Article 2 of the Mandate and Article 22 of the Covenant by failing to promote to the utmost the material and moral well-being and social progress of the inhabitants of the Territory and has the duty forthwith to proceed to carry out these obligations.

(5) The Union has, by word and action, treated the Territory in a manner inconsistent with its international status and has impeded opportunities for self-determination and has the duty to desist from such acts.

(6) The Union Government has established military bases in the Territory in violation of Article 4 of the Mandate, and has the duty to remove such bases forthwith.

The full text of the submissions may be seen at Appendix D.
(7) The Union has failed to submit annual reports to the General Assembly, in violation of Article 6 of the Mandate.

(8) The Union has failed to transmit petitions to the General Assembly, in violation of its obligations as Mandatory, and has the duty to submit the same to the General Assembly.

(9) The Union has attempted to modify substantially the terms of the Mandate without Assembly consent, in violation of Article 7 of the Mandate.

From the perusal of the above it can be seen that the submissions of Ethiopia and Liberia revolved around three fundamental issues: (a) the continued existence of the mandate; (b) international accountability; and (c) the promotion of the well-being of the inhabitants of the Territory. As regards the first two issues the Applicants were, in effect, asking the Court to confirm the legal conclusions it had already reached in the 1950 Advisory Opinion - that the mandate continued in force, the General Assembly taking the place of the League Council both with reference to such supervisory functions as reports and petitions and with regard to modification of the international status of the Territory (Submissions 1, 2, 5, 7, 8, and 9). Submissions 3 and 4 related to the alleged violations of the welfare clauses of the Mandate and involved essentially a factual determination. There was also the specific charge of militarization of the territory under submission 6 of the Memorial.
Essentially, Ethiopia and Liberia were, at one and the same time, acting on behalf of the United Nations in seeking to obtain an "order of specific performance" with regard to the principle of international accountability, and also on behalf of the inhabitants of South West Africa in seeking to obtain a "cease and desist order" with reference to violations of the welfare provisions of the Mandate. Thus the strategy of Liberia and Ethiopia was two-fold.

The fact that the contentious proceedings had been launched by Liberia and Ethiopia against the Union of South Africa was formally taken note of by the General Assembly in Resolution 1565 (XV) adopted by it on 18 December 1960 on the recommendation of the Fourth Committee.

The legal basis for filing the above mentioned case against South Africa on the question of South West Africa lay in Article 80, paragraph 1, of the Charter of the United Nations, Article 7 of the Mandate of 17 December 1920 for German South West Africa and Article 37 of the Statute of


61 Appendix 'C'.

62 Appendix 'B'.

the Court. In one of its advisory opinions the International Court of Justice itself referred to Article 7 of the Mandate concerning the submission of disputes to the Permanent Court of Justice and stated that:

Having regard to Article 37 of the Statute of the International Court of Justice, and Article 80, paragraph 1, of the Charter, the Court is of opinion that this clause in the Mandate is still in force and that, therefore, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court according to those provisions. 64

The above quoted opinion of the Court was endorsed by the General Assembly in a preambular para of Resolution 749A (VIII) of 28 November 1953 which ran as follows:

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.

This Article reads: "Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

An evaluation of the decision of the Fourth Committee to go in for a contentious case this time in preference to more advisory opinions is called for. Our evaluation must be based on the answer to the question as to how far a favourable decision of the International Court of Justice, even if one was obtained, would have been helpful in solving the problem of South West Africa. The maximum that the International Court of Justice could do in the case was to uphold all the complaints of the plaintiff, and do so in the strongest terms. What, then, was to follow? How could even a strongly-worded and entirely favourable judgement bring the solution of the problem nearer?

A judgement in the contentious case would have been helpful, no doubt, if the International Court of Justice were in possession of an international police force strong enough to enforce the judgement against the "judgement-debtor" even against her will as it happens in the case of decisions of the national courts which possess necessary machinery, supplied by the executive wing, to enforce its judgements. Such a police force not being there, one possibility of the way in which a favourable judgement could be helpful in the solution of the problem must be ruled out.

A favourable judgement of the International Court of Justice would have been helpful also in the event of an advance commitment on the part of the Union Government to the effect that she would accept the judgement in good grace
even if it went against her and abide by it both in letter and spirit. This would have eliminated the problem of enforcement of the judgement. However, a commitment to accept and carry out the judgement had not been made by the Union Government with the result that the possibility of voluntary compliance with the judgement by that Government did not exist. Thus the second possibility of the way in which a favourable judgement could have been helpful also stood eliminated.

Again, a favourable judgement would have been helpful in the solution of the problem of South West Africa also in the event of a distinct possibility or likelihood of effective enforcement measures coming forth from the Security Council under Article 94 (2) of the United Nations' Charter. Such an eventuality seemed to be non-existent at that time because there was no indication from the side of the western veto armed Powers that they would not veto a resolution which envisaged the application of enforcement measures under Article 94 (2) of the United Nations Charter. On the contrary their attitude towards the Union Government in general and the problem of South West Africa in particular indicated that they were unlikely to support drastic measures under Article 94 (2) of the Charter. Moreover, it was not enough

65 Appendix 'C'.
that the big Powers should vote in favour of such a resolution. What, in addition, was required of them was that, after having supported a resolution envisaging drastic measures, they should also help in the implementation of that resolution because strong measures, like military action or mandatory economic sanctions, could not be undertaken without their concrete help.

Hence, this third possibility of the way in which a favourable judgement of the International Court of Justice could have been helpful must also be ruled out.

The absence of any of the three possibilities (discussed above) in which a favourable judgement could have been usefully employed to solve the problem of South West Africa was enough to deter the Fourth Committee from choosing a contentious case in preference to more advisory opinions. Yet two more factors which ought to have deterred the Fourth Committee from opting for a contentious case might be mentioned. In the first place, a contentious case normally takes much longer time than an advisory proceeding. Time factor was too important a factor to be ignored because the more the delay in the solution of the problem, the longer the misery of the people of South West Africa. In the second place, there was no guarantee that the judgement of the Court would definitely go against the Respondents; it could as well go against the Applicants and, in such an eventuality,
the position of the United Nations would not only be embarrasing but also weak. This is why litigation has been described as a hazardous process and not always a suitable method of solving international disputes.

The Fourth Committee took the decision in favour of a contentious case obviously in disregard of these weighty considerations.

The members of the Fourth Committee made a serious miscalculation if they thought that the real hurdle to the solution of the problem of South West Africa was of a legal nature and that a change in the situation could be brought about by taking recourse to legal processes. The plain fact is that, action against South Africa needed not the support and consent of lawyers but the will and pressure of political forces, as one writer has aptly put it.

The Fourth Committee also seems to have misunderstood the correct meaning of the phrase "compulsory jurisdiction". The phrase "compulsory jurisdiction" without the consent of the parties appears to be inaccurate and a misnomer because it is almost impossible to enforce a judgement against a fully sovereign state against her will. The Permanent Court of International Justice and International Court of Justice

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have themselves held that the Court's jurisdiction depended upon the will of the parties. The Fourth Committee failed to realize that all international justice, by and large, was optional depending on the consent of the parties and that a prior consent of the parties in disputes before International Court was *sine qua non* to the submission of a dispute of contentious nature to international tribunal for adjudication.

The members of the Fourth Committee were also erring in being too sure of an effective Security Council action, once a favourable judgement was secured from the International Court of Justice otherwise they would not have chosen the path of a case of contentious nature. They seem to have lost sight of the important fact that, when the Security Council did take a decision about enforcement measures, the judgement of the Court was going to be one of the several influencing factors. Quite possibly other influencing factors, like the economic interests of member-states, their

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68 Rights of Minorities in Upper Silesia Case, *PCIJ Publications*, Ser. A, No. 15, p. 22. In the Eastern Peace Treaties Case also the International Court of Justice has said that the 'consent of the states parties to a dispute is the basis of the Court's jurisdiction in contentious cases...', *I.C.J. Reports*, 1950, p. 71. The Court has expressed the same view in Anglo-Iranian Oil Case also (*I.C.J. Reports*, 1952, p. 114).

commitments under various treaties and alliances, the problems of peace and security and the need for avoiding a world war etc., might prove to be too powerful with the result that the expected and the most wanted enforcement action - one that would really compel the Union Government to bow to the wishes of the international community - might not come at all.

In view of what has been stated in the foregoing paragraphs it can be safely maintained that the decision of the Fourth Committee to go in for a contentious case was not a step in the right direction.

The Fourth Committee also seems to have committed a strategical error. By one resolution, that is Resolution 1360 (XIV), the Fourth Committee invited the Union Government to enter into negotiations with United Nations through the Committee on South West Africa, and by another resolution, that is Resolution 1361 (XIV) adopted the same year, it drew the attention of Member-States to the legal action open to them, thus encouraging them to initiate a contentious case against South Africa. These two simultaneous approaches seemed to be not only irreconcilable but they also exhibited a lack of proper strategy on the part of the Fourth Committee since fruitful negotiations, at least in the international field, do not and cannot take place under threat of legal action. By encouraging States to file a contentious case, the Fourth Committee itself was closing the door to any
negotiations on the question of South West Africa. If negotiations had yielded no satisfactory solution, there was no need to invite the Union Government to negotiate anew the terms of settlement of the problem of South West Africa.

C. MULTI-DIMENSIONAL ACTIVITY OF THE FOURTH COMMITTEE

The contentious case was filed by Liberia and Ethiopia in 1960 and the final judgement was delivered by the Court in 1966. During the intervening period of six years the activity of the United Nations in relation to South West Africa did not come to a standstill. Efforts were no doubt made by Eric Louw on behalf of the Union Government to put a stop to all discussions on the question of South West Africa on the plea that the matter was sub-judice. In this the Union Government delegate was supported by the delegates of United Kingdom, United States and Ireland. The Fourth Committee, however, did not succumb to this pressure. It continued to deal with the problem politically while the Court was looking into the legal aspects raised by the petitioners in their applications.

In fact, the range of activity of the Fourth Committee

71 Ibid., pp. 298, 350 and 437.
during this period in relation to South West Africa was multi-dimensional. As many as twenty-two resolutions were adopted by the General Assembly on the recommendation of the Fourth Committee between 1960 and 1965 (both years inclusive) on the question of South West Africa. Of these resolutions, five dealt with the individual problems raised by petitioners from South West Africa in the petitions received from them, while three of the resolutions were formal and routine type. By one of these three resolutions - Resolution 1565 (XV) of 18 December 1960, the action of Liberia and Ethiopia in filing a contentious case against South Africa was taken note of and they were commended for having taken such a step. By Resolution 1704 (XVI) of 19 December 1961 the Committee on South West Africa which was in continuous existence since 1953 was dissolved. The new Committee called the Special Committee on South West Africa set up after the dissolution of South West Africa, was dissolved a year later vide Resolution 1806 (XVII) of 14 December 1962. Action taken under the remaining resolutions is dealt with in the following pages.

(a) Establishment of Educational and Training Programme

The General Assembly, vide Resolution 1705 (XVI)

72 Resolutions 1563 (XV) of 18 December 1960, 1703 (XVI) of 19 December 1961, 1804 (XVII) of 14 December 1962, 1900 (XVIII) of 13 December 1963, and 2075 (XX) of 17 December 1965.
adopted on 19 December 1961 on the recommendation of the Fourth Committee, established a special training programme for South West Africans including technical education, education for leadership and teacher-training. The Secretary General was asked to make use as fully as possible of the existing United Nations' programme of technical cooperation. The specialized agencies were also asked to lend their cooperation in the establishment of such a programme. Member-States were also asked to make available all-expense scholarships for the completion of secondary education and various forms of higher education. Two other resolutions on this subject - Resolution 1901 (XVIII) and 2076 (XX) adopted on 13 November 1963 and 17 December 1965 respectively on the recommendations of the Fourth Committee - were on the same line and were aimed at practical consolidation of this programme.

(b) Assistance for the all-round Development of Territory

One of the twenty-two resolutions - Resolution 1566 (XV) adopted on 18 December 1960 on the recommendation of the

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Fourth Committee urged the specialized agencies of the United Nations and the United Nations Children's Fund to provide the much-needed assistance for the economic, social and educational development of South West Africa. At the same time the Union Government, on its part, was urged to seek such assistance. Such a resolution had become necessary because the Committee on South West Africa had reported that the economic, social, educational and health conditions in South West Africa were unsatisfactory.

The resolutions dealing with the educational and training programmes and with economic development of the Territory referred to above, added new dimensions to the activities of the Fourth Committee in relation to South West Africa which were confined to political aspect of the problem only till then. Those resolutions reflected the widespread concern felt by the members of the Fourth Committee for the utter all-round backwardness of the territory of South West Africa due to wilful neglect on the part of the Mandatory.

(c) Action in regard to lack of Political Freedom in South West Africa

By Resolution 1564 (XV) adopted on 18 December 1960

75 UN Doc. A/4643 and Add. 1, n. 60, para 47, p. 11.
76 UN Doc. A/4464, n. 43, Section IV, V and VI, pp. 32-56.
on the recommendation of the Fourth Committee the Union Government was urged to instruct the competent authorities in the mandated territory of South West Africa "to cease the arbitrary imprisoning and deporting of Africans including the leaders and members of the South West Africa Peoples Organization and to ensure the free exercise of political rights and freedom of expression for all sectors of the population. This step had become necessary because the Committee on South West Africa had reported cases of loss of employment, deportation from the Union of South Africa and confinement under house arrest of those natives of South West Africa who sent petitions to the United Nations and expressed their views contrary to those held by the Union Government.

(d) Action Regarding Disturbances in Windhoek Location

The report of the Committee on South West Africa drew attention to the disturbances in the Windhoek Location, resulting in the death of 11 Africans at the hands of South African police and soldiers. The General Assembly, vide Resolution 1567 (XV) adopted on 18 December 1960 on the recommendation of the Fourth Committee, expressed its deep regret,

77 UN Doc. A/4643 and Add. 1, n. 60, para 47, p. 11.
80 UN Doc. A/4643 and Add. 1, n. 60, para 47, p. 11.
deplored the incident, urged the Union Government to refrain from the use of direct or indirect force to remove the residents from their location which had caused the incident and, finally, requested her also to punish the guilty officers.

As the previous pages have shown and the next few pages would show further that the Union Government lent no cooperation to the United Nations by disregarding all its resolutions on the question of South West Africa and by refusing to implement Resolution 1514 (XV) adopted on 14 December 1960 containing the 'Declaration' on the Granting of Independence to Colonial Countries and Peoples'. This persistent non-cooperation on the part of South African Government was the subject matter of Resolution 1979 (XVIII) adopted by the General Assembly on 17 December 1963 on the recommendation of the Fourth Committee, condemning such an attitude of that Government and asking the Security Council to consider the critical situation prevailing in South West Africa.

Though the resolutions regarding the establishment of educational programme for the people of South West Africa and the economic development of the Territory were well-motivated, yet the success of these programmes of assistance very much

81 UN Doc. A/5605 and Add. 1, n. 74, Part II, para 9, p. 12.
depended on the extent to which the Union Government was prepared to cooperate in their implementation. The fact of the matter was that the Union Government lent no cooperation whatsoever. She stated that it was her own sole responsibility to promote the economic, social, educational and health conditions of the population of South West Africa and that she was doing her utmost to promote such development. Later the Union Government also claimed that she had adequate means to develop the Territory without outside assistance. About the education of South West Africans abroad under scholarships granted by the foreign governments, the Union Government stated that the students would be too young to benefit from such studies and that they might be exposed to communist influence. All this showed that the Union Government was determined to prevent any development of the natives or the territory of South West Africa and was interested in keeping the natives in servitude and poverty as long as possible.

D. THE COMMITTEE PROPOSES UNITED NATIONS' TAKE-OVER OF THE TERRITORY THROUGH COMPULSIVE MEASURES

The main political action relating to South West Africa


84 Ibid., para 40, pp. 15-16.
was taken by the Fourth Committee under the remaining seven of the aforesaid 22 resolutions adopted during this period. Of these seven resolutions, four resolutions - 1568 (XV) of 1960, 1596 (XV) of 1960, 1593 (XV) of 1960 and 1702 (XVI) of 1961 - might be dealt with in this Chapter, while the remaining ones in the Chapter that follows.

The most important step taken by the Fourth Committee in the first part of the 15th session held in 1960 was the initiation of a new type of investigation in respect of South West Africa. We have seen that the Committee on South West Africa had made a very important study of the legal action open to the former members of the League of Nations or the organs of the United Nations. As a result of that study a contentious case had already been filed against the Union Government by Ethiopia or Liberia. The Committee on South West Africa, vide para 4 of Resolution 1568 (XV) adopted by the General Assembly on 18 December 1960 on the recommendation of the Fourth Committee was now asked to go to South West Africa to investigate the situation prevailing in the Territory and to ascertain and make proposals to the General Assembly on:

(i) the conditions for restoring a climate of peace and security, and

85 UN Doc. A/4643 And Add. 1, n. 60, para 47, p. 11.
(11) the steps which would enable the indigenous inhabitants of South West Africa to achieve a wide measure of internal self-government designed to lead them to complete independence as soon as possible.

The danger to the peace and security within and in relation to South West Africa, as implied in the above mentioned resolution, did not mean that there was an imminent possibility of a large-scale flare-up in Southern Africa. It simply meant that the situation had potentialities of a conflict or a civil war at a future date if the situation was allowed to slip out of hand by not satisfying the legitimate aspirations of the natives of South West Africa. The defiance of the United Nations' resolutions on South West Africa, on the part of the Union Government, had caused deep-seated resentment not only among the natives of that Territory but all over African continent.

Resolution 1568 (XV) did not provide for any direct solution of the problem. It simply provided for investigation of the situation prevailing in South West Africa under two counts mentioned above. Information to be gathered under the two counts, mentioned above, was intended to be made the basis of further recommendations of the Fourth Committee. This time the Fourth Committee was not trying to collect some factual information about the conditions prevailing in South West Africa. The Fourth Committee was now wanting to know definitely the steps that the United Nations should take for
the restoration of conditions of peace and security and for the attainment of self-government for the people of South West Africa.

Resolution 1568 (XV) is important in the sense that it indicated that the Fourth Committee had finally started thinking in terms of total independence for the Territory and not merely in terms of transitional stage of trusteeship status. This is why the Fourth Committee, in the year 1960, did not recommend any resolution to the effect:

Asserts that, in the present conditions of political and economic development of South West Africa, the normal way of modifying the international status of the Territory is to place it under the International Trusteeship System by means of a trusteeship agreement in accordance with the provisions of Chapter XII of the Charter of the United Nations.

as it used to do every year in the past.

The Committee on South West Africa had to submit its report after a visit to South West Africa but the Union Government refused to allow it to visit South West Africa because, according to her, the whole matter was 'sub-judice' before the International Court of Justice and also because, according to her, 'the action now envisaged in operative para 4 of Resolution 1568 (XV) would exceed the degree of

supervision which applied under the Mandates System. In view of this attitude of the Union Government, the Committee on South West Africa could not make recommendations required of it under para 4 of Resolution 1568 (XV).

The Fourth Committee thereupon moved quickly and, in the second part of the 15th session, recommended a resolution which was later adopted by the General Assembly. This was Resolution 1596 (XV) of 7 April 1961. It rejected the position taken by the Union Government in refusing to cooperate with the United Nations in the implementation of General Assembly resolution 1568 (XV) and other resolutions and also called upon the Committee on South West Africa to perform the tasks assigned to it in para 4 of Resolution 1568 (XV) \textit{with the cooperation of the Government of the Union of South Africa if such cooperation was available and without it if necessary}. \textsuperscript{89}

Again, the Committee on South West Africa was able to visit neither South West Africa for making an on-the-spot study of the situation there nor was it able to visit South Africa for discussing with the South African Government peaceful and practical arrangements for implementing the General Assembly resolutions because the Union Government did not grant

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  \item \textsuperscript{87} G.A.O.R., 15th sess., 1960, Annexes, Agenda Item 43, UN Doc. A/4705, para 6, p. 17.
  \item \textsuperscript{88} Ibid., UN Doc. A/4721, para 14, p. 21.
  \item \textsuperscript{89} Emphasis supplied.
\end{itemize}
visas to the members of the Committee.

The Committee on South West Africa could not also make a sort of forced entry into South West Africa, that is an entry without the cooperation of the Union Government, because of lack of cooperation from the British Government. A forced entry into South West Africa was possible only through the territory of Bechuanaland. The British Government, having first granted visas to the members of the Committee on South West Africa to visit Bechuanaland, withdrew or suspended them on the plea that "entrance into South West Africa from Bechuanaland without the permission of the Administering Power would, irrespective of the terms of resolution 1596 (XV), be an illegal act..."

However, if the British Government had allowed the Committee to enter Bechuanaland and if the Committee had attempted to enter the territory of South West Africa from Bechuanaland, there was every possibility of its being forcibly stopped at the border and its members arrested or deported. Such an incident would have opened a chapter of direct confrontation between the United Nations and South African Government and the incident could well have been


92 Ibid., paras 35 and 36, p. 5.
utilized by many members of the United Nations to exert pressure on big Powers to sanction drastic measures like the use of force or economic sanctions. Such an opportunity was denied to the United Nations by the refusal of the British Government to give the Committee members visas for Bechuanaland.

As an alternative, the Committee then visited three African cities, viz., Accra, Dare-es-Salaam and Cairo where it interviewed the refugees from South West Africa.

Having been frustrated from all the sides, the Committee on South West Africa then telegraphically sought the help of the Security Council in implementing the resolution under which it was charged to visit and make an on-the-spot study of the situation in South West Africa. However, the Security Council did not meet even to discuss the matter, to say nothing of taking any positive and compulsive action to enable the Committee on South West Africa to visit the Territory. Thus the efforts of the Fourth Committee to open a chapter of direct confrontation with the Union Government by making a forced entry into South West Africa were frustrated by lack of supporting action on the part of the Security Council.

Though the Union Government had not allowed the Committee

93  Ibid., Section III, para 74, pp. 8-10.
94  Ibid., Section IV (1), p. 27.
on South West Africa to visit South Africa or South West Africa for an on-the-spot investigation, yet, in 1961, it expressed its willingness to have it investigated by 'an independent person of international standing' whether or not international peace and security was threatened in South West Africa. On 21 November 1961, Eric Louw, the then External Affairs Minister of South Africa, offered to get the proposed enquiry done by three ex-presidents of the General Assembly 'from three different regions of the world and in whom the international community had shown confidence', instead of one as originally proposed by the Union Government. On 4 December 1961, the South African Minister of External Affairs further stated that his government was ready to make the selection of the three ex-presidents of General Assembly in agreement with the then President of the General Assembly. He also stated that the three past presidents would report their findings to the Union Government and she would publish them in toto and send a copy to the President of the General Assembly.

The difference between the investigation now proposed

96 Ibid., 4th cctee., 1218th mtg., p. 384.
97 Ibid., 1235th mtg., p. 507.
98 Ibid.
by the Union Government and the investigation entrusted to the Committee on South West Africa which it failed to do due to South African Government's refusal to let the Committee enter the Territory was that the Committee was asked to investigate and report on the conditions required for restoring a climate of peace and security which pre-supposed that the peace and security of the Territory was already disturbed whereas the Union Government wished to get this basic fact itself investigated whether or not the peace or security of the Territory was at all disturbed. In view of this difference the acceptance of the offer of the Union Government would have meant that the United Nations agreed with the Union Government that the existence of threat to peace and security of the Territory was not a settled fact but needed investigation. Thus the offer of the Union Government was a tricky one. Moreover, the offer of the Union Government did not propose any investigation into the steps required for leading the Territory finally to independence. Therefore, the two proposals for investigation, one by the United Nations vide Resolution 1568 (XV) and the other by the Union Government could not be equated.

The offer of the Union Government should be technically deemed to have been neither accepted nor rejected by the Fourth Committee since no formal resolution accepting or rejecting the offer was adopted by it. But, for all practical purposes, the offer of the Union Government should be considered
to have been rejected since it was not accepted.

With no other alternative left, the Committee on South West Africa submitted its report on para 4 of Resolution 1568 (XV) without being able to visit South Africa or South West Africa, relying mostly on such material and information as it was able to collect from its interviews with the refugees from South West Africa residing in Accra, Dare-es-salaam and Cairo. The Committee on South West Africa in its report advised that the following steps should be taken to restore a climate of peace and security in South West Africa:

1. The Security Council and other organs of the United Nations should consider taking such action as may be required to ensure the effective implementation of the recommendations and decisions made by the United Nations on the question of South West Africa.

2. The presence of the United Nations should be immediately instituted in South West Africa.

3. The present administration should be removed from South West Africa and simultaneously power should be transferred to the United Nations or to the indigenous inhabitants of the Territory.

4. The United Nations should provide assistance to

99 UN Doc. A/4926, n. 90, Section V, para 164 (a), p. 22.
100 Emphasis supplied.
the indigenous inhabitants, either through the Committee on South West Africa or through a United Nations Special Committee of Assistance to South West Africa.

5. The United Nations should arrange the training and organization of an indigenous police force, withdrawal of fire arms from all Europeans, prohibition of the possession of arms by all civilians, withdrawal of South African military forces, abolition of all discriminatory laws and regulations and cessation of all organized immigration of Europeans, especially South Africans to the Mandated Territory.

6. South West Africa should attain independence through a constitutional convention and the constitution should be approved in a popular referendum. Election of the representatives of the people should be held on the basis of universal adult franchise and thereafter an independent government should be established.

Explaining the need to remove South African administration from South West Africa, the Committee stated that the termination of the South African rule in South West Africa would be justified because that Government had followed a course of 'international illegality' by her rejection of the three advisory opinions of the International Court of Justice with respect to South West Africa, her persistent and unbending disregard of resolutions of the General Assembly and her continued violation of her legal obligations under the Mandate,

In the second place, the Committee on South West Africa was in no doubt that the South African Government, through her application of the apartheid policy, and of related legislative and administrative measures which established the rights and duties of various sections of the population on the basis of their colour, race and tribal origin, through her failure to promote and protect the rights and interests of the indigenous population of the Territory as a whole, through her denial to the native population of all basic human rights and fundamental freedoms, through her failure to submit reports and recognize and carry out her obligations regarding the right of petition and her continued failure to recognize and to submit to the supervisory authority of the United Nations over the administration of the Mandated Territory as pointedly demonstrated recently by her preventing the Committee from entering the Territory, and generally through her exercise of powers of administration and legislation in a manner inconsistent with the international status of the Territory, had violated her obligations under the Mandate and the Charter in relation to South West Africa. All of this was conclusive proof of the unfitness of the South African Government to continue further with the

101 UN Doc. A/4926, n. 90, Section IV, para 159, p. 21.
Mandate.

In the third place, the Committee was in no doubt that the South African Government was determined, from the very beginning, to annex the mandated territory entrusted to her care for the benefit of the native inhabitants, and was engaged unilaterally in its progressive integration and incorporation into South Africa without a proper consultation with the inhabitants of the Territory and without the consent of the United Nations. As eloquent proof of South African Government's resolve, at all costs, to annex and appropriate for her own use and benefit, the object of her sacred trust, the Committee on South West Africa drew attention to a number of facts such as South Africa's reservation to the last resolution on Mandates adopted by the League of Nations before its dissolution in 1946 and to the applicability of the Charter provisions on international trusteeship over Mandates upon the adoption of the Charter in San Francisco in 1945, her proposal to annex the mandated territory at the second part of the first session of the General Assembly in 1946, her series of legislations for the gradual integration or incorporation of South West Africa into the Union, and her ready acceptance and reiteration of partition and annexation as a basis for peaceful settlement.

102 Ibid., para 158, p. 21.
103 Ibid., para 156, p. 21.
of the question of South West Africa during the past two 104 or three sessions of the General Assembly. In pursuance of her desire to absorb the mandated territory into the Union, the South African Government had already proceeded, as the Committee on South West Africa pointed out, with a number of concrete measures such as the representation granted to the European population of the Territory in the South African Parliament, the integration of the administration of the entire native population with that of South Africa, the incorporation of South West African native reserve land into the South African Native Trust and, finally, the integration of the various sections of the administration, including among others, the civil service, the judiciary and the police....

In the fourth place, the Committee on South West Africa could not but draw attention to the fact that the Mandatory Power had 'revealed and reaffirmed itself to be unresponsive to the appeals of the native population, the African community and the international community as a whole...' The Committee on South West Africa, in another report, added that all appeals for change and reform in policy or method to accord them with the enlightened principles and objectives of

104 Ibid, para 157, p. 21.
105 Ibid., para 156, p. 21.
106 Ibid., para 159, p. 21.
the Mandate and the United Nations International Trusteeship 107 System had also remained unheeded. The implication of this naturally was that no good was likely to result from the re-iteration of those appeals.

In the fifth place, the Committee on South West Africa was convinced from the testimony of political refugees and other petitioners who appeared before it in Africa, that the continuing application of the apartheid policy in South West Africa and the continued defiance by the South African Government of the authority of the United Nations had created such a deep-seated resentment among all Africans and such a tense situation that only intervention by the United Nations could prevent armed racial conflict in Africa. Had such a possibility not been there, the Mandatory Power would not have encouraged the arming of the European population of the Territory, would not have established military fortifications and large defence forces within the mandated territory and, at the same time, would not have revised the integrated military programme of the Territory and of South Africa to provide, among other things, for a citizen force of war time strength 108 and a speed-up in the production of arms and munitions.

In fact, as the Committee on South West Africa viewed
it, the situation in the Territory was so tense that the people of South West Africa might revolt at any moment. Due to this possibility the South African Administration in South West Africa had instructed all the Europeans to equip themselves with arms. A petitioner, Tennyson Makiwane, told the Committee that "if one followed the normal consequences of events, South West Africa would follow the path of Angola, and people would use the same methods as in Angola if they lost their faith in the United Nations. It was also stated on behalf of SWAPO (South West Africa Peoples Organization) before the Committee on South West Africa that it would do its best to organize itself with a view to overthrow the South African Government in South West Africa by all means.

However, in spite of so much justification in favour of the termination of the South African administration in South West Africa, the Committee on South West Africa was in no hurry, at that stage, to recommend such a step without the matter having been given fullest consideration. Therefore, it desired that a two-fold study of the question of

109 Ibid., Section III, para 81, p. 12.
110 Ibid., para 82, p. 12.
111 Ibid., para 83, p. 12.
112 Ibid., para 90, p. 13.
termination of the South African administration over South West Africa should be carried out. This two-fold study should include, firstly, a study of all consequences of the proposed termination, and, secondly, a study of the measures required to put into effect the transfer of government power to the indigenous people of the Territory. It was necessary to take practical measures for the removal of the South African administration from South West Africa because otherwise the termination would remain on paper only. A study of these measures was, therefore, called for. Then it was also necessary that all consequences of the action proposed should be examined, including the question as to what type of administration would usher in South West Africa after, and if, the South African administration was successfully removed from there.

The Committee on South West Africa itself had given some thought to these problems. Regarding the measures required to remove the South African administration, the view of the Committee was that nothing short of compulsive measures would be required for the purpose.

Regarding the future of the Territory after the termination of the South African administration in South West

113 Ibid., Section V, para 162, p. 22.
114 Ibid., Section V, para 163, p. 22.
Africa, the Committee did not seem to favour immediate independence because of the extreme backwardness of the people and non-availability of sufficient number of educated and trained personnel of native background required to establish and maintain a purely native administration substituting for the prevalent "all-white" administration. The Committee on South West Africa felt that actual independence of the Territory will have to be preceded by the following measures:

1. Immediate organization of a special, intensive fellowship programme to train the largest possible number of indigenous inhabitants of South West Africa in the functions and techniques of administration, economics, law, hygiene (sanitation) etc. increasing thereby the available number of trained personnel of indigenous background;

2. Planning of the preliminary drafts, inter alia, for a constitutional convention, for a popular referendum including such factors as the qualification of electors, the location of election polls, supervision, campaigns, etc., for educational system, for economic organization, for agrarian organization and reform, particularly on the question of land ownership by the indigenous population, and for technical and economic assistance by the United Nations and its specialized agencies.

The recommendation of the Committee on South West

115 Ibid., para 164 (b), p. 22.
Africa was that for the time being the administration of South West Africa should be "assumed directly or indirectly by the United Nations so as to ensure the institution of the rule of law and such democratic processes, reforms and programmes of assistance as would enable the Mandated Territory to assume full responsibilities of sovereignty and independence within the shortest possible time". Thus, in the view of the Committee on South West Africa, the way to full independence of the Territory should be through a period of tutelage of the United Nations because the South African Government had done precious little to make the natives fit for self-government. For the immediate present, however, the United Nations' administration was needed in order to develop the people so much so that they were themselves able to assume administration of the Territory. H.M. Basner, a white Attorney and former member of South African Senate, who is sympathetic to the aspirations of the natives, also stated before the Committee on South West Africa that for the time being the United Nations itself should play the role of the Administering Power until the Africans had had enough training in democratic procedure, until the civil service could be Africanized, and until the Africans and Europeans had learned not to hate and distrust each other but to recognize their common humanity and interests. Basner

116 Ibid., para 162, p. 22 (Emphasis supplied).
added that the United Nations, and no foreign power, should assume the trusteeship of the Territory. Rev. Michael Scott also thought that it was difficult to conceive of South West Africa becoming an independent nation. According to him, South West Africa should become "an independent development area" directly administered through the agency of an association of African States set up for the purpose.

The recommendations of the Committee on South West Africa were of far reaching significance but the Fourth Committee ignored them, since it did not initiate any study of the ways and means of terminating the administration of the Union Government over South West Africa nor did it bring about the study of the consequences of its termination. The result was that whatever follow-up action that could be taken after the proposed study also could not be taken. The problems proposed for the study were too serious to be ignored. There seemed to be no conceivable reason as to why the Fourth Committee should not have decided to make the proposed study. In order to avoid a hasty and ill-considered action later, such prior study ought to have been made.

However, keeping in view the opinion of the Committee on South West Africa that compulsive measures would have to be applied to wrest control of the Territory from the Union

117 Ibid., Section IV, para 142, p. 19.
118 Ibid., paras 144, 145, pp. 19, 20.
Government, the attention of the Security Council was drawn for the second time to the situation in South West Africa which, "if allowed to continue, would endanger international peace and security", vide Resolution 1702 (XVI) of 19 December 1961 adopted by the General Assembly on the recommendation of the Fourth Committee. This was the second time that the Security Council had done so, the first time being in 1960, vide Resolution 1596 (XV). Indirectly, the Fourth Committee seemed to be sounding the Security Council about the possible need for "compulsive measures" at some future date.

E. THE EFFORTS OF THE SPECIAL COMMITTEE FOR SOUTH WEST AFRICA

Two unsuccessful efforts to enter the territory of South West Africa had already been made. A third attempt, if made, was likely to meet the same fate because the attitude of the Union Government had not changed a bit. Normally, in view of the past failures to enter the territory of South West Africa, the Fourth Committee should have been deterred from making a third venture. Yet we see that the new Committee, called the Special Committee on South West Africa which the General
Assembly created in 1961 *vide* Resolution 1702 (XVI) of 19 December 1961, was directed to visit South West Africa before 1 May 1962. Its relevant operative part containing the terms of reference for this new Committee was as follows:

1. *Solemnly proclaims* the inalienable right of the people of South West Africa to independence and national sovereignty;

2. *Decides* to establish a United Nations Special Committee for South West Africa, consisting of representatives of seven Member States nominated by the President of the General Assembly, whose task will be to achieve, in consultation with the Mandatory Power, the following objectives:

   (a) A visit to the Territory of South West Africa before 1 May 1962;

   (b) The evacuation from the Territory of all military forces of the Republic of South Africa;

   (c) The release of all political prisoners without distinction as to party or race;

   (d) The repeal of all laws or regulations confining the indigenous inhabitants in reserves and denying them all freedom of movement, expression and association, and of all other laws and regulations which establish and maintain the intolerable system of apartheid;

   (e) Preparations for general elections to the Legislative Assembly, based on universal adult suffrage, to be held as soon as possible under the supervision and control of the United Nations;

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120 Emphasis supplied. As stated earlier, the Committee on South West Africa was dissolved *vide* Resolution 1704 (XVI) of 19 December 1961.
(f) Advice and assistance to the Government resulting from the general elections, with a view to preparing the Territory for full independence;

(g) Coordination of the economic and social assistance with which the specialized agencies will provide the people in order to promote their moral and material welfare;

(h) The return to the Territory of indigenous inhabitants without risk of imprisonment, detention or punishment of any kind because of their political activities in or outside the Territory;

3. Requests the Special Committee to discharge the tasks which were assigned to the Committee on South West Africa by the General Assembly in sub-paragraphs (a), (b) and (c) of paragraph 12 of its resolution 749A (VIII) of 28 November 1953.

Regarding the terms of reference of this new Committee it might be stated that the functions from (b) to (h) listed above could be performed by it only if it were able to enter the territory of South West Africa and be in effective control of its administration. Since the Special Committee was not provided with means to establish itself in South West Africa after displacing the authority of the Union Government, there seemed to be no possibility of its being able to perform any of the duties assigned to it.

However, the importance of this Resolution lay in its proclamation of independence and national sovereignty as an inalienable right of the people of South West Africa. Independence of the Territory as an objective to be obtained was implied in Resolution 1568 (XV) also but was not explicitly
mentioned in it as was done in Resolution 1702 (XVI) for the first time.

On an approach made by the Special Committee for South West Africa, the Union Government extended an invitation to its Chairman and Vice-Chairman to visit South Africa as well as South West Africa. The Union Government also expressed her readiness to "enter informally into a review of the matter between the United Nations and South African Government" with the said two officials of the Special Committee. However, the Union Government made it clear that she was not prepared to make a departure from her juridical position which was that the United Nations had no jurisdiction in respect of South West Africa particularly to perform functions listed in sub-paras (b) to (h) of para 2 of Resolution 1702 (XVI). According to the Union Government, even the League of Nations was not competent to perform the functions assigned to the Special Committee for South West Africa.

The Special Committee welcomed this opportunity to visit South West Africa as it thought it would enable it to observe and hear evidence concerning conditions therein.

After the conclusion of the visit to South Africa and South West Africa, the Chairman and Vice-Chairman submitted

122 Ibid., para 11, p. 2.
their report. Its salient points were as follows:

(i) The South African Government contemplated no significant change in her apartheid policies as applied to South West Africa. Three deputations claiming to represent the coloured population of South West Africa, however, expressed their support to the policy of apartheid and the establishment of a separate coloured settlement in South West Africa. These representatives appeared to be self-appointed to the Chairman and Vice-Chairman.

(ii) Most of the Europeans that met the Chairman and Vice-Chairman were opposed to any change which would interfere with their economic life. However, a deputation of South West Party representing about 40 per cent of the European voting population supported gradual extension of representation to the non-European populations in the central legislature.

(iii) The South African Government denied that there were any political prisoners in the Territory but the Chairman and Vice-Chairman were of the opinion that persons had been repatriated or deported because of their political activities.

123 UN Doc. A/AC. 110/2, n. 83.
124 Ibid., para 9, pp. 4-5.
125 Ibid., para 21, pp. 8-9.
126 Ibid., para 22, p. 9.
127 Ibid., para 33, p. 12.
(iv) The Union Government refused to take any help of the specialized agencies for the development of the Territory on the ground that she had adequate means to develop the Territory without outside help. The maximum that the South African Government was prepared to do was to take the help of one or two experts from World Health Organization or Food & Agricultural Organization for consultation.

(v) The South African Government had no objection to the return of the inhabitants of the Territory who had left but made it clear that those of them who had contravened the law might have to face the consequences.

(vi) The South African authorities were reluctant to envisage the study abroad of South West Africans, fearing that the students would be too young to benefit from such studies and might be exposed to communist influence.

(vii) The Chairman and Vice-Chairman, in their report, stated that the African population desired that the United Nations should assume direct administration of South West Africa and take all preparatory steps for the granting of freedom to the indigenous population as soon as possible.

Regarding the solution of the problem of South West

128 Ibid., paras 36 and 37, p. 14.
129 Ibid., para 39, p. 15.
130 Ibid., para 40, pp. 15-16.
131 Ibid., para 42 (d), p. 17.
Africa, the Chairman and Vice-Chairman of the Special Committee in their said report recommended that short of the use of force or other compulsive measures within the purview of the Charter, there seemed to be no way of implementing General Assembly Resolution 1702 (XVI) nor even any hope of finding a solution to that question which would be acceptable to the South African Government other than virtual or outright annexation of the Mandated Territory. It was further recommended by the said two officials of the Special Committee for South West Africa that the South African Government should be given a short period of time within which to comply with the Assembly resolutions or, failing that, the feasibility of revoking the Mandate and of simultaneously assuming the administration of the Territory to prepare its people for independence even by imposing sanctions or by employing other means to enforce compliance with its decisions or resolutions should be considered.

The two officials of the Special Committee reportedly issued two important statements in South Africa which went contrary to the known stand of the United Nations regarding apartheid and the conditions prevailing in South West Africa.

One of these statements was made by Victor D. Carpio, the Chairman of the Special Committee, at a luncheon given

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132 Ibid., para 42 (e), p. 17.
133 Ibid., para 43, pp. 17-18.
by the Chamber of Mines in Carletonville. On being asked to comment on the racial policy of the Union of South Africa Carpio replied: "I would like to see apartheid succeed. It is a policy which has never been tried. If it works, it could be a solution. Apartheid, I must say, is contrary to what I thought."

The other statement which damaged the case of the United Nations on South West Africa was the so-called 'joint-communique' allegedly issued jointly by the Chairman and Vice-Chairman and the South African Government. In this 'joint communique' it was stated that they found no signs of militarization in the Territory and that the indigenous population was not being exterminated. There is lot of controversy about this communique which was described as "the biggest mystery in United Nations history". Carpio, the Chairman of the Special Committee stated that he had not participated in the drafting, approval or issuance of any joint statement or communique because he was ill nor had he authorized anyone to do so on his behalf and that the

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134 The Times (London), 25 May 1962. Carpio subsequently denied that he had changed his views on apartheid and he added that he continued to denounce apartheid as before, having seen or heard nothing to cause a change in his views on apartheid. UN Doc. A/5212, n. 123, Annex IV, p. 17.

135 Ibid., 28 May 1962.

136 Pakistan Times (Karachi), 26 July 1962.
Vice-Chairman of the Special Committee, Salvador Martinez de Alva, in agreeing to the issuance of the said communique, had acted on his own responsibility and not as his proxy or agent. On the other hand, Alva also maintained that Carpio, the Chairman had participated in the drafting of the communique and had personally approved its final wordings before he authorized him, in the presence of witness, to have it issued.

Now, whether the communique was issued with or without the consent of the Chairman, is not so important a fact as the fact that it was issued at all. This is so because the Special Committee, whose Chairman and Vice-Chairman Carpio and Alva were respectively, was not at all authorized to go into the question whether or not the indigenous population was being exterminated, whether or not apartheid could be solution to the problems faced by multi-racial societies and whether or not there were any signs of militarization in the Territory. The Special Committee was not a fact-finding or investigating body at all as the previous committees really were. It was a Committee especially entrusted with the execution of specific and defined tasks as listed in Resolution 1702 (XVI). The Chairman and Vice-Chairman had no authority to go outside the scope of the duties assigned to them.

137 UN Doc. A/5212, n. 121, Annex IV and IX, pp. 17-18, 21, 22.

The joint-communique was an unauthorized act of the Chairman and Vice-Chairman. This is why the Special Committee for South West Africa had formally to repudiate it. Though it was repudiated, the communique had done the harm because ever after its issuance, it was used by the Union Government as evidence of her claim that there was no militarization in the Territory, that she did not resort to arbitrary imprisonment of the natives or subject them to brutal treatment and that there was no threat to peace. At the same time it weakened the position of the Afro-Asian group also which was constantly alleging that in South West Africa racial extermination and political imprisonments were the order of the day.

This brings to the fore the problem of proper selection of the personnel entrusted with the execution of specific tasks on behalf of the United Nations. If any mistake is committed in the selection of the United Nations' personnel, the programme and policies of United Nations may be thwarted rather than promoted. The members of the Special Committee were selected by the President of the General Assembly, Mongi Slim. The Fourth Committee should not have

139 Ibid., Pt. II, para 19, p. 3.
left this work to be done by the President of the General Assembly. It should have itself made scrupulous selection of the members of the Special Committee so that its work was carried out fully both in letter and spirit.

F. APPEAL TO THE FRIENDS OF SOUTH AFRICA

Besides trying to get an on-the-spot investigation done in South West Africa under Resolutions 1568 (XV) and 1596 (XV) by the Committee on South West Africa and also getting certain other tasks done in the Territory through the Special Committee on South West Africa vide Resolution 1702 (XVI), the General Assembly on the recommendation of the Fourth Committee also made an appeal to the close friends of the Union Government, vide Resolution 1593 (XV) of 16 March 1961, to

...bring, as a matter of urgency, all their influence to bear on that Government with a view to ensuring that it shall adjust its conduct to its obligations under the Charter of the United Nations and shall give effect to the resolutions adopted by the General Assembly.

Thus the Fourth Committee seemed to realize clearly enough that, its resolutions and appeals having been consistently ignored by the Union Government, an appeal should

141 Ibid., 16th sess., 1960-61, Annexes, Agenda Item 43, UN Doc. A/4709, para 9, p. 20.
now be addressed to the friends of that Government so that they might exert their due influence on her and bring about her compliance with the United Nations' resolutions. It was a recognition on the part of the Fourth Committee that the friends of South Africa could play an important part in the solution of the problem of South West Africa if they wished to.

Before closing this Chapter it might be mentioned that the era of confrontation between the United Nations and South Africa had begun (a) as a result of the filing of a contentious case by Ethiopia and Liberia with the open encouragement and support of the United Nations, the idea being to attract Article 94 (2) of the Charter for enforcement action, (b) due to the efforts of the United Nations to find a foot-hold in South West Africa through its Committee on South West Africa even without the permission of the Union Government, and (c) by the proclamation of independence as an objective to be achieved in place of the goal of trusteeship or a modified form of Mandates System adapted to the requirements of the Charter. The problem now to be tackled by the United Nations was as to how to bring about the withdrawal of the Union Government administration from the Territory.