PART II

ORAL STATEMENTS

PUBLIC SITTINGS

held at the Peace Palace, The Hague,
on March 22nd and June 1st, 1956,
the President, Mr. Hackworth, presiding

DEUXIÈME PARTIE

EXPOSÉS ORAUX

SÉANCES PUBLIQUES

tenues au Palais de la Paix, La Haye,
les 22 mars et 1er juin 1956,
sous la présidence de M. Hackworth, Président

MINUTES OF THE SITTINGS HELD ON MARCH 22nd AND JUNE 1st, 1956

FIRST PUBLIC SITTING (*22 III 56, 10.30 a.m.*)

Present : President HACKWORTH ; *Vice-President* BADAWI ; *Judges* BASDEVANT, WINIARSKI, KLAESTAD, READ, HSU MO, ARMAND-UGON, KOJEVNIKOV, Sir Muhammad ZAFRULLA KHAN, Sir Hersch LAUTERPACHT, MORENO QUINTANA, CÓRDOVA ; *Registrar* LÓPEZ OLIVÁN.

Also present :

For the United Kingdom of Great Britain and Northern Ireland :
The Right Honourable Sir Reginald Manningham-Buller, Q.C., M.P., Attorney-General,

assisted by :

Mr. F. A. Vallat, C.M.G., Deputy Legal Adviser to the Foreign Office.

The PRESIDENT opened the hearing and said that the Court had met to hear oral statements on the Request of the General Assembly of the United Nations for an Advisory Opinion on a matter pertaining to the Territory of South West Africa. March 15th had originally been fixed as the date for the opening of the oral proceedings, but, at the request of the Government of the United Kingdom, the date had been postponed to March 22nd.

Judges Guerrero and Zoričić, who were compelled by reasons of illness to be absent from The Hague, were unable to participate in the proceedings.

By a Resolution dated December 3rd, 1955, the General Assembly of the United Nations had requested the Court to give an Advisory Opinion on the question whether it would be consistent with an earlier Opinion of the Court for the Assembly's Committee on South West Africa to grant oral hearings to petitioners on matters relating to the Territory of South West Africa.

The President called upon the Registrar to read the Resolution in question.

The REGISTRAR read the Resolution.

The PRESIDENT stated that the Request for an Advisory Opinion had been notified in the customary manner. In pursuance of Article 66, paragraph 2, of the Statute, the Request had been communicated to the Members of the United Nations.

By an Order dated December 22nd, 1955, the time-limit for the submission of written statements had been fixed at February 15th, 1956.

PROCÈS-VERBAUX DES SÉANCES TENUES LES 22 MARS ET 1er JUIN 1956

PREMIÈRE AUDIENCE PUBLIQUE (22 III 56, 10 *h.* 30)

Présents : M. HACKWORTH, *Président ;* M. BADAWI, *Vice-Président ;* MM. BASDEVANT, WINIARSKI, KLAESTAD, READ, HSU MO, ARMAND-UGON, KOJEVNIKOV, Sir Muhammad ZAFRULLA KHAN, Sir Hersch LAUTERPACHT, MM. MORENO QUINTANA, CÓRDOVA, *juges ;* M. LÓPEZ OLIVÁN, *Greffier.*

Présents également :

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :
Le Très Honorable sir Reginald Manningham-Buller, Q. C., M. P., *Attorney-General,*

assisté de :

M. F. A. Vallat, C. M. G., Jurisconsulte adjoint au ministère des Affaires étrangères.

Le PRÉSIDENT ouvre l'audience et annonce que la Cour se réunit aujourd'hui pour entendre les exposés oraux présentés à propos de la requête de l'Assemblée générale à fin d'avis consultatif sur une question intéressant le Territoire du Sud-Ouest africain. L'ouverture de la procédure orale en cette affaire avait été primitivement fixée au 15 mars. A la demande du Royaume-Uni cette date a été reportée au 22 mars.

MM. Guerrero et Zoričić, absents de La Haye pour raison de santé, ne participeront pas à cette procédure.

Par une résolution en date du 3 décembre 1955, l'Assemblée générale des Nations Unies a demandé à la Cour de rendre un avis consultatif pour savoir s'il était conforme à l'avis rendu antérieurement par la Cour que le Comité du Sud-Ouest africain de l'Assemblée des Nations Unies accorde des audiences à des pétitionnaires sur des questions relatives au Territoire du Sud-Ouest africain.

Le Président prie le Greffier de donner lecture de cette résolution.

Le GREFFIER *lit* la résolution.

Le PRÉSIDENT expose que la requête pour avis consultatif a fait l'objet des notifications d'usage. Conformément à l'article 66, paragraphe 2, du Statut, elle a été communiquée aux Membres des Nations Unies.

Par une ordonnance en date du 22 décembre 1955 l'expiration du délai pour le dépôt des exposés écrits a été fixée au 15 février 1956.

The Court had received from the Secretary-General of the United Nations the documents likely to throw light upon the question, including the relevant records of the General Assembly. It had also received written statements from the Government of the United States of America and the Government of the Republic of China. The Government of India had informed the Court that it did not wish to present a statement and had referred to the views expressed by its representative in the debates in the General Assembly.

The Government of the United Kingdom of Great Britain and Northern Ireland had notified its intention of being represented at the present hearing by the Rt. Hon. Sir Reginald Manningham-Buller, Q.C., M.P., Attorney-General, assisted by Mr. F. A. Vallat, C.M.G., Deputy Legal Adviser to the Foreign Office, whose presence in Court he noted.

The President called upon the representative of the Government of the United Kingdom to address the Court.

Sir Reginald MANNINGHAM-BULLER made the statement reproduced in the annex[1].

The PRESIDENT, on behalf of the Court, thanked the representative of the Government of the United Kingdom for the assistance that he had given the Court and said that the Secretary-General of the United Nations and the Government of the United Kingdom would, in due course, be informed of the date on which the Court would deliver its Opinion.

(The Court rose at 12.45 p.m.)

(Signed) GREEN H. HACKWORTH,
President.

(Signed) J. LÓPEZ OLIVÁN,
Registrar.

SECOND PUBLIC SITTING (1 VI 56, 11 *a.m.*)

Present: [See hearing of March 22nd.]

Also present:

For the United Kingdom of Great Britain and Northern Ireland:

Mr. H. G. Darwin, Assistant Legal Adviser to the Foreign Office.

The PRESIDENT opened the sitting and stated that the Court had met to deliver the Advisory Opinion requested by the General Assembly of the United Nations in the matter of the Admissibility of Hearings of Petitioners by the Committee on South West Africa.

He called upon the Registrar to read the Resolution of the General Assembly of December 3rd, 1955, requesting the Opinion.

The REGISTRAR read the relevant text.

[1] See pp. 43-54.

La Cour a reçu du Secrétaire général des Nations Unies les documents pouvant servir à élucider la question, y compris les procès-verbaux de l'Assemblée générale. La Cour a reçu, en outre, des exposés écrits émanant du Gouvernement des États-Unis d'Amérique et du Gouvernement de la République de Chine. Le Gouvernement de l'Inde a fait connaître à la Cour qu'il ne désirait pas présenter d'exposé et s'est référé au point de vue exprimé par son représentant au cours des débats de l'Assemblée générale.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord a notifié l'intention de se faire représenter à l'audience par le Très Honorable sir Reginald Manningham-Buller, Q. C., M. P., *Attorney-General*, assisté de M. F. A. Vallat, C. M. G., jurisconsulte adjoint du *Foreign Office*, dont il constate la présence devant la Cour.

Le Président donne la parole au représentant du Gouvernement du Royaume-Uni.

Sir Reginald MANNINGHAM-BULLER prononce l'exposé reproduit en annexe [1].

Le PRÉSIDENT remercie, au nom de la Cour, le représentant du Gouvernement du Royaume-Uni pour l'assistance qu'il lui a apportée en cette affaire, et annonce que, le moment venu, le Secrétaire général des Nations Unies et le Gouvernement du Royaume-Uni seront informés de la date à laquelle la Cour rendra son avis consultatif.

(L'audience est levée à midi 45.)

Le Président :
(Signé) GREEN H. HACKWORTH.

Le Greffier :
(Signé) J. LÓPEZ OLIVÁN.

DEUXIÈME AUDIENCE PUBLIQUE (1 VI 56, 11 *heures*.)

Présents : [Voir audience du 22 mars.]

Présent également :

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :

M. H. G. Darwin, Jurisconsulte adjoint, ministère des Affaires étrangères.

Le PRÉSIDENT ouvre l'audience et expose que la Cour est réunie pour rendre l'avis consultatif qui lui a été demandé par l'Assemblée générale des Nations Unies sur la question de l'admissibilité de l'audition de pétitionnaires par le Comité du Sud-Ouest africain.

Il prie le Greffier de lire la résolution de l'Assemblée générale du 3 décembre 1955, sollicitant cet avis.

Le GREFFIER lit le texte de la résolution.

[1] Voir pp. 43-54.

The PRESIDENT indicated that in pursuance of Article 67 of the Statute of the Court, notice had been given that the Advisory Opinion would be delivered in open Court.

In accordance with Article 39 of the Statute, the Court had decided that the English text of the Opinion would be considered as authoritative. He would read that text.

The President read the relevant text [1].

The President called upon the Registrar to read the French text of the operative clause.

The REGISTRAR read the relevant text.

The PRESIDENT stated that Judge Winiarski, while concurring in the operative clause of the Opinion of the Court, had appended to it a declaration.

Judge Kojevnikov, while concurring in the operative clause of the Opinion of the Court, had appended to it a declaration.

Judge Sir Hersch Lauterpacht, while concurring in the Opinion of the Court, had availed himself of the right conferred on him by Articles 57 and 68 of the Statute, and had appended to it his Separate Opinion.

Vice-President Badawi and Judges Basdevant, Hsu Mo, Armand-Ugon and Moreno Quintana, availing themselves of the right conferred upon them by Articles 57 and 68 of the Statute, had appended to the Opinion of the Court their joint Dissenting Opinion, to which was attached a declaration by Vice-President Badawi.

The authors of these declarations and opinions had informed the President that they did not wish them to be read at this sitting.

The President closed the sitting.

(The Court rose at 11.35 a.m.)

[Signatures.]

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[1] See Court's publications, *Reports of Judgments, Advisory Opinions and Orders 1956*, pp. 23-34.

Le PRÉSIDENT indique que, conformément à l'article 67 du Statut de la Cour, notification a été faite que lecture de l'avis serait donnée aujourd'hui.

Conformément à l'article 39 du Statut, la Cour a décidé que le texte anglais sera le texte faisant foi, et le Président donne lecture de ce texte.

Le Président lit le texte [1].

Le Président prie le Greffier de donner lecture du dispositif en français.

Le GREFFIER donne lecture du dispositif.

Le PRÉSIDENT annonce que M. Winiarski, juge, tout en étant d'accord avec le dispositif de l'avis de la Cour, y a joint une déclaration.

M. Kojevnikov, juge, tout en étant d'accord avec le dispositif de l'avis de la Cour, y a joint une déclaration.

Sir Hersch Lauterpacht, juge, tout en étant d'accord avec l'avis de la Cour, s'est prévalu du droit que lui confèrent les articles 57 et 68 du Statut et a joint à l'avis l'exposé de son opinion individuelle.

M. Badawi, Vice-Président, MM. Basdevant, Hsu Mo, Armand-Ugon et Moreno Quintana, juges, se prévalant du droit que leur confèrent les articles 57 et 68 du Statut, ont joint à l'avis l'exposé commun de leur opinion dissidente, auquel est annexée une déclaration de M. Badawi, Vice-Président.

Les auteurs de ces déclarations et opinions ont fait connaître au Président qu'ils n'ont pas l'intention d'en donner lecture à l'audience.

Le Président clôt l'audience.

(L'audience est levée à 11 h. 35.)

[Signatures.]

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[1] Voir publications de la Cour, *Recueil des Arrêts, Avis consultatifs et Ordonnances 1956*, pp. 23-34.

ANNEX TO THE MINUTES
ANNEXE AUX PROCÈS-VERBAUX

ORAL STATEMENT BY SIR REGINALD MANNINGHAM-BULLER

(REPRESENTING THE UNITED KINGDOM GOVERNMENT)

AT THE PUBLIC SITTING OF MARCH 22nd, 1956, MORNING

May it please the Court.

Before discussing the question submitted by the General Assembly, may I, on behalf of the Government of the United Kingdom, thank the Court for adjourning the oral hearing and so enabling me to put before the Court a statement on behalf of the United Kingdom. I do hope that the week's adjournment has not caused any inconvenience to Members of the Court. I regret that it was not possible to decide whether to intervene until ten days or so ago, and that, having regard to the comparatively early hearing and the time-limits fixed for written memoranda, it was not possible consequently to submit a written memorandum. I hope the Court will accept my apology for venturing to appear without having done so.

The Court is, I know, already familiar with the background of the question on which its opinion is sought. It has before it the very valuable introductory note and the documents submitted by the Secretary-General of the United Nations. It also has the benefit of written statements submitted by the Governments of the Republic of China, India, and the United States of America. Consequently, I do not think it is necessary—and I hope the Court will agree—for me to go into the historical details as fully as might have been considered necessary in a written statement or in an oral statement if this material had not already been placed before the Court.

My purpose in appearing to-day is to draw the attention of the Court to what seem to us material points, and I hope that by doing so I shall assist the Court in finding the correct answer to the question submitted to the Court by the General Assembly in Resolution 942 (X) of the 3rd December, 1955.

The Court has been asked to say whether it is consistent with the Advisory Opinion of the Court of 11th July, 1950, for the Committee on South West Africa to grant oral hearings to petitioners on matters relating to the Territory of South West Africa.

The most relevant passage in the 1950 Advisory Opinion is, I submit, the one on page 138, where it is said:

> "It follows from what is said above that South-West Africa is still to be considered as a territory held under the Mandate of December 17th, 1920. The degree of supervision to be exercised by the General Assembly should not therefore exceed that which

applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. These observations are particularly applicable to annual reports and petitions."

I shall be saying some more about this passage later but I would like now, if I may, to draw attention to its language which was, no doubt, most carefully chosen. It would be disrespectful to the Court to suggest—and I certainly do not wish to suggest—that the words used do not have, and were not intended to have, their plain, natural meaning and significance.

The first sentence in this passage to which I wish to draw particular attention is the second sentence in it : "The degree of supervision ... should not therefore exceed that which applied under the Mandates System...". It is not "which might have been applied" but "which applied". One has therefore to ascertain what supervision was in fact applied under the Mandates System, not to consider what might have been done in hypothetical circumstances under that system. In fact the Permanent Mandates Commission did not have oral hearings of petitions. Indeed, if the Advisory Opinion had said "which might have been applied", it would still be inconsistent with that Opinion for the Committee on South West Africa to have oral hearings of petitions, for the Council of the League decided not to permit the Mandates Commission to have such oral hearings.

Further, I would ask the Court to note that not only is the past tense used by the word "applied", but that it is also used in relation to procedure. The Opinion states that the degree of supervision should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. The language used is not that it should conform to the procedure which might have been followed by the League, but to the procedure followed. It is also to be noted that this passage of the Opinion specifically refers to petitions. The natural meaning of this passage is, I submit, that the General Assembly, through its Committee on South West Africa, could exercise the degree of supervision that was applied by the Mandates Commission—that is to say, the degree of supervision exercised under the Mandates System—but had no right to exceed it; and that the General Assembly, through this Committee on South West Africa, should follow as far as possible the procedure followed by the Council of the League of Nations with regard to petitions.

But before I say any more about this, may I first say something about the question put to the Court and about the Committee on South West Africa. Then I want to say something about the position and status of South West Africa itself, for that is very important. Then I propose to make some submissions on what was the degree of supervision in fact applied under the Mandates System by the Mandates Commission. Finally, I hope to submit that in the light of the supervision in fact applied under the Mandates System and the procedure followed by the Council of the League, it would not be consistent with the 1950 Opinion for the Committee on South West Africa to grant oral hearings to petitioners.

First, then, with the permission of the Court, I should like to say something about the question put to the Court and about the Committee

on South West Africa. As on previous occasions, it is a narrow one. It is limited to the oral hearing of petitioners by the Committee on South West Africa. The Court is not asked to give its opinion on oral hearings by any other body.

The Committee on South West Africa was established by Resolution 749A (VIII) adopted by the General Assembly on the 28th of November, 1953. That Resolution recalled that the Advisory Opinion of 1950 had been accepted by the General Assembly by Resolutions of the 13th of December, 1950, and the 19th of January, 1952. It recalled that the Advisory Opinion was that the territory of South West Africa is a territory under the international mandate assumed by the Union of South Africa on the 17th of December, 1920, and that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa, as well as the obligation to transmit petitions from the inhabitants of that territory, the supervisory functions to be exercised by the United Nations, to which its annual reports and its petitions are to be submitted. By paragraph 6 of the operative part of that Resolution, it is affirmed that, in order to implement the Advisory Opinion of the International Court with regard to South West Africa, the supervision of the administration of the territory, though it should not exceed that which applied under the Mandates System, should be exercised by the United Nations. It is to be noted again that it is that which applied under the Mandates System : not that which could have been applied. By paragraph 11 of the Resolution, the General Assembly expressed its belief that it would not fulfil its obligations towards the inhabitants of South West Africa if it were not to assume the supervisory responsibilities "with regard to the territory (I am quoting from the Resolution) which were formerly exercised by the League of Nations". Again it is to be noted that the word used is "exercised", not "exercisable". By paragraph 12, the General Assembly established the Committee on South West Africa and requested the Committee—and here I quote :

> "*(a)* to examine within the scope of the questionnaire adopted by the Permanent Mandates Commission of the League of Nations in 1926 such information and documentation as may be available in respect of the territory of South West Africa ;".

That is the end of the quotation, and the reference in that passage to the scope of the questionnaire in my submission shows that the Committee were only to act within the limits within which the Mandates Commission acted. The Resolution went on—I quote again—with a request to the Committee

> "to examine, as far as possible, in accordance with the procedure of the former Mandates System, reports and petitions which may be submitted to the Committee or to the Secretary-General ;".

Here again the Committee were to follow, in my submission, the procedure of the Mandates System. And the Resolution went on to the request, in paragraph *(c)*, that the Committee should

> "transmit to the General Assembly a report concerning conditions in the territory taking into account, as far as possible, the scope

> of the reports of the Permanent Mandates Commission of the League of Nations ;".

That is to say, in my submission, their report to the General Assembly was to be modelled on the reports submitted by the Permanent Mandates Commission to the Council of the League of Nations. In sub-paragraph *(d)* of the Resolution, the General Assembly requested the Committee to

> "prepare, for the consideration of the General Assembly, a procedure for the examination of reports and petitions which should conform as far as possible to the procedure followed in this respect by the Assembly, the Council and the Permanent Mandates Commission of the League of Nations".

This passage, in my submission, relates to the internal procedure of the General Assembly and in the exercise of the authority given to it by this paragraph, the Committee in due course submitted draft rules of procedure for the General Assembly.

Now these paragraphs constitute the terms of reference of the Committee on South West Africa. They show an intention by the General Assembly to adhere to the natural and ordinary meaning of the Advisory Opinion of 1950, an intention to exercise the supervisory functions exercised by the Council of the League of Nations with reference to South West Africa and the intention to confer on the Committee functions corresponding to those formerly exercised by the Permanent Mandates Commission. Therefore, to determine what should be the degree of supervision to be exercised by the General Assembly through its Committee, one must ascertain the degree of supervision in fact applied by the Mandates Commission, and in order to conform to the procedure followed by the Council of the League, we must ascertain what that procedure was. I will come to that, if I may, later.

In the course of the debate at the 500th to the 505th meeting of the Fourth Committee, a draft resolution contained in Document A/C4/L413 was introduced on the 8th November, 1955, by the delegations of Mexico, Pakistan, Syria, Thailand and the United States of America to the effect that, in accordance with the Advisory Opinion of 1950 (and here I quote), "the oral hearing of petitioners by the Committee on South West Africa would not be in accordance with the procedure of the former Mandates System and is therefore not admissible". That is the end of the quotation. A revised version of this Resolution, submitted by the same delegations on the 9th November, 1955, although couched in different terms, was to the same effect, and many delegations, in the course of the debate, expressed the view that the grant of oral hearings would not be consistent with the Advisory Opinion. It is interesting to note that at the 500th meeting of the Fourth Committee it was stated on behalf of the United States Delegation that that delegation agreed that if the General Assembly decided to hear petitioners concerning South West Africa it would not be complying with the Advisory Opinion given by the International Court of Justice in 1950. However, it became clear that these resolutions would not command the necessary two-thirds majority. There is a saying in my country that second thoughts are sometimes best, and I observe that the Memorandum now submitted by the United States of America

contends that oral hearings are permissible in certain circumstances. But I would submit that in this instance the first thoughts were soundest.

I want now to make some observations with regard to the position and status of South West Africa itself. It is particularly necessary that I should do this in view of certain statements made in the course of the debate in the Fourth Committee. One or two of these statements suggested that the territory of South West Africa either came or should come under Chapter XI of the United Nations Charter regarding non-self-governing territories. Other delegations, on the other hand, maintained that South West Africa should be regarded as though it were a trust territory and be treated as though it came under Chapter XII of the Charter regarding the international trusteeship system. Whatever may or may not happen in the future, the present legal position and status of South West Africa is in my submission clear. It is not a non-self-governing territory. It is not a trust territory. It is a mandated territory.

The question put to the Court has its origin in the fact that South West Africa is not a trust territory or a non-self-governing territory but as stated expressly in its Advisory Opinion of 1950, South West Africa is a territory under the international mandate assumed by the Union of South Africa on December 17, 1920. This Court has clearly indicated that it considers the status of South West Africa as *sui generis*, and in relation to the question now before the Court the provisions of Chapters XI and XII of the Charter are, in my submission, of no assistance and give no guidance. This Court in 1950 also expressed the view, a view accepted as I have pointed out by the General Assembly, that the Union of South Africa continued to have the international obligations stated in Article 22 of the Covenant of the League and in the Mandate for South West Africa, as well as the obligation to transmit petitions from the inhabitants of that territory. *Since there is provision for written petitions*, under the Mandates System the position of South West Africa is clearly different from that of non-self-governing territories to which Chapter XI of the Charter applies, for in the case of those territories there is no provision for petitions to any organ of the United Nations.

Equally unsound, in my submission, is the argument that the Committee on South West Africa is entitled to grant oral hearings because the Union of South Africa is under an obligation to place the territory under United Nations trusteeship. In the 1950 Advisory Opinion a majority of this Court considered—and here I quote—"that the provisions of Chapter XII of the Charter do not impose on the Union of South Africa a legal obligation to place the territory under the trusteeship system"—that is the end of the quotation. The Court was unanimous in the view that the provisions of Chapter XII provide a means by which the territory may be brought under the Trusteeship System. To grant oral hearings on the basis that South West Africa should be a trust territory, involves treating South West Africa as if it was a trust territory which clearly it is not. The United Kingdom Government entirely agrees with these views expressed by the Court and submits that the territory of South West Africa should not, and indeed cannot, be treated as though it were a trust territory. There are certain features of the trusteeship system which distinguish it from the Mandates System. One of these is

the express provision for petitions made in paragraph *(b)* of Article 87 of the United Nations Charter. No corresponding provision appeared in Article 22 of the Covenant of the League, and it is in accordance with this provision of Article 87 that detailed rules for the hearing of oral petitions are made in the rules of procedure of the Trusteeship Council, and the rules in question are Rules 78, 80 and 87 to 91 of the rules of procedure of the Trusteeship Council as amended to 1952.

For the purpose of the present reference to the Court it is unnecessary to examine this question, namely, the present status of South West Africa, anew. Whether the Court was right or wrong in 1950 is, strictly speaking, irrelevant because the Court is now asked to say simply whether the grant of oral hearings is consistent with the 1950 Opinion. The Court is not asked to revise or reconsider, or to alter that Opinion. In 1950 the majority of the Court expressed the Opinion that there was no obligation to place South West Africa under the trusteeship system. Accordingly any argument to the contrary should be disregarded by the Court in considering the question before it, and one must proceed, in my submission, on the basis that South West Africa is, as this Court has said, a territory under the international Mandate assumed by the Union of South Africa on the 10th December, 1920.

Questions relating to the status of South West Africa and supervision over the administration of the territory fall to be decided, as I have just said, neither on the basis of Chapter XI nor Chapter XII of the United Nations Charter, but on the basis of the mandate and the Mandates System. In order to see how the Mandates System worked one must look at the practice of the League of Nations. And I should now like to say something about the practice of the League with regard to the question of oral hearing of petitioners.

On the basic facts there does not seem to be any room for controversy. There were *no* provisions for petitions of any kind either in Article 22 of the Covenant of the League or in the Mandate for South West Africa. There were *no* provisions for oral hearings in the Constitution or the Rules of Procedure of the Permanent Mandates Commission or in the special rules relating to written petitions, drawn up in 1923.

The absence of any provision for oral hearings of petitions was no accident. It was not the result of any lack of foresight or imagination on the part of the organs of the League. The history of these occasions is indicated in paragraphs 20-33 of the Introductory Note by the Secretary-General of the United Nations of February 14th, 1956. There is no need for me to remind the Court of that history or to go in very great detail into the documents which have been presented to the Court. It will suffice, I hope, to mention only a few salient points.

At its Third, its Seventh, and its Eighth Sessions, the Mandates Commission considered the question of hearing petitioners and on each occasion decided against oral hearings. At the Third Session in 1923, the decision was to tell the Anti-Slavery Society that the Commission welcomed—and here I quote—"all relevant detailed *written* information from responsible persons". (That is the end of the quotation.) The Court may be aware of the circumstances which gave rise to that communication. They were very exceptional, so exceptional that a case could be put forward for such exceptional procedure as the hearing of oral petitions. Information had been received about events in the territory in

question but the Mandatory Power had refrained from reporting upon them.

And in this connection, in relation to this case, it is interesting to see what Professor Rappard said at page 66 of the Minutes of the Third Session of the Commission. He pointed out that the Commission had always three kinds of information at its disposal: official information from the annual reports of the Mandatory Powers; official information from the replies of the accredited representatives of the Mandatory Powers; and unofficial information of all kinds which it had asked the Secretariat to furnish, such as cuttings from newspapers, interviews, accounts of Parliamentary debates, etc. He said—Professor Rappard—that in the case then under consideration the information to be given could only be of the third kind, and he added that the Mandates Commission was not a court of justice which could readily call witnesses before it. So in that case, *despite the absence of a report from the Mandatory Power*, the Commission on this exceptional occasion decided against the grant of oral hearings.

The decision taken at the Fourth Meeting of the Seventh Session in October, 1925, is also of particular interest. The Minutes of the Commission show that the Chairman raised the question of oral representations being made to him. He said that representatives of various groups had formed the habit of coming to see him personally at Rome.

Professor Rappard expressed the view that the Chairman would always make it clear that he was unable to make any official use of anything unless it was formally submitted in writing. The Mandates Commission then intimated to the petitioners that it did not think it its duty to receive petitioners, but it was understood that the Chairman would always be happy to hear what they had to say. And perusal of these Minutes makes it clear, in my submission, that while the Chairman and individual members of the Commission were at liberty to see persons who applied to them for an interview and hear what those persons had to say, it was the view of the Commission that they would only do so in their individual capacities and not as representatives of the Commission. They would *not*, as Professor Rappard said, have to take account of the facts brought to their notice in that way as official facts duly authenticated.

It is evident from the subsequent history that the Commission, or at any rate some of its members, became dissatisfied with this practice. They considered that in some instances they were unable to fulfil their duties without granting oral hearings. Accordingly, the whole question was discussed fully by the Commission in June, 1926, at the Sixth, Eighth and Ninth Meetings of its Ninth Session. The Commission reported to the Council of the League of Nations that, experience having shown that sometimes the Commission had been unable to form a definite opinion as to whether certain petitions were well-founded or not, the Commission was of opinion that in these cases it might appear indispensable to allow the petitioners to be heard by it. The Commission, however, did not desire to formulate a definite recommendation on this subject before being informed of the views of the Council.

When this Report was presented to the Council, it invited the various Mandatory Powers to submit their views. These observations are referred to in paragraph 27 of the Secretary-General's Introductory Note. *All* the Mandatory Powers were against the grant of oral hearings, and I

should like to call the attention of the Court in particular to the observations of the Belgian Government, because the Report on which the Council acted refers specifically to these observations, and the Report and the Resolution adopted by the Council on 7th March, 1927, at its Forty-fourth Session is probably the key to the answer to the question before the Court.

There are only four short paragraphs of the letter of 3rd December, 1926, from the Belgian Government which call for consideration. The Belgian Government said in the first section of its letter on the hearing of petitioners that such a procedure might even run counter to the object which the signatories of the Covenant had in view when they set up the Mandates Commission. According to the Belgian Government—and here I quote: "In actual fact, the hearing of witnesses by the Mandates Commission, if thus converted into a sort of court for the hearing of appeals against the Mandatory Power, would quickly become in certain territories an excuse for resistance and even for revolt against the Mandatory Power on the part of unruly elements." That is the end of the quotation. The Belgian Government also pointed out that even in countries with the most liberal constitutions, Parliaments did not generally possess the right to hear petitioners submitting applications to the National Assembly.

In the fourth paragraph of the letter, it was stated that in considering the problem as a whole, it must not be forgotten that the Council, which in the last resort was responsible for the supervision of the Mandatory States, could in special cases order such extraordinary measures of investigation as it might think fit.

It is clear in my submission from the context of their letter that the Belgian Government were distinguishing between oral hearings of petitions on the one hand, and investigations initiated by the Council on the other.

The Council decided in March, 1927, that there was no occasion to modify the procedure which had been followed by the Commission in regard to the hearing of petitioners. That is to say, the Council decided *against* oral hearings by the Commission. During the remainder of the life of the League of Nations no decision was ever taken in favour of oral hearings by the Commission. On the contrary, on the occasions mentioned in paragraphs 30-33 of the Secretary-General's Introductory Note, decisions were taken by the Mandates Commission against the grant of oral hearings. For example, at its Eleventh Session in 1927, the Commission decided—and here I quote: "In accordance with a decision of the Council, in no circumstances can a personal audience be granted by the Permanent Mandates Commission." *In no circumstances.*

And to sum up the practice of the League of Nations: in a period of nearly twenty years there were no oral hearings, not even in exceptional cases. There was no provision for oral hearings, and there were several decisions against oral hearings, although the Mandates Commission, or, at least, some members of it, thought in some cases that they might be indispensable.

It cannot therefore be said that the degree of supervision applied under the Mandates System included oral hearings. Whether oral hearings can be regarded as an exercise of supervision, or as a matter of procedure, the General Assembly would, in my submission, if it permitted oral hearings, be going beyond the degree of supervision applied under the

Mandates System and beyond the procedure followed by the Council of the League of Nations.

I now come to the last part of my speech. I have made some observations on the question put to the Court and about the Committee on South West Africa. I have submitted that the position of South West Africa is unique in that it is a territory under the international mandate assumed by the Union of South Africa : that it is neither a trust territory nor a non-self governing territory but a mandated territory. I have reminded the Court of the degree of supervision exercised by the Mandates Commission and of the procedure followed in relation to supervision by the Council of the League of Nations.

Now I want, if I may, to relate these observations to the question before the Court.

May I once more remind the Court of the relevant passage in the Advisory Opinion of 1950.

It reads as follows :

> "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations."

I have already drawn attention to the significance of the use of the past tense in this passage.

I now want to point out that the words "the degree of supervision" govern the whole sentence. The degree of supervision should not exceed that which applied under the Mandates System. The degree of supervision should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. Then the Opinion states that "these observations are particularly applicable to annual reports and petitions".

What exactly is the meaning of the words "degree of supervision" in this passage ? These words have already been considered by the Court, and in their Opinion of 1955 the Court said, on page 72 :

> "The words 'the degree of supervision' relate to the extent of the substantive supervision thus exercised, and not to the manner in which the collective will of the General Assembly is expressed.
>
> Accordingly, these words, if given their ordinary and natural meaning, should not be interpreted as relating to procedural matters. They relate to the measure and means of supervision. They comprise the means employed by the supervising authority in obtaining adequate information regarding the administration of the Territory and the methods adopted for evaluating such information, maintaining working relations with the Mandatory, and otherwise exercising normal and customary supervisory functions. The statement that the degree of supervision to be exercised by the General Assembly should not exceed that which was applied under the Mandates System means that the General Assembly should not adopt such methods of supervision or impose such conditions on the Mandatory as are inconsistent with the terms of the Mandate or with a proper degree of supervision measured

by the standard and the methods applied by the Council of the League of Nations."

Later, on page 73, the Court said:

> "It was necessary for the purpose of defining the international obligations of the Union to indicate the limits within which it was subject to the exercise of supervision by the General Assembly.
>
> In order to indicate those limits, it was necessary to deal with the problem presented by methods of supervision and the scope of their application. The General Assembly was competent, under the Charter, to devise methods of supervision and to regulate, within prescribed limitations, the scope of their application. These were matters in which the obligations could be subjected to precise and objective determination, and it was necessary to indicate this in a clear and unequivocal manner. This was done when it was said in the previous Opinion that: 'The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System...'"

It is also to be noted that Judge Lauterpacht, in giving his Opinion, said on page 94—and I quote his words—that:

> "The expression 'degree of supervision' has two meanings: it signifies primarily the means of supervision. Thus it is clear that the place assigned to periodic missions or to petitions in the System of Trusteeship exceeds the degree of supervision adopted in the Mandates System and that that means of supervision by the United Nations cannot, without the consent of the Government of the Union of South West Africa, be applied to the Mandated Territory of South West Africa. This is a question of means of supervision in their wider sense."

Consequently, it is, in my submission, clear beyond doubt, from the passages that I have cited, that this Court has already expressed a view from which it follows that the oral hearing of petitioners must be regarded as an exercise of supervision. Having regard to the views expressed in the organs of the League of Nations and the serious view there taken of the effect that such hearings might have on the extent of supervision over the Mandatory Powers, it certainly could not be said that the grant of oral hearings would be a mere matter of detail or just a matter of pure procedural machinery. It would, on the other hand, be a serious step in the exercise of supervision—as I have already submitted—a step that was deliberately and after much consideration not taken by the Mandates Commission or the League of Nations.

But, if, contrary to the argument I am advancing, the Court felt that it was open to them to come to the conclusion that the oral hearing of petitioners was merely a matter of procedure, then I would further suggest that even on this view for the Committee on South West Africa to grant oral hearings would be a grave departure from the procedure followed by the Mandates Commission and the Council of the League of Nations and, in this connexion—and if I might—I would like to draw the Court's attention to a passage in the Opinion they gave in 1955 at page 75. There they said:

"While, as indicated above, the statement regarding the degree of supervision to be exercised by the General Assembly over the Mandate of South West Africa, relates to substantive matters, the statement requiring conformity 'as far as possible' with the procedure followed in the matter of supervision by the Council of the League of Nations, relates to the way in which supervision is to be exercised, a matter which is procedural in character. Thus, both substance and procedure are dealt with in the passage in question and both relate to the exercise of supervision. The word 'procedure' there used must be understood as referring to those procedural steps whereby supervision is to be effected."

So that whether the granting of oral hearings is regarded as the exercise of supervision or as a procedural step whereby supervision is to be effected, one in my submission reaches the same conclusion, namely that to grant such hearings would be to go far beyond what was done under the Mandates System. I have throughout my address to the Court drawn attention to the frequent use by this Court of the past tense in relation to the supervision exercised under the Mandates Commission and the procedure followed. Even if it could be said that the language used by this Court was capable of being interpreted as meaning "might have been applied" or "would have been followed", I would submit that this Court would be bound to come to the conclusion that the grant of oral hearings would not have been applied by the Mandates Commission and such procedure would not have been followed by the Council of the League. I say this for the following reasons. In the case to which I have already made some reference, the case considered by the Mandates Commission in 1923, the Mandatory Power refused to comment on the reports and information received by the Mandates Commission. This placed the Mandates Commission in a very considerable difficulty, but despite that difficulty, the Permanent Mandates Commission in 1923 and the Council of the League in 1927 both decided against the grant of oral hearings. It is clear, therefore, that neither the Council of the League nor the Mandates Commission would have granted oral hearings in any circumstances. I say this because neither in an exceptional case such as that of 1923, nor even when it was thought that such hearings were indispensable, did they do so.

Now there is just one further point to which I wish to refer. The memorandum submitted to this Court by the United States of America appears to attach some importance to the view expressed by the Mandates Commission that their Chairman and individual members of the Commission might, at their discretion, receive information from individuals who approached them. It is of course one thing not to restrict the freedom of individual members of the Commission to see anyone they wished. But it is quite another thing to suggest that information given to them—the members of the Commission—in their individual and unofficial capacities is to be regarded as information put before the Mandates Commission.

It really would have been ridiculous for the Council and the Commission to decide that the Commission as a body would not grant oral hearings and then to say that so long as the members of the Commission did not sit together they could do so privately and in their

capacity as members of the Commission. The view that has been expressed that individual members of the Commission were free to hear petitioners privately really means that no restriction was imposed on the activities of the members acting individually and privately, and that that decision of the Mandates Commission means, in my submission, no more than that.

Now here I would conclude by saying that I am very grateful to the Court for having listened to me for so long, and I hope that what I have said may be of some assistance to the Court. I have already said that the question put to the Court is a narrow one. In one sense it is a very important question, for if oral hearings can be granted it will mean that the Committee on South West Africa is converted into something in the nature of a court. It should be borne in mind that written petitions can be submitted direct to the Committee on South West Africa. There is consequently nothing to prevent those who wish to be heard orally from putting down on paper all that they wish to say and from sending it to the Committee. So acceptance of the argument I have addressed to the Court does not mean that petitioners cannot put forward petitions. They must do so—if my argument is accepted—in the way which is permitted, that is to say, in writing and not orally.