

INTERNATIONAL COURT OF JUSTICE

---

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

---

SOUTH WEST AFRICA CASES

(ETHIOPIA *v.* SOUTH AFRICA;

LIBERIA *v.* SOUTH AFRICA)

VOLUME XI

1966

COUR INTERNATIONALE DE JUSTICE

---

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

---

AFFAIRES DU SUD-OUEST AFRICAIN

(ÉTHIOPIE *c.* AFRIQUE DU SUD;

LIBÉRIA *c.* AFRIQUE DU SUD)

VOLUME XI



All rights reserved by the  
International Court of Justice

Tous droits réservés par la  
Cour internationale de Justice

Abbreviated reference:  
*I.C.J. Pleadings, South West Africa,*  
Vol. XI

---

Référence abrégée:  
*C.I.J. Mémoires, Sud-Ouest africain,*  
vol. XI

<p>Sales number 331 N° de vente: 331</p>
--

SOUTH WEST AFRICA CASES  
(ETHIOPIA *v.* SOUTH AFRICA;  
LIBERIA *v.* SOUTH AFRICA)



AFFAIRES DU SUD-OUEST AFRICAIN  
(ÉTHIOPIE *c.* AFRIQUE DU SUD;  
LIBÉRIA *c.* AFRIQUE DU SUD)

INTERNATIONAL COURT OF JUSTICE

---

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

---

SOUTH WEST AFRICA CASES

(ETHIOPIA *v.* SOUTH AFRICA;  
LIBERIA *v.* SOUTH AFRICA)

VOLUME XI

1966

COUR INTERNATIONALE DE JUSTICE

---

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

---

AFFAIRES DU SUD-OUEST AFRICAIN

(ÉTHIOPIE *c.* AFRIQUE DU SUD;  
LIBÉRIA *c.* AFRIQUE DU SUD)

VOLUME XI



PRINTED IN THE NETHERLANDS

The present volume contains the continuation of the oral arguments on the merits and the evidence of witnesses and experts in the *South West Africa* cases and covers the period 20 September to 19 October 1965. The beginning of the oral arguments on the merits (15 March to 15 June 1965) is published in Volume VIII, pages 105-712, Volume IX, pages 1-658, and Volume X, pages 1-558. The proceedings in these cases, which were entered on the Court's General List on 4 November 1960 under numbers 46 and 47, were joined by an Order of the Court of 20 May 1961 (*South West Africa, Order of 20 May 1961, I.C.J. Reports 1961, p. 13*). Two judgments were given, the first on 21 December 1962 (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports, 1962, p. 319*), and the second on 18 July 1966 (*South West Africa, Second Phase, Judgment, I.C.J. Reports 1966, p. 6*).

Cross references correspond to the pagination of the present edition, the volume being indicated by a roman figure in bold type.

The Hague, 1966.

---

Le présent volume contient la suite des plaidoiries sur le fond et les dépositions des témoins et experts dans les affaires du *Sud-Ouest africain*; il porte sur la période allant du 20 septembre au 19 octobre 1965. La première partie des plaidoiries sur le fond (15 mars-15 juin 1965) est publiée dans le volume VIII, pages 105 à 712, le volume IX, pages 1 à 658 et le volume X, pages 1-558. Ces affaires ont été inscrites au rôle général de la Cour sous les n<sup>os</sup> 46 et 47 le 4 novembre 1960 et les deux instances ont été jointes par ordonnance de la Cour le 20 mai 1961 (*Sud-Ouest africain, ordonnance du 20 mai 1961, C.I.J. Recueil 1961, p. 13*). Elles ont fait l'objet de deux arrêts rendus le 21 décembre 1962 (*Sud-Ouest africain, exceptions préliminaires, arrêt, C.I.J. Recueil 1962, p. 319*) et le 18 juillet 1966 (*Sud-Ouest africain, deuxième phase, arrêt, C.I.J. Recueil 1966, p. 6*).

Les renvois tiennent compte de la pagination de la présente édition, un chiffre romain gras indiquant le numéro du volume auquel il est renvoyé.

La Haye, 1966.

CONTENTS — TABLE DES MATIÈRES

PART II. ORAL ARGUMENTS (*continued*)  
 DEUXIÈME PARTIE. PLAIDOIRIES (*suite*)

ANNEXES TO THE MINUTES (*continued*)

ANNEXES AUX PROCÈS-VERBAUX (*suite*)

	Page
24. Hearings of the witnesses and experts ( <i>cont.</i> ) (20 IX-19 X 65).	3
Evidence of the Rev. Gericke (witness and expert) . . . . .	3
Examination by Mr. Rabie. . . . .	4
Cross-examination by Mr. Gross . . . . .	12
Witness questioned by Judge Sir Gerald Fitzmaurice . . . . .	62
Witness questioned by Judge Jessup . . . . .	63
Witness questioned by Judge Sir Louis Mbanefo . . . . .	64
Witness questioned by the President . . . . .	64
Evidence of Prof. Krogh (witness and expert). . . . .	67
Examination by Mr. Muller . . . . .	67
Cross-examination by Mr. Gross . . . . .	86
Witness questioned by Judge Forster . . . . .	200
Witness questioned by Judge Sir Louis Mbanefo . . . . .	203
Evidence of Mr. Pepler (witness and expert) . . . . .	206
Examination by Mr. Muller . . . . .	207
Cross-examination by Mr. Gross . . . . .	219
Witness questioned by Judge Jessup . . . . .	248
Explanation by Mr. Pepler. . . . .	251
Evidence of Dr. van Zyl (witness and expert). . . . .	251
Examination by Mr. Rabie. . . . .	252
Cross-examination by Mr. Gross . . . . .	268
Witness questioned by Judge Sir Louis Mbanefo . . . . .	315
Evidence of Professor Rautenbach (witness and expert) . . . . .	326
Examination by Mr. Grosskopf . . . . .	326
Cross-examination by Mr. Gross . . . . .	345
Witness questioned by Judge Sir Gerald Fitzmaurice . . . . .	443
Witness questioned by Judge Sir Louis Mbanefo . . . . .	448
Witness questioned by the President . . . . .	450
Further questions by Judge Sir Louis Mbanefo . . . . .	451
Re-examination by Mr. Grosskopf . . . . .	452
Evidence of Mr. Dahlmann (witness and expert) . . . . .	455
Examination by Mr. Muller . . . . .	456
Cross-examination by Mr. Gross . . . . .	480
Re-examination by Mr. Muller . . . . .	570
Evidence of General Marshall (witness and expert) . . . . .	574
Examination by Mr. Muller . . . . .	574
Cross-examination by Mr. Gross . . . . .	587
Evidence of Professor Manning (witness and expert). . . . .	599
Examination by Mr. Rabie. . . . .	600
Cross-examination by Mr. Gross . . . . .	619
Evidence of Professor Possony (witness and expert) . . . . .	643
Examination by Mr. Muller . . . . .	647



PART II (*continued*)

SECTION B

---

ORAL ARGUMENTS ON THE MERITS

PUBLIC HEARINGS

*held from 15 March to 14 July, 20 September to  
15 November and 29 November 1965, 21 March and  
on 18 July 1966, the President, Sir Percy Spender, presiding*  
(continued)

---

---

PARTIE II (*suite*)

SECTION B

---

PLAIDOIRIES RELATIVES AU FOND

AUDIENCES PUBLIQUES

*tenues du 15 mars au 14 juillet, du 20 septembre  
au 15 novembre, le 29 novembre 1965, le 21 mars  
et le 18 juillet 1966, sous la présidence de  
sir Percy Spender, Président*  
(suite)



ANNEX TO THE MINUTES (*continued*)  
ANNEXE AUX PROCÈS-VERBAUX (*suite*)

24. HEARINGS OF THE WITNESSES AND EXPERTS

(*continued*)

AT THE PUBLIC HEARING OF 20 SEPTEMBER 1965

Mr. MULLER: Mr. President, the next witness, as indicated to the Applicants, will be the Reverend Mr. Gericke. I ask the leave of the Court for Dr. Rabie to introduce the witness, to explain how his testimony will be relevant and to put, with the permission of the Court, certain questions to the witness.

The PRESIDENT: Mr. Muller, is the Agent for the Respondent not present?

Mr. MULLER: Mr. President, yes, but I have been asked merely to indicate to the Court who the next witness will be, with the authority of the Agent.

The PRESIDENT: Mr. Muller, will you proceed?

Mr. MULLER: Yes, Mr. President. I shall ask Dr. Rabie to introduce the witness, the Reverend Mr. Gericke, and to indicate to the Court the relevance of his evidence.

Mr. RABIE: May it please you, Mr. President, honourable Members of the Court, the evidence of the Reverend Jacobus Stephanus Gericke will relate to issues raised under the Applicants' Submissions Nos. 3 and 4. It will be directed to the following points, as set out in a letter addressed by the Respondent's Agent to the Deputy-Registrar of this honourable Court on 30 July, a copy of which was transmitted to the Applicants' Agents. The same information was repeated in a letter sent to the Applicants' Agents on the 18th instant. I quote, Mr. President:

"Considerations underlying the development in the Dutch Reformed Church of a system of separate churches for Coloured and Bantu members. The advantages of such development for Coloured and Bantu members and the communities to which they belong. The significance of the Church's experience of different population groups for the State in its administration of a heterogeneous population. [And finally] The Church's concern with the social, political and economic life and circumstances of the various population groups and their members, and with the formation and implementation of State policy in these fields."

Mr. President, may I also say, before the witness is introduced, that the Reverend Mr. Gericke is Afrikaans-speaking and that he is not very confident of expressing his thoughts properly in English at all times? Because of practical difficulties connected with translation he has, however, agreed and decided to give his evidence in English. May I now ask the witness to take the stand and, Mr. President, may I ask that the witness be called upon to make both the declarations provided for in the Rules—that is, as witness and expert?

The PRESIDENT: The witness will make both declarations.

Mr. GERICKE: In my capacity as a witness I solemnly declare, upon my honour and conscience, that I will speak the truth, the whole truth, and nothing but the truth. In my capacity as an expert I solemnly declare, upon my honour and conscience, that my statement will be in accordance with my sincere belief.

Mr. RABIE: Mr. Gericke, your full names are Jacobus Stephanus Gericke?

Mr. GERICKE: That is so, Mr. President.

Mr. RABIE: You are by occupation a minister of the Dutch Reformed Church of South Africa, and you have your congregation at Stellenbosch in the Cape Province of South Africa?

Mr. GERICKE: Yes, Mr. President.

Mr. RABIE: You have been a Minister of that Church for 27 years, 19 of which have been spent at Stellenbosch—is that correct?

Mr. GERICKE: Yes, Mr. President.

Mr. RABIE: You are also Chairman of the Council of the University of Stellenbosch?

The PRESIDENT: Is that correct, witness?

Mr. GERICKE: That is correct, Mr. President.

Mr. RABIE: You are furthermore Vice-Chairman of the Dutch Reformed Church Synod in South Africa, the Cape division thereof?

Mr. GERICKE: That is correct, Mr. President.

Mr. RABIE: And you are at present Vice-Chairman and have for 20 years been a member of the General Missions Commission of that Church—is that right?

Mr. GERICKE: That is correct, Mr. President.

Mr. RABIE: You are a member of the Federal Council of the Dutch Reformed Churches of South Africa, which is a body composed of representatives of the European, Coloured and Bantu Dutch Reformed Churches in South Africa?

Mr. GERICKE: That is so, Mr. President.

Mr. RABIE: You were for some time Chairman of the Students' Christian Association of South Africa, a body composed of students of all sections of the country's population—is that right?

Mr. GERICKE: That is correct, Mr. President.

Mr. RABIE: In 1958 you paid a visit to the United States of America at the invitation of the United States/South Africa Leaders Exchange Programme; you spent some three months in the United States—is that right?

Mr. GERICKE: That is so, Mr. President.

Mr. RABIE: And, during that time, you gave special attention to university administration and race relations—is that right?

Mr. GERICKE: Yes, Mr. President.

Mr. RABIE: You are also a member of the South African Bureau of Racial Relations, a body which studies racial relations in the country—is that correct?

Mr. GERICKE: That is correct, Mr. President.

Mr. RABIE: Mr. Gericke, your office as Vice-Chairman of the General Missions Commission and as a member of the Federal Council of Dutch Reformed Churches to which you have referred brings you into frequent contact with Bantu and Coloured Ministers and other leaders of the Coloured and Bantu population groups in South Africa—is that right?

Mr. GERICKE: That is so, Mr. President.

Mr. RABIE: Now, Mr. Gericke, before proceeding to put my next

question to you, will you kindly tell the Court what your academic qualifications are; I believe you have a B.A. Degree—is that right?

Mr. GERICKE: That is correct, Mr. President.

Mr. RABIE: And then you have also obtained a degree in theology at the Theological Seminary at Stellenbosch?

Mr. GERICKE: That is so, Mr. President.

Mr. RABIE: Before putting my next and succeeding questions, I would like to put the following points to you. We have had evidence here about the diversity of the population groups in South Africa and South West Africa. The Applicants say that they are particularly concerned with what they call the qualitative aspects of the well-being of the inhabitants of South West Africa, that is, with their moral well-being and social progress. In this regard the Applicants rely on a suggested norm and suggested standards which appear to emanate from a certain premise, and this premise is apparently that the allotment of rights and obligations, burdens and privileges, on the basis of membership in a race, class or group must necessarily be detrimental to the moral well-being and the social progress of some of the inhabitants. In particular, the notion seems to be that the provision of separate institutions and facilities for the different population groups must inevitably be detrimental to such moral well-being and social progress.

Those are the points I wish to put to you and now comes my question. Has the Church of which you are a member to your knowledge gained experience in Southern Africa which has a bearing on the matters I put to you, that is, separate institutions and facilities and, in connection therewith, moral and social well-being? What do you say, Mr. Gericke?

Mr. GERICKE: Mr. President, yes. The Church is not concerned only with what I may call the care of the soul. The Church is also deeply concerned with the moral well-being and social progress of people and has gained extensive experience which, as I see it, is relevant to this matter which has been referred to.

Mr. RABIE: Before developing your answer, will you please indicate to the Court what the fields of activity are and more particularly those in which that experience was gained.

Mr. GERICKE: Mr. President, first of all there is the missionary activity of the Dutch Reformed Church. The Dutch Reformed Church's activities cover all parts of South Africa and a part of South West Africa and extend beyond the boundaries of our country to Bechuanaland, Malawi, Rhodesia, Zambia and Nigeria. I have had the privilege to visit all these mission fields on several occasions, with the exception of Nigeria. Now according to the latest information available, the annual expenditure of the Dutch Reformed Church on missionary work has reached the figure of 6 million rand. As the result of this work, 12 independent daughter Churches have been established in 14 different territories serving 17 different language groups.

Mr. RABIE: Mr. Gericke, your attention has been drawn to a summary of the missionary activities of your Church in the Respondent's Rejoinder, V, at pages 342 to 344. Have you seen that summary?

Mr. GERICKE: Mr. President, yes I have seen the particulars and I think they give a brief and true indication of the nature and extent of the Dutch Reformed Church's activities.

Mr. RABIE: You have referred to missionary activities?

Mr. GERICKE: Yes, I am referring to missionary activities.

Mr. RABIE: In addition to those, can you refer to other activities of your Church?

Mr. GERICKE: Mr. President, the Dutch Reformed Church has always given very special attention to medical care, to hospitalization, and also to education.

With reference to the medical work, the Dutch Reformed Church has been able to greatly extend its hospitalization programme, partly due to an increase of contributions from the White congregations but also because of a State policy to subsidize such church enterprises. As an example I may say that in the course of 6 years the Dutch Reformed Church erected 16 new hospitals in the Transkei alone, as well as several maternity hospitals, clinics, etc., all over the country. Several of these hospitals provide for tuberculosis and leper patients.

With reference to the educational programme, the Church has provided hundreds of schools (I am referring to the Dutch Reformed Church) for primary and secondary education, as well as colleges for the training of teachers, several theological seminaries for the training of Bantu and Coloured Ministers, also schools for the deaf and the mute, and schools for the blind. Also, several youth organizations have been established and in the largest cities, like Johannesburg, crèches and kindergartens care for the children of working mothers.

The Church has also been active in the field of social welfare, for example, in organizing social clubs, special classes, evening classes, and in providing means of entertainment. In addition, the Church has interested itself in the teaching of illiterate adults and in providing literature for the non-White community. At the present moment a special fund for 6 million rand is being raised by the Dutch Reformed Church for providing literature for the Bantu people.

Mr. RABIE: Mr. Gericke, will you indicate briefly to the Court the nature of the internal organization of the Church as far as Coloured and Bantu members are concerned.

Mr. GERICKE: Mr. President, the name Dutch Reformed Church actually indicates a family of churches equal in status. Usually we refer to the Church for the White people as the mother Church. The Churches for the non-White people, which resulted from the missionary enterprises of the Dutch Reformed Church, are referred to as daughter Churches. These daughter Churches are independent and the government of these Churches rests with their respective synods, and the office bearers of these synods are elected by ballot. Of course, the daughter Churches still need the support of the mother Church in the form of financial aid and also personnel.

The personnel supplied include ministers, doctors, nurses, teachers, instructors and administrators. The training of the ministers for the daughter Churches is at present still undertaken by the mother Church, but the aim and policy of the Dutch Reformed Church is that each population group should have its own self-governing Church, wherein each group can be served in its own language and by its own leaders.

The PRESIDENT: Do I understand you, Mr. Gericke, to say that in the daughter Church the synods are elected independently by the members of the daughter Church?

Mr. GERICKE: That is so, Mr. President.

The PRESIDENT: And who are the people who participate in the election?

Mr. GERICKE: The synod comprises a Minister and an Elder from each congregation or parish of this particular daughter church.

The PRESIDENT: Who participate in the election? Who are the electors of the synod?

Mr. GERICKE: The local church councils.

The PRESIDENT: Do they comprise the members of the congregation or are there White members who participate?

Mr. GERICKE: No, they comprise the members of the congregation. In some of the congregations there is still a White missionary, who acts as Minister of the congregation.

The PRESIDENT: Thank you.

Mr. RABIE: But apart from the White missionary, the other members who elect a Minister and an Elder are the respective Coloured and Bantu community?

Mr. GERICKE: Yes, that is so, Mr. President.

Mr. RABIE: Mr. Gericke, will you indicate whether this situation of having separate churches in the Dutch Reformed Church existed from the very beginning, or whether it is a more recent development?

Mr. GERICKE: Mr. President, this pattern of church life is the outcome of historical development. In the course of history several changes of policy took place. In the main it may be said that at first the Dutch Reformed Church adhered to the policy of integration, but since the beginning of the nineteenth century changed over to a policy of separate churches or separate development in the Church. In the beginning the church services were multi-racial, attended by White people, the slaves at that time, and very few Aborigines. The first school was integrated as well but this soon proved to be impractical and it was consequently decreed that the children should be taught in separate schools.

Mr. RABIE: Can you say until when the Church maintained its practice of having integrated or multi-racial services?

Mr. GERICKE: This was the case up till the nineteenth century, Mr. President. By this time it was clear that the results were very unsatisfactory. Very few non-White people became Christians. Furthermore, those who joined the Church had a very inadequate opportunity for full religious experience. They were a mere appendix to the White congregation. They were seated in a separate part of the church and received very little benefit from a service which was attuned to the needs and the background of the White people.

Mr. RABIE: How did this change in church policy come about? Could you indicate that very briefly?

Mr. GERICKE: Mr. President, the early nineteenth century brought a new awakening of missionary zeal all over the western world. It was at this time that the great missionary societies were established, for example, the London Missionary Society and also the British and Foreign Bible Society for the propagation of the gospel, and all this had a very great influence on the missionary zeal in South Africa and also in our Church, with the consequence that very special efforts were made to reach as many non-White people in the Cape as possible. It was at this time that special and separate services were held for the Coloured community and also separate churches were built to provide for the spiritual need of an increasing number of non-White people who started joining the Church.

Mr. RABIE: To what did that lead?

Mr. GERICKE: This led to a resolution by our synod, a resolution in the late 1850s, officially permitting separate services for the Coloured community, and eventually, about a quarter of a century later, to the establishment of a separate, independent and self-governing Church for the Coloured people of the Cape.

Mr. RABIE: Mr. Gericke, from your study and knowledge of the matter what would you say were the main considerations in this regard, that is about having separate churches for the different groups?

Mr. GERICKE: Mr. President, as appears from history, it became quite clear that the difference in culture, language, level of intellectual development and racial background, demanded a different method of approach, even an adapted form of preaching; also, new hymns to serve as a means of expression of religious experience.

In addition, there was no real communion, spiritual communion, between the White and non-White members of the congregations, chiefly due to the absence of social intercourse in ordinary life. Friction occurred on occasion between groups as a result of a feeling of frustration on the part of the Coloured people who found themselves in a minor position in the Church. At that time there was a growing desire for separate services and separate churches on the part of leading members of both groups.

Mr. RABIE: What was the significance of the establishment of that first separate church for Coloureds?

Mr. GERICKE: Mr. President, this marked the beginning of a new pattern in our church life, namely the establishment of separate churches for the Bantu people as well. In the course of time, as I have said before, 12 such daughter churches were established in the Republic and beyond.

Mr. RABIE: Could you say very briefly, you have already referred to this, how the churches are governed and how they function on the local parish level.

Mr. GERICKE: Mr. President, as I said before, these daughter churches are completely independent, the highest authority being the different synods, and these synods comprise Ministers and Elders from the different congregations. On the local or parish level the Minister and the Church Council regulate the matters pertaining to the spiritual welfare of the congregation.

Mr. RABIE: Now, does the independence of the daughter churches imply that there is no further relationship with the mother church?

Mr. GERICKE: Mr. President, apart from the financial and other aid to which I have referred, I wish to point out that there are various channels of communication, for example, the Federal Council of the Dutch Reformed Churches. At this top level, the Federal Council provides the opportunity for discussion of matters of policy for the whole Church. Representatives from all the churches have equal authority and privilege on this Council. The Federal Council also serves as a means of expressing the unity of the Dutch Reformed Churches.

Mr. RABIE: Now, how is membership in the various churches regulated, that is, the mother church and the daughter churches?

Mr. GERICKE: Membership is regulated by the local church councils. However, it is an implied understanding among the different Dutch Reformed Churches that each admits to membership those belonging to the ethnic group concerned.

Mr. RABIE: Now, how does that principle work out in practice? Could you say it briefly?



Mr. GERICKE: Mr. President, experience has shown that members of a group join their own church, the only exception being White missionaries who become members of the congregation they serve. Otherwise, I know of no case of a Bantu or Coloured person who has become or even wanted to become a member of the White Church.

Mr. RABIE: Now, Mr. Gericke, would you describe what you consider to be the fruits of this system of having separate churches for the different groups?

Mr. GERICKE: Mr. President, before dealing specifically with this question, I wish to point out that there has been in recent years a very substantial increase of membership in the Dutch Reformed daughter churches. During the past 15 years the membership has been doubled, which would seem to indicate that this system has some appeal for the people.

Now, coming to the advantages, the experience of the Dutch Reformed Church has shown that the adherents desired no change in this arrangement and that this system is beneficial to the adherents of the Church.

First of all, this system provides full opportunity for self-development for the members of the daughter churches. All offices are open to them. A new stimulus is provided for development of their own leaders and the management of their own affairs. This has brought about a more positive attitude and a new sense of enterprise and responsibility on the part of the members of the daughter churches. Furthermore, this system has stimulated co-operation and removed possible occasions of friction.

The separated churches realize and appreciate the fact that they are not merely an appendix of the White Church but churches equal in status. This has really engendered a spirit of co-operation, of mutual respect and of neighbourliness. They can now meet their White brothers in the church as equals. The present relationship between the mother and the daughter churches is one of mutual respect and readiness to co-operate.

Mr. RABIE: Now, could you give us an example of this spirit of co-operation?

Mr. GERICKE: Mr. President, first of all I may say that there is an increasing interest in the welfare of the daughter churches, a fact which is reflected in a substantial increase of contributions, financial and otherwise. Let me illustrate with one example.

When I became a Minister of the Church of Stellenbosch about 19 years ago the annual contribution of that particular congregation for missionary work was round about £2,000. In 1964 the annual contribution was £15,000. In this same period the number of students of the University of Stellenbosch, the local university, who volunteered for missionary work during their weekends increased from 100 to 800 young people who go out on Saturdays and Sundays to do this work.

Mr. RABIE: Now, Mr. Gericke, you have mentioned some advantages of the system. Are there any others to which you wish to refer?

Mr. GERICKE: Mr. President, perhaps the most important fact is that the daughter churches have become less and less dependent on the mother church, even financially. This autonomy or independence is reflected, among others, by the fact that these daughter churches are now launching their own campaigns of evangelization beyond the boundaries of their own congregations and their own countries.

All these factors must have contributed to giving the members a new sense of self-respect and independence.

But, Mr. President, to me a point of supreme importance is this, that in this set-up the feeling of human dignity must come into its own. Where you have independent self-governing churches and communities, the requirement that one must love one's neighbour as oneself becomes easier of fulfilment than might otherwise be the case.

Mr. RABIE: Now, what, in your opinion, would be the results if there were to be no separation in the church?

Mr. GERICKE: Mr. President, it would cause a disruption of the orderly situation which now exists in the Dutch Reformed Churches, and orderliness is of supreme importance to the Church. You cannot preach the Gospel in a disordered society where there is tension and friction. It would also lead to an unfair competition in the church organization which would exclude many non-White members from leadership and consequently cause friction, frustration and even bitterness. In short, it would nullify the advantages which resulted from this particular system in our Church.

Mr. RABIE: Now, does your Church apply the same principle of separation in its missionary work in South West Africa?

Mr. GERICKE: Mr. President, yes it does, but I must add that the Dutch Reformed Church has only recently commenced missionary work in South West Africa. However, the first independent Dutch Reformed Church was established in 1962 and this church is growing very rapidly.

The PRESIDENT: Where was it established?

Mr. GERICKE: Windhoek, Mr. President.

Mr. RABIE: Mr. Gericke, do you know whether the churches of longer standing in South West Africa also apply this principle of having separation in their churches?

Mr. GERICKE: Mr. President, I am not in the position to give precise details of their organization at top level but I know that on the local or parish level the groups are served separately. The Evangelical Lutheran Church, for example, has developed a separate church for the non-Whites parallel to that of the Whites. In this non-White church each group is served in its own language, necessitating up to three successive services in one church in Windhoek on a Sunday. The Hereros have broken away from the other Christian churches of the Territory and have formed their own so-called Uruwana Church, a church which contains certain elements of ancestor worship, etc. The Finnish Lutheran Church operates among a homogeneous people. The Ovambo people have formed the Ovambo-kavango Church; this church is wholly indigenous, it has an Ovambo Bishop at the head, 69 Ovambo Ministers, 150 Evangelists and round about 150,000 adherents. The Roman Catholic Church follows the principle of serving its adherents in their own language.

Mr. RABIE: Now, Mr. Gericke, in your opinion, have the experience and the practice of the church had an influence on the currents of thought in South Africa with regard to the racial situation?

Mr. GERICKE: Mr. President, over a period of several decades the Dutch Reformed Churches in South Africa have been very deeply involved in race relations and as the result of this involvement numerous conferences have been organized on a nation-wide basis, dozens of books dealing with this subject have been written by churchmen and pronouncements by numerous church leaders, Roman Catholic and Protestant, English and Afrikaans, have been published.

The Dutch Reformed Church has, furthermore, drawn its best theologians into commissions, which, without intermission during the past three decades, had to carry out the specific charge to study the racial question in the light of the Scriptures and Christian practice and to advise the church thereon. Every synod during the past 25 years has given earnest thought to this matter and to the responsibility and duty of the mother church towards the non-White churches in the country.

The church has, furthermore, co-operated very closely, and remained in touch with scientific and other bodies which have made it their object to study the racial problem. All these efforts by the church must have had a very substantial influence on the currents of thought in South Africa.

Mr. RABIE: Now, can you say, has the church, in the light of its experience, actively sought to influence the State, in the formulation of policy?

Mr. GERICKE: Mr. President, yes; to put it briefly, the church has, on many occasions, urged the Government to follow a policy of separate development. I am speaking of the Dutch Reformed Churches. When I speak of the Government, I refer not only to the present Nationalist Government but also to its predecessors.

Mr. RABIE: Mr. Gericke, your attention has been drawn to recent resolutions adopted by the church in this regard and which are set out in the Respondent's Rejoinder, V, pages 344-346. Have you seen those passages? Do they correctly reflect what happened in that regard?

Mr. GERICKE: Yes, they do.

Mr. RABIE: Is there anything more you can say or wish to say in that regard?

Mr. GERICKE: Mr. President, perhaps I may refer to just one resolution quoted by the Respondent. At the 1950 Convention at Bloemfontein, the Government was urged to appoint a special commission of experts to investigate this whole problem. It is well known that as a result of the Recommendations of this Commission—the so-called Tomlinson Commission—certain progressive steps were taken in the Transkei and also in other connections.

Mr. RABIE: Now, why, would you say, are the churches, including the Dutch Reformed Church, so intensely interested in the political problem, and, can you say whether this interest is compatible with the spiritual nature and the prophetic charge of the Christian church?

Mr. GERICKE: Mr. President, first of all, I must draw attention to a fact which is accepted by all Christian churches: namely that it is the duty and the responsibility of the church to do everything in its power to improve human relations and to promote law and order, justice and equity. When the Dutch Reformed Church, in this broad context, takes an interest in matters of a political nature, she is acting in accordance with the faith and the practice of all Christian churches.

Furthermore, the church's duty is emphasized in a country where race relations are an issue. Now, from the point of view of the Dutch Reformed Church, the following must be taken into account. In a country where tension and friction are allowed to develop, the church can never escape the consequences. It is very difficult, if not impossible, to preach the Gospel in a disordered society. Therefore, for practical reasons, Mr. President, the church must encourage a policy or policies, which, according to the viewpoint of the church, tend to bring about a just and peaceful co-existence of the groups and the races.

Now, as I pointed out before, the Dutch Reformed Church believes that the policy of separate development offers the best solution.

Mr. RABIE: Mr. Gericke, your attention has been drawn to pages in the pleadings, amongst others, the Respondent's Rejoinder, V, at pages 346 and following, which show that churchmen have expressed conflicting views in regard to the policy of separate development. You have seen those pages, have you not?

Mr. GERICKE: That is correct.

Mr. RABIE: And do they reflect some of the views that have been expressed on this whole problem?

Mr. GERICKE: Yes, that is so.

Mr. RABIE: Now, my final question is this. Is the attitude of your Church, as expressed by churchmen, based on any peculiar theological outlook or any scriptural interpretation put in issue by other churchmen?

Mr. GERICKE: Mr. President, no; it is basically a matter of proper appreciation or understanding of the facts of the total situation. Once it is appreciated and accepted, as we firmly believe, that a policy of integration will lead to—and I am speaking figuratively now—either suicide or homicide of certain groups and to a fatal set-back in the advancement of the country and its people, there can be no quarrelling with the morality of a viewpoint that such consequences are to be avoided at all costs. I think that it is largely because of a different understanding of the situation that churchmen have been led to express divergent views on this particular policy and not because of a difference of opinion on moral concepts and Christian ethics.

Mr. RABIE: Thank you. Mr. President, that concludes the questions I wish to put to this witness.

The PRESIDENT: Very well Mr. Rabie. Mr. Gross?

Mr. GROSS: Mr. President, if the Court please, the Applicants would appreciate the opportunity to cross-examine the witness. Would it be convenient, to the Court, Mr. President, to allow me to gather my notes together during a brief recess in order to address questions in orderly and organized form to the witness, or does the President wish me to continue now, which I would be glad to do?

The PRESIDENT: Mr. Gross, the Court is always willing to meet the position of counsel as much as is possible. If the Court adjourned now for 20 minutes and took the usual break during that period of time then, when the Court resumed, it would expect the cross-examination to be carried to a conclusion. If that is convenient the Court will now adjourn for 20 minutes.

Mr. GROSS: Thank you, Mr. President.

The PRESIDENT: The hearing is resumed. Will the witness come to the podium? Mr. Gross?

Mr. GROSS: Dominie Gericke, I shall ask questions, with the Court's permission, which under the circumstances will, in some cases, reflect my scribbled notes during the course of your testimony. If I misquote you, or attribute to you comments or views which you have not intended to express and which I have misunderstood, then I would ask you please to correct me. It will be inadvertent in any such case, as I do not have to assure you.

If I understood, Dominie Gericke, in response to one of the final questions addressed to you by learned counsel you referred to differences of opinion which have arisen in, and I suppose among, the churches and

church leadership. You have attributed such differences which conceivably exist to appreciations of fact rather than to differences of view concerning moral or religious tenets or beliefs. Did I understand you correctly in that respect, Sir?

Mr. GERICKE: Yes, Mr. Gross.

Mr. GROSS: In order that the Court may have the benefit of the record and the attitudes of leaders in this very important field, which, as a layman, I hesitate very much to engage in anything that would resemble a colloquy, I should really like to address questions to you for the benefit of the Court's understanding of the matter. I should like to place before you a number of comments and policy statements on matters which are covered within the scope of your testimony, with the request that you would be good enough to explain whether you agree or disagree, and elaborate where you wish, subject to the Court's permission, in order that the Court may fully understand the purport of your testimony and the facts which I shall attempt to elicit with regard thereto. In the first place, may I ask you, Sir, whether you can advise the Court concerning the approximate number of non-Whites who are members of, or profess adherence to, the Dutch Reformed Church on the one hand, and other Christian churches on the other—the principal churches I am referring to in the latter connection? Could you explain the relative number of adherents in those cases?

Mr. GERICKE: Mr. President, the total number of adherents of the Dutch Reformed Churches—that is in the Republic and outside the Republic—is about a million and a quarter.

Mr. GROSS: Did I hear you say a million and a quarter?

Mr. GERICKE: Yes, in and outside the Republic, that is the total number of adherents.

Mr. GROSS: Perhaps for the sake of clarity, could I, with the Court's permission, read to you these figures, which are from the 1951 census, which set forth the number of non-White (under the classification here of "Bantu") adherents to certain churches in the Republic? The citation, Mr. President, is from Union Statistics for 50 years (that is 1910 to 1960), published in the Union of South Africa by the Bureau of Census and Statistics at Pretoria, and the reference is to page A.29 of that volume, and the figures which I shall mention are as follows: with respect to the *Nederduits Gereformeerde Kerk* (that is, the Dutch Reformed Church), in 1951, in round numbers, 300,000 (the number here is 297,000 plus); the Anglican Church, in round numbers, 580,000; the Methodist Church, in round numbers, 1 million; the Roman Catholic Church, in round numbers, 460,000. On the basis of such information as you may have, do you have any comment with respect to the extent, if any, to which these figures or the ratios have changed since 1951?

Mr. GERICKE: Mr. President, are those figures for Bantu people or the Coloured people?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: For the Coloured people?

Mr. GROSS: These are Bantu.

Mr. GERICKE: Because the adherents of the Dutch Reformed Church among the Coloured people alone is 336,000 and I was giving the total figures of Coloureds and Bantus.

Mr. GROSS: I am sorry if I misled you. These figures which I have read from this page of the report are under the heading "Religion—Bantu".

These are Bantu figures, as the classification is in the census. Do you have any comment with respect to these figures? Do they, so far as you are aware at the present time, correspond to the ratio of Bantu and non-White African membership in these various churches?

Mr. GERICKE: Mr. President, I have information that during the past 15 years the adherents of the Dutch Reformed Church amongst the Bantu people doubled itself; especially during the past 5 to 7 years there was a substantial increase of the adherents of the Dutch Reformed Church.

Mr. GROSS: So that that would be roughly now, instead of 300,000 . . .

Mr. GERICKE: It would be more.

Mr. GROSS: Roughly 600,000?

Mr. GERICKE: Yes.

Mr. GROSS: Do you happen to know, Sir, whether there has been a similar increase of membership on the part of Bantu in the other churches I have mentioned—the Anglican, the Methodist or the Catholic?

Mr. GERICKE: Mr. President, I have not got any figures on the Roman Catholic Church, but I know that there was a very slight increase, I believe, of 1 or 2 per cent. in the Methodist Church. There was a slight decrease in the Presbyterian Church. The only Church that doubled its numbers was the Dutch Reformed Church.

Mr. GROSS: Now, roughly, then, if I may simply deal with approximations here, we start with an estimated, let us say, 600,000 Bantu adherents to the N.G.K., that is the Dutch Reformed Church; approximately, say, 600,000 or similar number in the Anglican Church; approximately 1 million in the Methodist Church and approximately half-a-million in the Roman Catholic Church. Now would you explain to the Court, if it is within your knowledge, Dominie Gericke, what the policy and practice of the Roman Catholic Church is with respect to the separation on racial grounds in services?

Mr. GERICKE: I am not well acquainted with the Roman Catholic Church in South Africa. I had discussions with a Roman Catholic priest and I know that in South West Africa the Roman Catholic Church serves the different racial groups according to language. They have different services for people of different language groups.

Mr. GROSS: That is a matter of servicing those who speak one language and not another. In respect of the racial rather than linguistic distinctions, do you know whether it is correct or not that the Roman Catholic Church in South Africa has not established separate churches on a racial basis? Is that correct?

Mr. GERICKE: No, it is against the nature of the Roman Catholic Church, as you know. It is one church all over the world.

Mr. GROSS: And with respect to the Anglican Church in South Africa and in South West Africa, if you are familiar with that as well, can you tell the Court whether or not the Anglican Church has established indigenous churches?

Mr. GERICKE: No, they have not, Mr. President.

Mr. GROSS: Can you tell the Court what the practice or policy of the Anglican Church is—if it has a policy in this respect—with regard to the members of different races attending the same services?

Mr. GERICKE: Mr. President, in a few places (and I am referring now to Cape Town and to one Anglican Church in Johannesburg) they have multi-racial services, but in many places they have separate services for the separate communities.

Mr. GROSS: So far as you are acquainted with the official church policy of the Anglican Church, are the policies the same as or similar to those which govern the Dutch Reformed Church with respect to separate churches based upon racial distinction?

Mr. GERICKE: No, Mr. President. The proclaimed policy is not the same. The proclaimed policy of the Anglican Church is that of a multi-racial church.

The PRESIDENT: How do they carry it into effect?

Mr. GERICKE: Mr. President, it all depends. There are places—I am referring now to places like Port Elizabeth, East London, Durban, Bloemfontein—where they have separate services for the non-White members of their church.

Mr. GROSS: Would you say, Dominie Gericke, that that is a matter of principle or policy of the church, or is that a matter of practical experience, as the case may be?

Mr. GERICKE: Mr. President, it is not a principle of policy of the church, it is a matter of practical experience, as I see it.

Mr. GROSS: The testimony which you gave in Court related, if I understood it correctly, Sir, to the frictions and tensions which might arise, could arise, or perhaps have arisen, as a result of multi-racial participation in services or in the same church. Is that a correct version of your testimony, Sir?

Mr. GERICKE: Mr. President, could that question be repeated?

Mr. GROSS: I would certainly be delighted to repeat it, Mr. President, with your permission. The question was whether I correctly paraphrase your testimony when I say that I understood you to state that tension and friction have arisen or could arise by reason of participation by different races, in the same services or membership in the same church. Is that correct?

Mr. GERICKE: That is correct, Mr. President.

Mr. GROSS: And that I further understood you to testify that it is part of the function and a necessity for the church to preach the gospel in an atmosphere free of tension and frustration—that was your testimony was it, Sir? Could you explain for the benefit of the Court and to clarify this very important question, what the churches, the Roman Catholic Church and also the Anglican Church, what their reaction is or attitude toward arguments of this sort with respect to establishing separate services or separate churches in their own communions—do you understand my question, Sir?

Mr. GERICKE: What their arguments are . . .

Mr. GROSS: What are their reactions to the contention that frustration and tension arise through multi-racial services or churches which impede the mission of the church?

Mr. GERICKE: There is a wide division of opinion in the Anglican Church.

Mr. GROSS: There is a wide division within the Anglican Church?

Mr. GERICKE: Oh yes, within the church.

Mr. GROSS: Is that division based upon or does it reflect any moral or ethical considerations?

Mr. GERICKE: I am afraid I am not in a position to answer that question.

Mr. GROSS: I will come back if I may to this same question in respect of the Dutch Reformed Church, of which, of course, you are a distin-

guished leader and I would however, first, if I may, ask with respect to another aspect of your testimony—the reference was made by counsel in his questioning to you as to whether or not the Dutch Reformed Church has sought to influence the State to follow the policy of separate development or otherwise influence the State in its policy in racial matters; I believe that your answer was that it is, indeed, the duty of the church to influence the State and you referred, if I understood you correctly, to the question of separate development and the support of the Dutch Reformed Church, of separate development as a policy and the influence brought to bear by the Church, or sought to be brought to bear by the Church on the State to further the policy of separate development. Is this a correct version of your testimony?

Mr. GERICKE: Yes.

Mr. GROSS: In connection with this question of the policy of the Church and State regarding separate development, I refer to the Rejoinder, V, page 344, which is a page in the Rejoinder to which counsel for Respondent has drawn your attention and with which you said, I believe, that you were familiar. I call attention particularly to the April 1950 conference which is referred to on that page of the Rejoinder, in which a statement is made by an author reporting on the conference, Dr. Visser 't Hooft of the World Council of Churches, with regard to the view of the Federal Mission Council in April 1950 at the Bloemfontein conference, to which you have referred in your testimony—the following statement, which I shall read from that page of the Rejoinder:

“It was emphasized that the rights of every man were to be respected and that permanent subordination of one group to another should not exist in any realm of life. The only way in which these aims could ultimately be realized was by total separation, which would mean the conversion of the native areas into true homelands of the Bantu with full opportunity for development and self-government and the replacing of the Bantu in the present economic structure, which would entail great sacrifice on the part of the European.” (V, p. 344.)

I should like to ask you, Sir, whether the doctrine or policy of separate development which you have testified the Dutch Reformed Church supports and seeks to influence the Government to develop, to promote, envisages, as this resolution implies, total geographical separation and the removal at great sacrifice of the non-Whites from the White areas and the establishment of separate political and economic entities. Is this the doctrine of separate development which the Dutch Reformed Church espouses—total separation of the races, as reflected in this statement from the Rejoinder which I have read?

Mr. GERICKE: Mr. President, that particular conference was a conference of the Dutch Reformed Churches and different other organizations—the 1950 conference, is that correct?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: The Dutch Reformed Church has never to my knowledge made a proclamation about total separation. There is no such doctrine in the Dutch Reformed Church as far as I know. I have been testifying about separate churches and the influence of the church on the Government for separation but there is no doctrine or proclamation of or by the Dutch Reformed Church for total separation and I am not a political expert to know whether this is viable or not.



Mr. GROSS: Well, I think the Court will appreciate, Sir, that you are not here as a political or economic expert—the question is to establish to the best of our ability for the benefit of the Court, the notion, the concept of the doctrine of separate development which your Church is espousing and seeking to influence the Government on—in that context and for that purpose, not as an economist or as a politician . . .

Mr. GERICKE: I am sorry.

Mr. GROSS: If total separation is not envisaged, what is the policy of separate development—how would it be defined by the Church in respect of the question we have discussed?

Mr. GERICKE: Mr. President, the Church has had a certain experience in its own work and the Church's experience is that if you establish a church say for the Coloured people, or for the Bantu people in the Transkei or for the Malavis in Malawi—if you do that and you give these people the opportunity to run their own church, this engenders a spirit of self-respect and it takes away occasions of friction and you get orderliness in the church. Now the Church has passed this principle on, if I may put it that way, to the State in advocating this policy. How this is to be worked out is very difficult for me to say, as I said I am not a politician.

Mr. GROSS: To avoid misunderstanding is your answer intended to say that the only respect in which the Church seeks to influence State support or promotion of separate development is in the religious life of the nation—did I understand you correctly?

Mr. GERICKE: No, also in the political life.

Mr. GROSS: Therefore this is the aspect of the matter on which I would seek elucidation for the benefit of the Court—in what respect does the Church, the Dutch Reformed Church, seek to influence the Government with respect to political or economic separate development, if the Church has that intention at all. Do you understand my question, Sir? Would you explain what the viewpoint of the Dutch Reformed Church is with respect to separate development in the political field, let us say, by way of taking an example, the promotion of a franchise for the non-Whites—if you wish to take that example—take any other example you wish, if you do not wish to take that one at the moment.

Mr. GERICKE: Mr. President, I am afraid I do not understand this question—what exactly does counsel want me . . .

The PRESIDENT: I can understand that you cannot answer the question, it is a little long, but Mr. Gross, is not the question you are seeking to have answered: what policy views have been conveyed by the Dutch Reformed Church to the parties in power in South Africa?

Mr. GROSS: Yes, Sir, with respect to political aspects.

Mr. GERICKE: Thank you, Mr. President. At that particular conference the Dutch Reformed Church in conjunction with other bodies, F.A.K. and S.A.B.R.A. and other organizations, said in effect to the Government that the conference believes that a policy of separate development is the only just solution to this particular problem. This particular conference also said that integration was no solution and just passed this on to the Government that, it was the opinion, the conviction of this conference, that in a policy of separate development there would be ample opportunity for all sections to develop to the utmost, politically, economically, etc.

Mr. GROSS: Now, the question that I asked which I shall state briefly—

with regard to the political aspects of separate development, has the Dutch Reformed Church endorsed or promoted any policy or point of view?

Mr. GERICKE: The Dutch Reformed Church has passed on a principle to the Government but not any particulars.

Mr. GROSS: Now therefore, if I understand you correctly, the Dutch Reformed Church as such has not taken a public position with regard to such matters as participation by individuals, non-White as well as White, in the franchise, in the voting rights of the country—has the Church taken a position publicly with respect to that question?

Mr. GERICKE: The Church has said, I think it was at that same conference or I think it was the 1945 conference or 1956, I am not sure now, to the Government, that no people or race which is worth its keep can be satisfied without any political rights, therefore the Government must see to it that all these races get a part of the country, that is separate development, so that they can develop to the full, also politically.

Mr. GROSS: Now with respect to the parts of the country in which the Whites and non-Whites both live and work in the same economy—let us say the urban problem as it is sometimes called—has the Dutch Reformed Church taken a position with respect to whether or not the non-Whites in the urban areas should have a vote or direct voice in the Government?

Mr. GERICKE: In the Government, no.

Mr. GROSS: It has not taken a position with respect to that. With respect to the economic aspects of separate development, has the Dutch Reformed Church taken a position with regard to, let us say specifically, the Job Reservation Acts—it has, you say?

Mr. GERICKE: The Dutch Reformed Church—there was a declaration by a number of leaders—all the Moderators and Secretaries and Assessors of the different synods—a declaration in 1961, I believe—and these leaders referred to job reservation, as far as I can remember, and told the Government that this should be carried out with the least possible—I am looking for the word, Mr. President—injustice is not the right word—infringement on the rights of people; I think I am . . .

Mr. GROSS: Paraphrasing, perhaps?

Mr. GERICKE: Yes, paraphrasing.

Mr. GROSS: But the sense of it was that the Job Reservation Act legislation should be applied, but with justice?

Mr. GERICKE: Yes.

Mr. GROSS: There was no position taken, was there, or was there a position taken, not necessarily at that conference but at any time in recent history or currently against the principle of job reservation?

Mr. GERICKE: Against it, no.

Mr. GROSS: Is there a difference of view among Church leaders in the Dutch Reformed Church regarding job reservation as to a position which the Church should take; is there a difference of view; are some in favour of it, some opposed to it, among the Church leadership?

Mr. GERICKE: About taking up a position?

Mr. GROSS: Yes.

Mr. GERICKE: Yes, I would imagine there are some of the ministers who think that the Church should take up a position; I do not want to name these people, but I know them.

Mr. GROSS: Well, I will perhaps name one or two in due course, but I was anxious to obtain your view, if you care to express it, for the

benefit of the Court with respect to this matter—your own personal view.

Mr. GERICKE: My personal view?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: Mr. President, I am not in a position to judge all particulars; as I said before, I am not a political expert, but what I know is this: that rights of people must be protected; the rights of people, say, in Ovamboland, in the Transkei, must be protected; the same applies to, say, Johannesburg or Cape Town—that is one point. For example, I know that many of the White traders, people who are doing certain jobs in the Transkei—cannot go on with that now, because those jobs are reserved for the people in the Transkei. I think the same principle applies also, say, in Johannesburg or Cape Town, the mines or in factories; it is a question of certain privileges and rights that should be protected on both sides.

Mr. GROSS: Do you mean, Sir—there has been some testimony on the part of earlier witnesses to the effect that the protection of, let us say, the Whites in the White economy, so-called, in the South West Africa Police Zone justifies, or indeed perhaps requires, restrictions upon the freedom or promotion of non-Whites, and that—I think the word “reciprocity” was used to describe it in the course of questions—by reciprocity White persons will be deprived of freedoms or subject to certain restrictions in the non-White areas. This is the doctrine to which you refer, Sir—the policy?

Mr. GERICKE: That is right, Mr. President.

Mr. GROSS: Now, with respect to those non-Whites who are essential to the economy and remain in the multiracial area, do you apply the same doctrine of reciprocity, and if so, on what basis?

Mr. GERICKE: Are you referring now to the . . . ?

Mr. GROSS: I am referring to the non-Whites who spend their lives in the so-called White economy, and who live there and work there, are born and die there.

Mr. GERICKE: Now Mr. President, one must look at the whole picture, the total picture; the idea is to eventually develop all the Native areas so that there will be ample opportunity for the Bantu in the Bantu areas, ample opportunity—that is the goal that we have in view, and when that building is completed it stands to reason that there will be protection of the Bantu people in those areas, the same as there is protection in the White areas.

Mr. GROSS: That, if I understand you, assumes total separation of White and non-White; that assumes ultimate total separation of White and non-White—is my understanding correct of your answer?

Mr. GERICKE: Not necessarily.

Mr. GROSS: It has been testified, and I do not mean, Mr. President, to draw the witness into the area of economic life, but I am anxious to establish the bounds of the Church doctrine to which the witness has testified in clarifying this issue of what is meant by separate development . . .

The PRESIDENT: Are you asking the Church doctrine, not the witness's personal views, then?

Mr. GROSS: The Church doctrine at this point, Sir; I had asked the witness's personal view; I am now addressing myself, if I may, Sir, to the Church doctrine with respect to the question of total separation, which you testified was not the objective, as I understood it, and this

position of the Church's with regard to the non-Whites who are not during their lifetime to be expected to return to or go to a homeland; what, if anything, has the Church to say about the subjection of that individual or those individuals to the restrictions upon the freedoms, specifically the Job Reservation Act?

Mr. GERICKE: What has the Church got to say on that?

Mr. GROSS: Yes, Sir—if anything.

Mr. GERICKE: No, I do not know of any resolution by the Church on that.

Mr. GROSS: The Church has not, so far as you are aware, Sir, adverted to or taken a position with respect to this matter—that is correct?

Mr. GERICKE: Not as far as I am aware.

Mr. GROSS: With respect to your personal opinion on the matter, what is your view, if you wish to expound it to the Court, with regard to this matter—are you clear, Sir, what I am referring to?

Mr. GERICKE: What my view is on the Bantu people in the cities . . . ?

Mr. GROSS: Being subject to job reservation or other restrictions upon their ability to rise above a certain imposed ceiling.

Mr. GERICKE: Let me put it this way. Mr. President, as I see it, if this policy of separate development is taken to the final goal—what the final goal might be I do not know, but if it is taken to the final goal, then it means that in a certain or certain parts of South Africa full rights and privileges will be granted, say, to the Bantu people, and of course those privileges will be protected in those parts, and in those parts which belong to the White people certain privileges will be protected for the White people; that is as I see it.

Mr. GROSS: So that, if I may, with the President's permission, press you just one more notch, with respect to the individual who by the hypothesis of my question lives, works and dies in the so-called White economy and is subject throughout his life to the restrictions which we have mentioned, do you, or do you not, have a personal view with respect to that situation?

Mr. GERICKE: Mr. President, all depends—does this question mean *ad infinitum*?

Mr. GROSS: During his lifetime, yes.

Mr. GERICKE: For the future as far as we can see, if you mean that?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: As I said, I am not a statesman, but I am going to try to answer this question, Mr. President.

Mr. GROSS: Thank you, Sir.

Mr. GERICKE: Once the Bantu or Bantustans have been developed to the full and there is a homeland for the Bantu people, the different Bantu peoples of South Africa, and things are settled, and there is this mutual understanding, I think it will be much easier to make some of these regulations less offensive, if that is the word. You see, we are busy erecting a building, and when you erect a building you have got to have scaffolding to finish this building, but when this building is completed the scaffolding will be removed, and I think much of the scaffolding will be removed in the near future.

Mr. GROSS: Could you explain the necessity for these restrictions during what we may for the sake of this colloquy between us call an indefinite transitional period, if you will accept that phrase; can you explain, Sir, or how do you explain in terms of your answer the necessity for these

restrictions upon the advancement of the non-White in the area of the White economy?

Mr. GERICKE: It is very difficult to say; I do not know, but I can think of one reason. You know we have about a million immigrants, many of them illicit, from territories all around South Africa swarming to the cities. Now, you can just imagine, if there is no protection, you will get a situation of strife and tension which would make it impossible for any government to keep order in the country.

Mr. GROSS: These immigrants are White immigrants?

Mr. GERICKE: No.

Mr. GROSS: They are non-White immigrants?

Mr. GERICKE: They are non-White immigrants.

Mr. GROSS: Could you explain, Sir, in what respect it would be difficult to keep order if these immigrants or other non-White persons who had lived there a long time, let us say, were free to rise on the economic ladder according to their innate capacity?

Mr. GERICKE: Can I, Mr. President, if the Court will allow me, ask, can you imagine a position, say in Belgium or Switzerland, a million immigrants from any other country who are shoved on the labour market in, say, Switzerland, people who come from other countries and who perhaps are willing to do certain jobs, and would have a free choice—say, for example, in the factories—and people are driven out of their jobs in that particular city or in that particular country as a result of this influx of say a million labourers from other places, can you imagine what would happen? Well, I cannot; I am sorry.

Mr. GROSS: May I invite you now to transpose the question to South West Africa, which of course as you know is the subject of these proceedings. In South West Africa, it has been testified and it is undenied in the record, that Job Reservation Acts and policies prevail as in the Republic. Are you familiar enough with the situation in South West Africa to comment, from your personal point of view and analysis as a leading churchman, theologian, on the restrictions which are imposed upon the freedom of economic advancement in South West Africa, imposed, that is to say, upon the inhabitants of the Territory, non-White inhabitants?

Mr. GERICKE: I do not know any particulars about South West Africa as far as the economy is concerned.

Mr. GROSS: Does the Dutch Reformed Church, so far as you are aware, Sir, have any policy with respect to the separate development in South West Africa?

Mr. GERICKE: Pronounce any policy?

Mr. GROSS: Yes, with respect to the policy of separate development in South West Africa, has the Dutch Reformed Church issued any pronouncements on that subject, or taken a position on it?

Mr. GERICKE: No, as I have said before, the Dutch Reformed Church has passed on a general principle, nothing more, not mentioning South West Africa, or South Africa, or Transvaal, or Natal for that matter.

Mr. GROSS: I should like, if I may, now to turn to a statement with regard to this matter by Dr. Ben Marais. Are you familiar with the career and works of Dr. Ben Marais, Dominie Gericke?

Mr. GERICKE: He is a personal friend of mine.

Mr. GROSS: I will refer to his work, well known I believe it is, *The Two Faces of Africa*, published in Pietermaritzburg in 1964, and read, with

the Court's permission, the following from page 66 of Dr. Marais' book:

"In conclusion, I wish to stress to what degree the possibility of making separate development a workable hypothesis poses a very real moral problem. [And then Dr. Marais goes on to say] Today we in South Africa are wont to justify all forms of discrimination against certain groups, like job reservation, etc., on the ground that it is not unfair because the Coloured groups will ultimately enjoy all these privileges and rights in their own areas as temporary sojourners in our midst they are not really part of White South Africa and cannot claim these rights. They are not citizens but are only allowed in to sell their labour outside the homelands but, and this has become a serious matter of conscience to many in South Africa, if we are convinced that millions of Africans, for instance, are among us to stay, and many were born here, the question arises, may we still condone blatant discriminatory measures like job reservation on the strength of a political philosophy that, in terms of actual trends, shows no possibility of being realized?"

I should like to ask you, if you wish, Sir, to comment on that statement.

Mr. GERICKE: I think I have commented on that a little while ago when I said that adjustments will have to be made in the future. What those adjustments will be I am not in a position to say. Adjustments will have to be made in the future but I can see reasons for the present system, protection, etc., as I have said before.

Mr. GROSS: You have, I think, Sir, used the term "offensive", in quotation marks. Would you agree with Dr. Marais in the description of job reservation as discriminatory, blatant?

Mr. GERICKE: No, I will not agree with him.

Mr. GROSS: Would you regard it as discriminatory?

Mr. GERICKE: It all depends on what you mean by "discriminatory".

Mr. GROSS: Would you care to define the term yourself, Sir?

Mr. GERICKE: Must I define it?

Mr. GROSS: Not if you do not wish to.

Mr. GERICKE: Well, I have got to discriminate in my own house, in my own home, between the younger and older children. In that sense, job reservation and many of these regulations, are discriminatory.

Mr. GROSS: Does the fact that it is imposed have any bearing in your judgment on whether it is blatant or not, or unfair or not? The fact that it is imposed by one group upon another, does that have any relevance to the question in your mind?

Mr. GERICKE: But is there any way to work out a system or a pattern of life other than imposing it?

Mr. GROSS: In that context there have been discussions, if I am not mistaken, and I am sure that you will be quick to correct me if I am wrong, as to the necessity perceived by some of the church leaders for consultation between the groups in the determination of the common destinies. Is that correct, Sir?

Mr. GERICKE: Yes.

Mr. GROSS: Has the Dutch Reformed Church taken a position with respect to such inter-group consultation on a political, economic or other level?

Mr. GERICKE: Has the Dutch Reformed Church taken part in it all?

Mr. GROSS: Taken a position with respect to the desirability or other-

wise of such consultations among various population groups, with respect to working out the economic and political and social pattern of the country of South Africa: has the Dutch Reformed Church taken a position on that?

Mr. GERICKE: The Dutch Reformed Church knows that there is consultation.

Mr. GROSS: What form does such consultation take at the present time? Could you give the Court an example or two, Sir?

Mr. GERICKE: Well, there are the Bantu authorities, Bantu Councils, in the urban areas, and I know of many occasions where the Minister had consultations with these people, with these Councils. It has been reported in our papers week after week.

Mr. GROSS: May I, in this connection, read to you, with the Court's permission, an excerpt from the book by Dr. B. B. Keet, who I assume is well known to you, Sir.

Mr. GERICKE: He was my professor, Mr. President.

Mr. GROSS: Professor Keet's book is entitled *Whither South Africa?*, published in Stellenbosch in 1956, by the University Publishers and Booksellers Limited. I refer in this connection to the following comment by Dr. Keet on page 95 of his book and would invite your comment if you wish to give it for the Court's benefit. He says:

"All parties must have a share in these talks [and he is referring to talks about the general development of the economic and political social system and life of the Republic], not only the White political parties but as broad a representation of non-Whites as possible. To draft a plan that will meet with the approval of the majority of the population there must be co-operation from those who are without doubt most closely concerned. Without their co-operation there can be no lasting racial peace."

Do you agree with Professor Keet that there should be consultations among White and non-White political parties, looking towards the social and economic life?

Mr. GERICKE: Yes, I agree with the principle of consultation.

The PRESIDENT: Did Professor Keet say in that quotation that there should be consultation between the White political parties and political parties which were non-White?

Mr. GROSS: Yes, if I may read the sentence again, Mr. President, for clarification—do you wish me to, Sir?

The PRESIDENT: Yes please.

Mr. GROSS: "All parties must have a share in these talks, not only the White political parties but as broad a representation of non-Whites as possible."

The PRESIDENT: It does not say "non-White political parties" does it?

Mr. GROSS: No, Sir, this does not specify. May I ask, Mr. Gericke, would you distinguish between non-White political parties and other representatives of non-Whites for the purpose of the consultations for which you have expressed a sympathy?

Mr. GERICKE: Must I distinguish between?

Mr. GROSS: Would you distinguish between non-White political parties and non-White groups or individuals? Would you distinguish between political parties and other forms of non-White representation in the consultations for which you have expressed sympathy?

Mr. GERICKE: Yes. I am in sympathy with the principle of consultation. How it is to be carried out I do not know. If it can be political parties, why not?

Mr. GROSS: There is no reason to distinguish between the two so far as you can see, Sir?

Mr. GERICKE: No, no reason for distinguishing.

Mr. GROSS: Thank you. I would like to invite your attention now to another problem which has emerged from the record and has been the subject of testimony, and that is the question of migratory labour. Are you familiar at all, Sir, with the problem of migratory labour in South West Africa as well as in South Africa?

Mr. GERICKE: More in South Africa.

Mr. GROSS: Do you know, Sir, whether the Dutch Reformed Church has taken a public position with respect to the social and other problems which arise from migratory labour?

Mr. GERICKE: The Dutch Reformed Church has brought it to the attention of the Government that the migratory labour causes disruption of family life.

Mr. GROSS: They have merely brought that to the attention of the Government, you say, Sir?

Mr. GERICKE: Yes, we have.

Mr. GROSS: Has there been any comment for or against that?

Mr. GERICKE: Yes, there has.

Mr. GROSS: And is it negative or affirmative, the attitude of the Church?

Mr. GERICKE: Do you want me to go into the problem as a whole, Mr. President? Then I can give the arguments for and against.

Mr. GROSS: May I focus this point because naturally we want to conserve your energies and the Court's time.

The PRESIDENT: But the witness is entitled to answer the question, Mr. Gross.

Mr. GROSS: I thought he had asked one.

The PRESIDENT: I don't think he did. Your question on the Church's attitude was "Is it negative or affirmative?" And he seeks then to give a response to that. If he desires so to do let him do so.

Mr. GROSS: As the President correctly admonishes me, would you please answer the question if that is your desire, Sir?

Mr. GERICKE: Well, Mr. President, first of all, let us move out of South Africa for a while. If a man has to come from Italy to, say, Amsterdam, to work in Amsterdam, as many Italians are doing at the present moment, and he has to leave his wife in Italy, naturally the Church is worried about that situation. Now the same thing is happening in South Africa; many people come from the territories, but not only from the territories within the boundaries of South Africa but also from Basutoland, Swaziland, Bechuanaland, and also from the Rhodesias, many of them come to the cities to find work. Naturally the Church is worried about the position of these people who come from the territories outside South Africa and in South Africa when they have to leave their families behind. But this is not only a South African problem, it is a problem in many countries today. It is a choice between two evils. Either you have to tell these people that you are not going to give them work in the cities or you will have to find the housing for these people who come to the cities for work. You cannot subject the people to shanty towns and



everything that flows from that way of life, so you will have to build the houses.

During the past 10 years, the Government has been erecting houses for Bantu people in the cities for more than 400 million rand, at the rate of 50 houses per day: it is very difficult to cope with the position. More and more of these people are allowed to bring their families with them if they get the houses. But this is the dilemma: it is South Africa's dilemma at the present moment; it is also the dilemma of other countries, as you know.

Mr. GROSS: In respect of the migrant labour problem and policy in both South Africa and South West Africa, I should like again, if I may with the Court's permission, to read a brief extract from Dr. Keet's work which I have quoted, this from pages 68-69, in which, on the subject of migrant labour, Dr. Keet says as follows:

"One of the greatest evils in the broad context of our society arising out of our policy of apartheid is the system of migrant labour. Under the pressure of economic factors, large numbers of non-Whites are forced to go into the service of the Whites and, in this way, they have become an essential part of our economy in industry, mining and agriculture. Employed originally by the gold mines, migrant labour has come to be regarded as an essential part of the future development of industry within the general pattern of apartheid. Since no non-White may have rights or privileges in White areas, he has no chance of acquiring a permanent home and he can be regarded only as a temporary migrant labourer who must, in due course, return to his own territory, whether the reserves or elsewhere. [And, then, I conclude the quote] In this way, the millions who are already working among the Whites are being turned into a non-White proletariat living under most unnatural conditions without the privileges of home or married life."

The testimony with regard to South West Africa is that, on the average, approximately 30,000 migrant labourers are at present in South West Africa. That is undenied in the record and appears in the Odendaal Commission report at pages 39 and 41.

With respect to Dr. Keet's comments as to what he describes as "the evil of migrant labour as a result of apartheid", to refer to his language, do you care to comment either with respect to the position of the Dutch Reformed Church or as to your own personal views, or both?

Mr. GERICKE: Mr. President, I do not agree with Professor Keet that migrant labour is part and parcel of the policy of apartheid.

Mr. GROSS: You disagree with this premise?

Mr. GERICKE: Yes. It is not part and parcel of apartheid.

Mr. GROSS: Would you care to address yourself to that portion of his comment which relates to the two factors: (1) that the migratory labourer may not and does not bring his family with him, and (2) that he is deprived of rights and privileges in the area whose economy he serves. Would you comment on either, or both, of those aspects of the migrant labour system and its workings?

Mr. GERICKE: May I comment on them one at a time, Mr. President?

The PRESIDENT: One at a time.

Mr. GERICKE: Would you please repeat the first?

Mr. GROSS: The first question is with respect to the consequences,

social, political, and, above all, moral in the context of the church or your personal view, with respect to the enforced separation of the family during the period while the migrant labourer is serving, in this case of South West Africa, in the Police Zone.

Mr. GERICKE: Now, is the separation of the family, Mr. President (if I may ask the question because I do not know about South West Africa—I know the position in South Africa), forced upon these labourers?

Mr. GROSS: Well, I do not want to get into an argument with the witness. The undisputed facts on record (I think, Mr. President, there can be no question about this)—on the record and in the testimony—are that the migrant labourer from the north entering the Police Zone or southern sector, as it is called, may not bring his family with him.

The PRESIDENT: Mr. Rabie, do you desire to address the Court?

Mr. RABIE: Mr. President, I regret that I feel that I must object to this line of cross-examination. The witness has said repeatedly that he is not *au fait* with conditions in South West Africa. He is now being cross-examined on economic conditions in South West Africa. I would suggest to my learned friend that he puts his questions to somebody who professes to know something about the economy of South West Africa and I feel that I must point out that my learned friend is putting those questions when the witness has already told him that the system can be regarded, or may be regarded, as an evil. He said that it was a question of choosing the lesser of two evils. Mr. President, in my submission, this can really lead nowhere. What can be the value of examining a person on an economic question when he starts off by saying that he knows nothing of the economy of the country?

The PRESIDENT: Mr. Gross. The witness is qualified as an expert in relation to the attitude of the Dutch Reformed Church in respect of certain aspects of separate development or apartheid. He does not know anything of the facts which you are putting to him regarding South West Africa. Your questions do not appear to be directed to him in his capacity as an expert. They are directed to him in his capacity as an individual witness. Either he gives his evidence as an expert or he gives it as an individual witness in relation to facts that he knows. In what respect is his testimony, either as a witness of fact or as a expert witness, involved in the questions which you are putting to him?

Mr. GROSS: I, Mr. President, would not wish to pursue this line of enquiry. I had not realized as fully that the witness knew so little about the policies with respect to South West Africa. I withdraw the question I asked and I should like to pursue now a line of enquiry with regard to more churchly matters, if I may put it that way, Mr. President?

The PRESIDENT: Well, that may be better, I think.

Mr. GROSS: I may say, however, with the President's permission, that in response to the comments of my learned friend the witness himself testified concerning the church's support of the policy of separate development and I had endeavoured, Sir, to reduce it from an abstraction to a concrete and clear programme so that we could examine the form of support and the object of support of the church to which the witness had testified. I should, however, like with the Court's permission, to pursue the question on a broader basis and that is with respect to the policy of separate development within the church and the views of the church as expressed by certain churches and by the World Council of Churches.

In the first place, I should like to refer to the work of Dr. Visser

't Hooft, to which reference has been made both in the Reply and in the Rejoinder, entitled *The Ecumenical Movement and the Racial Problem* by W. A. Visser 't Hooft, which was published for and by Unesco, the United Nations Educational, Scientific and Cultural Organization in 1954 in Paris. Dr. Visser 't Hooft expresses certain conclusions with respect to what he describes as the (in his own terms, I read from p. 65, with the Court's permission):

"... main points, on which there is a very wide, though not universal, agreement, are the following: [And these are his conclusions, and, with the Court's permission, I should like to read each of these six conclusions and ask the witness to comment with respect to the matter if he wishes] ...".

The PRESIDENT: Could I ask you again, Mr. Gross? You are asking him to *comment*. Either he comments in a personal capacity or in relation to his own knowledge of facts, or he comments in his capacity as an expert. In what capacity are you asking him to comment?

Mr. GROSS: I would appreciate, Mr. President, by your leave, to ask him to comment on either, or both, and I will attempt, first to ask in terms of the doctrine or pronouncement of the Dutch Reformed Church, if any, and then with respect to his personal views as an expert in this field if the witness wishes to respond.

The first is from page 65 of the work I have cited:

"The existence of separate ethnic churches cannot be defended on the grounds of theological principle. Their existence can, under certain circumstances, be justified for practical, pastoral reasons."

Would you, Sir, reflect or advise the Court what, if any, position the Dutch Reformed Church has taken with regard to the question of the defence of the existence of separate ethnic churches on grounds of theological principle?

Mr. GERICKE: Theological and/or practical principles?

Mr. GROSS: Yes, Sir. If I may quote again "practical, pastoral reasons" is the expression.

Mr. GERICKE: Mr. President, I can take you back to many missionary conferences but I want to refer to one, the one at Tambaram in 1938 which said exactly the opposite of what Dr. Visser 't Hooft is saying in that particular passage. There is a difference of opinion about this matter in the churches of the world today, whether it can be theologically justified or practically justified. Now, it is very difficult to distinguish between a theological and a practical reason. If it is necessary to follow a certain road for the benefit of the church, practically, then it would be wrong to say it is theologically wrong to follow that road except if there are definite principles of the Bible, Scriptural principles at stake.

Mr. GROSS: May I ask, Sir, by way of elucidation, if non-Whites are excluded from participation in White services. Are they excluded?

Mr. GERICKE: From participation in White services?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: In the Dutch Reformed Church?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: They are not excluded. Three weeks ago I had between three and four hundred non-White people in my Church at Stellenbosch and the two speakers for the night were a Coloured person and a Bantu Minister. They were not excluded.

Mr. GROSS: Was this, may I ask, as part of or in the course of religious services?

Mr. GERICKE: Yes, it was a missionary week and it was part of a religious service—they were not excluded.

Mr. GROSS: May I refer to it, Sir, as a multi-racial service—is that term acceptable to you?

Mr. GERICKE: Yes, for that . . .

Mr. GROSS: Now, are multi-racial services permitted on certain stated occasions or in connection with certain events?

Mr. GERICKE: Yes, they are permitted.

Mr. GROSS: Are they otherwise prohibited?

Mr. GERICKE: There is no church law prohibiting corporate worship in our church.

Mr. GROSS: Would you say, Sir, that the admission of a non-White person at his own request or volition to a multi-racial service is consistent with the objective of avoiding strife, disorder, tension which you have posed before as a reason for the establishment of separate churches?

Mr. GERICKE: Whether this would cause strife and tension—is that the question?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: It did not cause it at Stellenbosch—I do not know what might happen say in a congregation in Johannesburg—it all depends on local conditions.

Mr. GROSS: Thus, the emphasis would be, would it, if I understand you correctly, on the practical pastoral reasons to which Dr. Visser 't Hooft refers. Would you say, Sir, now as an individual, as a church leader and expert that there is a theological principle which favours multi-racial services or joint taking of communion, let us say—would you say that as an individual, expert, theologian?

Mr. GERICKE: It is difficult to precisely understand what you mean by theological reasons—if you, the counsel, ask me, Mr. President, whether there are scriptural reasons or scriptural principles, then I can answer the question but it is difficult to precisely understand what you mean by theological reasons.

Mr. GROSS: Well Sir, I was referring to . . .

Mr. GERICKE: . . . scriptural principles?

Mr. GROSS: No, Sir. I was referring to the phrase used by Dr. Visser 't Hooft which I have quoted—the phrase being “theological principle” in a sentence which I may repeat with the Court's permission—“the existence of separate ethnic churches cannot be defended on grounds of theological principle”—this is the phrase, which I now address in the question to you as an expert—does theological principle favour participation of different races in common services?

Mr. GERICKE: Mr. President, that is the problem with this question; there are people who give theological reasons for multi-racial churches; there are people who give theological reasons for separate churches. If I am an American citizen, most probably say in the north, I will find many ministers who will give theological reasons for multi-racial churches and if I go to the south there might be people who tell me there are theological reasons for separate churches but when you come to scriptural principles then I can answer the question.

Mr. GROSS: Well, Sir, I am at the moment . . .

Mr. GERICKE: You see my problem?

Mr. GROSS: Yes, Sir, of course, and I hope you see mine.

Mr. GERICKE: Yes, Sir.

Mr. GROSS: I would with the President's permission continue with this line of questions addressed to the summation of Dr. Visser 't Hooft. The second quotation which is under the heading, as I would remind you Sir: the main points on which there is very wide if not universal agreement are the following—

“The formation of special ethnic churches must never be considered as more than a very provisional solution of the problem of nation and race in the christian church—the clear purpose must always be to arrive as soon as possible at the creation of supra ethnic, supra racial churches. In this matter, the sociological pattern of the environment is in no sense a decisive argument against advance along this line for the mission of the church is to point the way towards unrestricted fellowship between men and women of all nations and races.”

Would you comment on that first, if you please, with respect to whether or not the Dutch Reformed Church would have a policy compatible or incompatible with that statement and secondly, your own personal view as an expert if you wish to express it to the Court.

Mr. GERICKE: I do not agree with a supra-ethnic church—I think that is the view of my Church as well. The unity of the church is not to be found in one organization or unity of organizations because then it would be very difficult to have unity in Christ with people in another country.

Mr. GROSS: So that if I understand you correctly, Sir, you disagree with the basis of this point?

Mr. GERICKE: Yes.

Mr. GROSS: I should like to turn to the third of the points or may I ask, by the way, could you advise the Court as an expert whether or not the point just read with which you disagree both as an individual expert and a member of the Dutch Reformed Church—whether or not this doctrine as announced here or summarized by Dr. Visser 't Hooft would be acceptable or more consistent with the viewpoint of the Anglican and Roman Catholic Churches in the Republic of South Africa.

Mr. GERICKE: There will be difference of opinion in both the Roman Catholic and the Anglican Church.

Mr. GROSS: Have either or both of those churches, however, made official pronouncements bearing upon the subject of a supra-national or supra-racial church as the objective of the church's mission?

Mr. GERICKE: I do not know about any pronouncements but I know it is a general trend in that church to have a supra-ethnic church but there are people who differ with that principle, in both churches.

Mr. GROSS: Do they, Sir, on theological or scriptural grounds?

Mr. GERICKE: I am not in a position to say.

Mr. GROSS: I understand. The third point is “*enforced* segregation, the refusal to admit persons into a Christian Church merely on the grounds of race cannot be justified in any way”—would the Dutch Reformed Church and would you as an individual expert agree with that summation that I have just read?

Mr. GERICKE: Enforced segregation cannot be . . .

Mr. GROSS: I will read it again—“enforced segregation, the refusal to

admit persons into a Christian Church merely on the grounds of race, cannot be justified in any way".

Mr. GERICKE: Now, admit to a service in the church or admit to membership because that makes a difference?

Mr. GROSS: Would you answer it, with the Court's permission, in both contexts and explain the difference, Sir?

Mr. GERICKE: Mr. President, I have already said that on occasions non-White people come to my Church and they are very welcome there—it happened a few weeks ago—that is admission to the Church service. When it comes to admission to membership then there is one point that must be remembered—supposing, if I may take the example, a number of people, say ten Bantu people, were to come to me in Stellenbosch from the local Bantu congregation and want to become members of the Church, then it is quite a different position. First of all, I do not want to rob the local Bantu church of ten members; if ten members of the Anglican Church were to come to me—then I want to know the reasons why they want to come to the Dutch Reformed Church—the same would apply here. But the Dutch Reformed Church in Stellenbosch, Bantu section, need these people, they need them as leaders and I would consider it a "stab of Brutus" if I accept those Bantus as members of the Dutch Reformed White Church in Stellenbosch while they have their own church. I must help the Bantu church to get on with the job and therefore I am not in a position to rob them of ten or five members.

Mr. GROSS: Excuse me, Sir, were you finished? The problem in that respect then arises, if I understand you correctly, by reason of the existence of this . . .

Mr. GERICKE: Yes.

Mr. GROSS: . . . this young and perhaps struggling church. But for the existence of that church would there be any other reasons or problems that would arise, if let us say, a person, non-White, came to your Church—a person who was not a member or affiliated with a Bantu church, who does not for personal reasons wish to be—would you have other reasons for excluding him?

Mr. GERICKE: I have already given the information in my testimony on that point.

Mr. GROSS: Which you do not care to elaborate . . . I will look at the record on that. The next point of Dr. Visser 't Hooft is as follows—

"Where separate ethnic racial churches exist, there rests with these churches a special responsibility to demonstrate in various ways that they are in a real sense members of one and the same body."

Would you agree with that and would the Church agree with that?

Mr. GERICKE: I agree with that.

Mr. GROSS: The next point—

"This concern for the expression of supra-racial Christian unity must find expression, not only at the level of national Synods or Councils but must be particularly made manifest in regular contacts between different *local* congregations and their members."

Would you comment on that both from the standpoint of the Dutch Reformed Church policy and your own views as an expert?

Mr. GERICKE: Yes, there must be local contact and as a matter of fact we have the local contact.

Mr. GROSS: There are also regular contacts between different local

congregations and their members—could you explain to the Court what the nature of those regular local contacts is between the different congregations, White and non-White?

Mr. GERICKE: Mr. President, first of all, I am referring now to my own congregation. We have a missionary week every year—to these services we extend a special invitation to all our local non-White congregations, coloured and Bantu. Then, we have a committee consisting of members of the church council of the coloured community and members of the church council of the mother church community, which meet at intervals to discuss problems of common interest.

Mr. GROSS: This would be at the local congregation levels?

Mr. GERICKE: Yes.

Mr. GROSS: Therefore, you agree with this principle.

Mr. GERICKE: At the top level I believe I said before, Mr. President, that we have a Federal Council.

Mr. GROSS: And finally, this series of statements—"the final purpose must remain to create churches and local congregations which manifest the unity of men of all races and peoples in their common relation to one and the same Lord"—that would be consistent, no doubt, with the views both of the Dutch Reformed Church and your own view. The question would arise I take it, would it not, Sir, as to the method by which that principle or mission is carried out?

Mr. GERICKE: That is correct.

Mr. GROSS: The testimony which you have given according to my notes, and I turn now to a somewhat different line of questions, with the Court's permission, relates to the degree of autonomy or independence of the daughter churches, as you referred to the non-White churches in the Dutch Reformed Church. I should like to ask several questions about that if I may. One of the questions I should like to elucidate, which I do not believe you have covered, is whether in all of the non-White Dutch Reformed Churches there exists full autonomy, in the sense that they have ecclesiastical jurisdiction over White ministers serving within them.

Mr. GERICKE: That is so, Mr. President. The local church council has the same authority in the daughter church as the local church council has in the White church.

Mr. GROSS: The same degree of ecclesiastical jurisdiction over the White ministers is exercised by the synods and councils of the non-White church; do I understand you correctly, Sir?

Mr. GERICKE: Yes. Only one anachronism in this situation remains, i.e., that when a White minister or a White missionary has to be censured—is that the word you use?— . . .

Mr. GROSS: I would think so, Sir.

Mr. GERICKE: . . . this has to be done by the White church, which has a special commission for that.

Mr. GROSS: Does that power extend . . . or is it limited only to censure? Does it involve, for example, removal or re-assignment?

Mr. GERICKE: No. It does not involve re-assignment.

Mr. GROSS: In other words, the White ministers serving in a non-White church could be re-assigned by the non-White church council?

Mr. GERICKE: In our Church we have a system where you are called to another congregation by the church council of that particular congregation, and you can accept it or reject it. That is also the position in the Coloured and Bantu churches.

Mr. GROSS: With respect to White ministers as well as to non-White ministers?

Mr. GERICKE: Non-White and White ministers.

Mr. GROSS: Is that true also with respect to removal of White ministers?

Mr. GERICKE: Removal?

Mr. GROSS: In terms of discipline or expulsion from the church.

Mr. GERICKE: No. As I said before, we still have the anachronism that the removal, in the sense of expulsion, rests with the committee.

Mr. GROSS: Are the original assignments made by the non-White church authorities . . . councils . . . the original assignment of a White minister to a non-White church, is that made by the non-White church?

Mr. GERICKE: The non-White local church council.

Mr. GROSS: Finally, along this line, do the non-White churches have non-White moderators and are all their highest office bearers non-White?

Mr. GERICKE: Yes. They have non-White moderators.

Mr. GROSS: And are their highest office bearers all non-White?

Mr. GERICKE: Yes, with the exception of a few. I think there is a secretary in Malawi, who is a White missionary and I think there is a secretary in the Bantu church who is a White missionary.

Mr. GROSS: These would be exceptions in your personal knowledge?

Mr. GERICKE: That is the present position.

Mr. GROSS: I should like now also to turn, with the President's permission, to your testimony with regard to the development—and I shall be brief about this, Mr. President, with your indulgence—I should like to refer to your testimony, which, according to my notes, indicated that the development of separate churches was the result of the missionary zeal of the nineteenth century and the wishes of the non-Whites. Am I correctly paraphrasing your testimony?

Mr. GERICKE: Yes. That is correct. This development came as the result of a new effort by the White church to reach as many non-White people at the Cape as possible.

Mr. GROSS: Now, is it correct, Dominic Gericke, that when these questions were first raised in the middle of the nineteenth century there was reluctance on the part of the churches to agree to the separation of the churches?

Mr. GERICKE: Yes, especially on the part of the White church.

Mr. GROSS: Especially on the part of the White church?

Mr. GERICKE: The White ministers of the church.

Mr. GROSS: This was what I was referring to—reluctance on the part of the White ministers. And is it correct that, in the earlier attempts to have separate services for the different races, the White church frowned on the requests that were made by the White congregation for separate services and separate churches? Is that correct?

Mr. GERICKE: I think there was a little frowning on that. That was at the beginning of the nineteenth century.

Mr. GROSS: It was. According to my notes, Sir, this is from the report of the *ad hoc* Commission for Race Relations, appointed by the Federal Council of Dutch Reformed Churches in South Africa, and it has been referred to, I believe, in the pleadings, but in any event, you are familiar with that report, Sir. On page 6 of that report, the statement is made that in 1855, 45 White members asked the church council of Stockenstroem to serve them Holy Communion "on a separate Sunday" from



that on which non-Whites received the sacrament. Then the report says—

“The church council refused their request on the grounds that it conflicted with the formulary for the Communion service, the Articles of faith and many passages of scripture.”

Do you agree with the ruling of the church council I referred to?

Mr. GERICKE: Was it the White church council refusing admission to 45 non-White applicants?

Mr. GROSS: Yes, Sir, that appears on page 6 of the report of the *ad hoc* commission—the words I have just read and quoted are from page 6 of the report. Are you familiar with that section of the report?

Mr. GERICKE: Yes.

Mr. GROSS: This is what is reported. I cannot vouch for its accuracy. Do you wish to comment as to whether you agree or disagree with the ruling of the church council as reflected in this report?

Mr. GERICKE: Mr. President, it is very difficult to go back more than a hundred years and know what were the reasons why this was refused. It is very difficult. I do not think there is any report in history about the reasons.

Mr. GROSS: I cannot say if there is or is not, Sir. I referred to it as an excerpt from the report of the *ad hoc* commission. I take it that you would not then care to comment one way or the other about that?

Mr. GERICKE: No, not for the moment.

Mr. GROSS: Further, may I ask you this as well? It would appear from this report that the initiative was taken by the White members, or a certain number of White members, of the church, who requested the church council along these lines. Now, would you care to comment, as an expert, concerning the extent to which the separate services and the separate churches arose as a result of initiatives taken by Whites, such as is reflected in the excerpt of the report I have just read?

Mr. GERICKE: At that time, Mr. President, as I have said before, very few non-Whites joined the church. They were a small minority. Any new idea or movement in the church came from the White people, but it is historic fact that at that time there were Coloured people who had a feeling of frustration because, as I said before, they were a minority group; they had separate seats in the church, etc.; but the move came from White people.

Mr. GROSS: The report, at the same page, at the same paragraph of the *ad hoc* commission goes on to say that:

“Soon afterwards [that is soon after this incident to which I have just referred] the European members asked that the Communion be served to them on the same Sunday, but after the usual service, in their cups and by their own deacons.”

This request was referred to the Presbytery and the Presbytery of Albany decided unanimously:

“that, as a concession to prejudice and weakness, it be recommended to the church council of Stockenstroem to serve one or more tables to the new or European members of the Communion after the Communion had been served to the older members of the parish, namely the non-Whites.”

The concession to prejudice and weakness—is that, Dominie Gericke, a fair summation or description of any aspect of the creation of indigenous churches in the Republic or of the holding of separate services today?

Mr. GERICKE: Is the question: whether this played a part when separate services first came into existence, or separate churches?

Mr. GROSS: My question, Sir, is whether the view of the presbytery to which I have referred, that the request of the White members of the church would be granted as a "concession to prejudice and weakness"—whether that enters, in your judgment as an expert faced with the problem, into the situation today both in respect to the separate church and the separate service?

Mr. GERICKE: Mr. President, as I believe, if prejudice enters into this matter, it is sinful and I cannot agree with it.

The PRESIDENT: Well, the question is—in your opinion, does prejudice enter into the present separation of the churches into the mother church and the daughter churches?

Mr. GERICKE: Mr. President, my opinion is that we have passed that stage of prejudice in our church. It must have existed, I think it did exist a century ago, but we have passed that stage. We believe in separate churches for other reasons than prejudice.

The PRESIDENT: Would you say if the establishment of the church was based in any sense upon prejudice, in your opinion, and if so, when did its foundation rest upon some other basis?

Mr. GERICKE: It is my opinion that it was not a decisive factor. It could have been present, but it was not a decisive factor. The decisive factor was that for two hundred years the Dutch Reformed Church tried integration in the church, and, as I have said before, very few non-White people joined the church, and when this awakening came and special services were held for these people, then many of them joined the church and in 1881 a separate church for Coloured people was established. It is always difficult to say what were the hidden motives of people in those days but I know that there was very little success on the pattern of integration and there was more success on the pattern of separate churches. It is from that date that our churches increased in numbers.

The PRESIDENT: Have you in recent years been made conscious of any prejudice inside your own Church on the part of White people in relation to Coloured and other non-White people?

Mr. GERICKE: Mr. President, I am so grateful that the one thing happening in South Africa is that prejudice is dying out. In my own Church, and I know that the same thing is happening in other churches, we are preaching against prejudice and I think we have made a lot of headway. I will not say that there is no prejudice in South Africa, as a matter of fact, I do not think there is a country where you do not find prejudice, but if I had to answer the question, what is the main thing that happened during the past 10, 15, 20 and more years in South Africa, I would say, it is the dying out of prejudice in that country. That is my impression.

Mr. GROSS: Mr. President, I have several more questions. Would it be the pleasure of the President to allow me to continue tomorrow?

The PRESIDENT: Certainly, it can be continued tomorrow, Mr. Gross.

Mr. GROSS: Thank you, Sir.

[Public hearing of 21 September 1965]

Mr. GROSS: Dominie Gericke, since the adjournment of the session yesterday I have had the opportunity to read the verbatim of 20 September 1965 and there are one or two points which I should like to endeavour to clear up, with the President's permission, by reference to the verbatim, in particular one point which I shall read. I refer to an apparent confusion that arose between us—I am sure it was my fault—on pages 32 and 33, *supra*, of the verbatim. I had asked you, if you recall, for opinion regarding a ruling in 1855 by the Albany Council of the D.R.C. in connection with a request that had been made by certain White members to the church council to serve them Holy Communion "on a separate Sunday" from that on which non-Whites received the sacrament, and then I quoted from page 6 of the report which I identified as the report of the *ad hoc* Commission for Race Relations appointed by the Federal Council of Dutch Reformed Churches in South Africa. Page 6 of that report from which I quoted stated that:

"The church council refused their request on the grounds that it conflicted with the formulary for the Communion Service, the Articles of Faith and many passages of Scripture."

And I asked whether you agreed with the ruling of the church council—what your opinion was in regard to that ruling. Then you asked me, as reflected in the verbatim at the top of page 33, *supra*, "was it the White church council refusing admission to 45 non-White applicants?" I misunderstood you, I am afraid, Sir, and said "yes, Sir" and then I referred again to the quotation. Then ensued a short colloquy in which you said, in response to my question, that you "would not care to comment one way or the other about it for the moment"—I quote from page 33.

Now, I am anxious to clear this up in fairness to you and to the Court because I am not certain whether you understood my question and the request which I addressed to you for an expression of your opinion, theological or scriptural, or both, particularly with respect to the reason assigned by the church council which, if I may refresh your recollection again, "refused the request on the grounds that it conflicted with the formulary for the Communion Service, the Articles of Faith and many passages of Scripture". Subject to that clarification of the exchange between us, would you now care to comment—express your views with regard to the Council's decision and the basis for the refusal as reflected in the report?

Mr. GERICKE: Mr. President, at that time it was one church. As you will recollect, it was before the Coloured church was established in the Cape. I do not think it can be justified, when it was one church, to refuse people the church building or the Communion Service.

Mr. GROSS: In other words, Sir, if I have understood you correctly, the explanation, in your opinion, would be that the existence of only one church would alter the scriptural basis of the decision?

Mr. GERICKE: The scriptural basis?

Mr. GROSS: Yes, Sir, may I remind you that the quotation in the report states, if I may, Mr. President, read it just once more in that relevant portion?

The PRESIDENT: It is at the top of page 33, *supra*.

Mr. GROSS: On page 33—yes, Sir.

"The church council refused their request on the grounds that it conflicted with the formulary for the Communion Service, the Articles of Faith and many passages of Scripture."

I wondered whether you could shed light upon the reasons which, from the church point of view—theologically or scripturally—would have been involved in such a decision.

Mr. GERICKE: Mr. President, it is very difficult to say because I know of no text pertaining to the position when this particular church council decided to refuse, or rather to have two separate services at that time. I know of no scriptural passage pertaining to this particular position.

Mr. GROSS: Then, I think, if I understand your answer correctly, that you have no basis for an opinion concerning . . .

Mr. GERICKE: It is such a pity that when a church council makes such a decision they do not say on which particular scriptural basis. They did not say and so it is very difficult for me to say what was the text if any to which they referred.

Mr. GROSS: Thank you. Just in order to complete the record of the history on this matter, in so far as it may be of interest to a full understanding on the part of the Court with regard to the testimony regarding the history of the separate churches, in the same report by the *ad hoc* Commission on page 6 the report states:

"The Synod [and I will inject parenthetically that the decision of the council to which I have just referred, quoted on p. 33, *supra*, of the verbatim was appealed to the synod, which I presume is the higher authority, and the report on page 6 states as follows:] considers it desirable and scriptural that our members from the heathen be received in and absorbed in to our existing congregations wherever possible, but where this measure, as a result of the weakness of some, impedes the furtherance of the cause of Christ among the heathens, the congregation from the heathen already founded or still to be founded shall enjoy its Christian privileges in a separate building or institution."

Could you, Dominie Gericke, shed any light upon the reference in that decision by the synod—the reference to the result of the "weakness of some"? Would you have any elucidation of that for the Court?

Mr. GERICKE: Mr. President, in my testimony yesterday I tried to explain that it became clear to the Dutch Reformed Church that an adapted form of preaching was necessary, even new hymns were necessary, on account of the difference of level of intellectual development, etc.,—I refer to my testimony.

This "weakness of some", as far as I know, refers to that weakness. Therefore, it was allowed, or permitted, by the synod to have a separate service.

The PRESIDENT: Is this your interpretation?

Mr. GERICKE: That is my interpretation.

The PRESIDENT: Have you any factual basis upon which you base that interpretation?

Mr. GERICKE: I think it would be very difficult to find any factual basis. I have not, at any rate.

Mr. GROSS: I would like to point out to the honourable Court that the report to which reference is made and which has been the subject of quotation, was a report of the *ad hoc* Commission for Race Relations

appointed by the Federal Council. Could I ask you, Dominie Gericke, did you participate in the work of the Council at that time, or in the work of the Commission at that time?

Mr. GERICKE: Not at that time, Mr. President.

Mr. GROSS: I shall proceed, if I may, with the permission of the President, to refer to the subsequent section of the report (and I refer now to p. 10), in which the Commission sets forth what it calls a critical review of the history, and I quote in relevant part:

"From the above historical survey, it appears that the founding of separate churches sprang from [then I omit a paragraph]

(b) the fact that some European members preferred to attend separate Communion Services, and to worship separately from the non-Whites. Undoubtedly the motives here were grounded on social and hygienic considerations and on the racial attitudes of the nineteenth century."

Does this critical review of the Commission, in your expert opinion, reflect a correct analysis of the reason (among others) for the establishment of separate churches?

Mr. GERICKE: No, it is not a complete analysis according to my opinion.

Mr. GROSS: I have not represented it to be a complete analysis. I want again, if I may, Sir, to point out that I am not reading the entire section. I am concentrating, however, on this section that I have just read and would appreciate it if you would wish to explain to the Court whether, in your expert view, this reason, among others, is a true and valid critical analysis or history of the foundation of separate churches?

Mr. GERICKE: Mr. President, could the reasons be repeated, please?

The PRESIDENT: The question could be less involved, Mr. Gross. Why do you not ask him the question: was it, in his opinion, a factor that operated to the establishment of separate churches?

Mr. GROSS: Did you understand the question, Sir?

Mr. GERICKE: Was it a factor?

Mr. GROSS: Was it a factor? Yes.

Mr. GERICKE: I think it could have been a factor in those days.

Mr. GROSS: Do you have a view as to whether or not it continues to be a factor today?

Mr. GERICKE: No. Hygienic considerations?

Mr. GROSS: The fact . . . I will read it to you, if I may, again:

"The founding of separate churches sprang from, and among, the factors 'the fact that some European members preferred to attend separate Communion services and to worship separately from the non-Whites. Undoubtedly, the motives here were grounded on social and hygienic considerations and on the racial attitudes of the nineteenth century'."

I had asked you before, with the elucidation by the honourable President, for your comment with regard to this factor and I am now asking you whether you regard it as a pertinent factor to explain the continued existence of separate churches, today?

Mr. GERICKE: I do not think there are any hygienic reasons at the present time.

Mr. GROSS: Are there social considerations or racial attitudes which enter into the continuation of the separate churches?

Mr. GERICKE: At the present moment?

Mr. GROSS: At the present time, yes, Sir.

Mr. GERICKE: This must have entered into the debate in the course of time. I do not agree with those arguments. I think there are other arguments, as I stated in my testimony before, which are valid to me, but I do not agree with those.

Mr. GROSS: You do not agree, Sir, with . . .

Mr. GERICKE: With that statement.

Mr. GROSS: With this as a statement concerning the reason for the original establishment of separate churches?

Mr. GERICKE: For the fact of separate churches as they are today.

Mr. GROSS: You believe that this was not one of the reasons for the establishment of separate churches?

Mr. GERICKE: Mr. President, as I have said before, it could have been a reason in those days.

Mr. GROSS: We have been discussing the contemporary situation and I just wanted to be certain that we understood each other.

Mr. GERICKE: To be quite clear on this point—if the question was asked, Mr. President, and I had to reply to that question—are you in favour of separate churches because of hygienic reasons, social reasons or reasons of . . .

Mr. GROSS: Racial attitudes.

Mr. GERICKE: . . . racial attitudes? Then my answer would be: no, not on those counts. There are other and better reasons which I gave in my testimony yesterday.

The PRESIDENT: The question was really not that precisely. The question first was whether it was a factor in the original establishment of the separate daughter churches? To that you have given an answer.

Mr. GERICKE: I think so.

The PRESIDENT: The other question is, however it is put—is it a factor today for the continued maintenance of separate churches?

Mr. GERICKE: It is not a valid factor.

The PRESIDENT: It is a factor in the minds of the White congregation?

Mr. GERICKE: I think you will find very few White people in our Church who would consider that a factor.

Mr. GROSS: Shall I continue, Sir? The remaining single question I should like to address to you on the basis of the report is again under the heading of "Critical Review of History", in which the report states as follows, at page 11:

"that the decision of 1857 and the founding of indigenous churches, as well as the origin of the custom at that time that members from a specific race could only join their own church, was a matter of practical policy and not of principle is proved by the following . . ."

and then set forth certain reasons, which unless you or the Court wishes me to, I shall omit because the purpose of my question, if it is clear enough, is—do you wish to express a view concerning the conclusion reflected here that the founding of the indigenous churches, as well as the origin of the custom at that time that members of a specific race could only join their own church, was a matter of practical policy and not of principle?

Mr. GERICKE: Mr. President, I would be so grateful if Mr. Gross would read the rest of that particular paragraph, where it is stated that this is

in accordance with the church's view of the nature of the Church of Christ on earth.

Mr. GROSS: I would be glad to if the President will permit. To continue the quote:

"is proved by the following:

- (a) the families of European missionaries and other Europeans often worship in the mission churches;
- (b) the inclusion of two non-White congregations, St. Stephen's and Stockenstroem, in the mother, European, church, and the presence of their delegated elders at presbyterial and synodical gatherings;
- (c) the special services at some places which are attended by believers from all racial groups,

It is worth noticing that not one of the federated Dutch Reformed Churches has ever legally, or in any other way, forbidden the Communion of believers from the various racial groups."

That is the end of the quote of the reasons and may I remind you, Sir—it may be difficult to follow this lengthy quote—that these are assigned as reasons which prove, in the words of the report, that the founding of the indigenous churches was a matter of practical policy and not of principle?

Mr. GERICKE: Mr. President, in that same report—I would like to see that report, I haven't got it here—it is stated by the *ad hoc* commission that the founding of separate churches was in accordance with the church's view of the nature of the Church of Christ on earth—its diversity, etc.

The PRESIDENT: I am sure Mr. Gross will show you the document so you can identify what he says.

Mr. GROSS: You say you do not have it with you?

Mr. GERICKE: You will have to give me time for that of course. Can we leave that for a while?

Mr. GROSS: With the President's permission, I would be very glad to continue with another line to give the witness an opportunity to study and find the portion to which he refers.

I turn now, Dominie Gericke, to the testimony of yesterday, again in the same verbatim and I refer particularly to your reply, which I will quote in part, to a question addressed to you by learned counsel, in which you state as follows; on page 9, *supra*, of this verbatim, in which you are describing the respects in which the system is beneficial to the adherents of the church, that is, to have the separate churches, you say:

"First of all, this system provides full opportunity for self-development for the members of the daughter churches. All offices are open to them. [And then in the next paragraph—I skip several sentences—you say:]

The separated churches realize and appreciate the fact that they are not merely an appendix of the White Church but churches equal in status. This has really engendered a spirit of co-operation, of mutual respect and of neighbourliness. They can now meet their White brothers in the church as equals. [And then you concluded that answer by saying:] The present relationship between the mother and the daughter churches is one of mutual respect and readiness to co-operate."

Now, I would like particularly to emphasize, for the purpose of my question to you, the two sentences, respectively: "All offices are open to them" and, secondly: "They can now meet their White brothers in the church as equals." Would you care to elaborate, before I proceed, what you had in mind when referring to the fact that all offices are open to them. To whom were you referring, Sir?

Mr. GERICKE: To the members of the non-White congregation.

Mr. GROSS: You meant, Sir, that all offices in the church were open to them, as non-White members of the congregation?

Mr. GERICKE: Yes.

Mr. GROSS: Does this mean, Sir, that offices are not open to non-White members of the church in the White section, or White churches, of the Dutch Reformed Church?

Mr. GERICKE: Before the separation, Mr. President?

Mr. GROSS: I am talking about the present time, if that is what you were referring to, Sir.

Mr. GERICKE: The meaning of that passage is as follows, Mr. President. When we had a multi-racial church, that was before 1881, when there were non-White members in the congregation. I know of no case where a non-White was chosen as an elder or a deacon. They were a minority group. They found themselves in a minor position in the church. The office-bearers were White people. When the new church came into being, it stands to reason that there was more opportunity and this opportunity was utilized; elders and deacons were chosen and eventually they had their own ministers. That is all I have to say.

Mr. GROSS: If I understand you correctly, Sir, you were not referring to the present time?

Mr. GERICKE: No.

Mr. GROSS: Then we have said that all offices are open to them?

Mr. GERICKE: No. Well, it applies to the present time, all offices are open to them now, in the non-White church.

Mr. GROSS: My question, Sir, is, or was intended to be, whether at the present time offices are open to non-Whites in the White Dutch Reformed Church? Are any offices open to non-Whites in the White Dutch Reformed Church?

Mr. GERICKE: No, they are not members of the White Dutch Reformed Church.

Mr. GROSS: Now, may I ask, if this is not a hypothetical question, whether any non-Whites are members of the White church—are there any members of the White Church who are non-White?

Mr. GERICKE: No, as I said, Mr. President, I know of no case where a non-White became a member of the White church.

Mr. GROSS: The fact that all offices in their own church are open to them would follow from the fact that there are separate non-White churches?

Mr. GERICKE: Yes.

Mr. GROSS: Is it the point, Sir, that you were implying here that it is a reason for separate non-White churches that if they were multi-racial churches, they would not be eligible for office?

Mr. GERICKE: Oh, they would be eligible but it would not be easy.

Mr. GROSS: Why would it not be easy, Sir?

Mr. GERICKE: Mr. President, I think I explained this point: the non-White people (and I was referring to history), were in the minor position



in the White church. When this new church was formed, which is a very strong church today, these offices were open to the non-White people and to them alone.

Mr. GROSS: Yes, Sir. Now would you bring that down to the present time—contemporary life of the church—would you comment on whether or not—I am referring to your testimony, Sir, and attempting to elucidate it for the Court—whether or not it is implied in your statement that all offices are open to them as a reason for having separate churches and if you did not have a separate church, but have multi-racial churches, the non-Whites would not be either eligible for office or would not receive office—is that the implication?

Mr. GERICKE: It is a hypothetical question—I do not know what would happen if the Dutch Reformed White Church and the Dutch Reformed Coloured Church became one church tomorrow or the day after. Mr. President, it is very difficult to foretell the future but as I see it the level of intellectual development, even at the present moment is such that very few of the non-White people would become leaders in a multi-racial church. We hope that in the future this difference in level of intellectual development will disappear—in the near future.

Mr. GROSS: Then your testimony is that one of the reasons, perhaps a principal reason for this advantage that you see in the separation is that the non-Whites generally have not achieved a level of accomplishment or ability which enables them to compete on equal basis with Whites—is that what you are . . .

Mr. GERICKE: Yes, the competition.

Mr. GROSS: And it is in that respect that you feel the existence of separate churches will offer more opportunities of advancement so to speak—is that correct?

Mr. GERICKE: That is the reason, Mr. President.

Mr. GROSS: Now is it not true, Sir, that the English-speaking churches which, if I am not mistaken—correct me on this, claim substantially more non-White adherents than the Dutch Reformed Church—is that not correct, Sir?

Mr. GERICKE: Yes.

Mr. GROSS: That the English-speaking churches, as I understand it, believe that while it may be practically expedient for Whites and non-Whites to worship separately, they are all members of the same community and should share in the government of the Church. Is that a correct version or analysis of the attitude and policy of the English-speaking church?

Mr. GERICKE: Yes.

Mr. GROSS: And is it correct that in the great majority of the congregations of these churches, although they do worship in separate buildings, White and non-White ministers and laymen deliberate and vote together in synodical meetings—is that correct so far as you are aware?

Mr. GERICKE: Yes, that is correct but, Mr. President, I must point out—I am very reluctant to talk about sister churches in South Africa as you can appreciate, but I must point out that in the English churches very few non-White members become leaders.

Mr. GROSS: Among those few, as I understand it, Dominie Gericke (I will not press you for comment or analysis of the church in which you are not ordained, and in which you do not profess expertise, and if you

do not know as a matter of fact whether what I ask you is correct or not of course I shall not press the point) but is it true to your knowledge that the Methodist Church of South Africa has had an African or Bantu President who is the executive or administrative head—the Reverend Seth Mokitimi during the current year—do you know whether that is correct?

Mr. GERICKE: Yes, I know the man.

Mr. GROSS: And do you know if office bearers in that Church are elected by non-racial annual conference—do you know whether that is correct, Sir?

Mr. GERICKE: That is correct.

Mr. GROSS: And is it correct, if you know, whether the Anglican Church has had an African or Bantu Suffragan Bishop—the Right Reverend A. Zulu since 1960—is that correct, Sir? You do not know, Sir?

Mr. GERICKE: No.

Mr. GROSS: That is according to the information I have; in any event, it would appear would it not, Sir, that there are possibilities for advancement to high church positions as well as multi-racial or non-racial synodical or other ecclesiastical sessions in which the other churches do participate and is part of their policy—is that not correct, Sir?

Mr. GERICKE: That is correct. Mr. President, with reference to the Reverend Mokatimi who became Moderator—if that did happen, without the election being a gesture, I will be in favour of it but there must be no gestures, no paternalizing in the church—I am against that—I am reluctant to make any further comment.

Mr. GROSS: Do you have any comments, Sir, with respect to the policy of multi-racial meetings for synodical purposes in the English-speaking churches—would you care to comment on that as a policy?

Mr. GERICKE: No, I do not think so.

Mr. GROSS: You, I think, testified, if I am not mistaken, Dominie Gericke, that one of the reasons why the Dutch Reformed Church supported separate ethnic churches was in order to avoid friction and tension—is that not correct?

Mr. GERICKE: That is correct.

Mr. GROSS: We are dealing here with one society. Is that, in your expert view, a source of tension and friction unique to the membership of the Dutch Reformed Church or is it something that you feel would be of general applicability?

Mr. GERICKE: Mr. President, if this would be an answer to the question, I can just say that I know that there is friction and tension in some of the English churches as a result of this particular matter.

Mr. GROSS: There is throughout?

Mr. GERICKE: There is friction.

Mr. GROSS: I shall, with the Court's permission, go into that very shortly, but before we reach that I would like, if I may, to go back to the other excerpt I quoted from your testimony on page 9, *supra*, of the verbatim record of yesterday in which you said as follows: "They can now meet their White brothers in the church as equals"—I wonder whether you would be good enough to elucidate in what sense you used the term "equals" in that answer.

Mr. GERICKE: Mr. President, when we meet in, say, our Federal Council, we meet as ministers of the different churches, elders of the different churches, deacons of the different churches, leaders of the different

churches. Before we had separate churches there were no coloured leaders, they did not have the opportunity to develop into leaders. But when they had to shoulder the burden and take the responsibility of their own church, then these leaders developed and now the leaders can meet you as equals—that is all I meant by that particular phrase.

Mr. GROSS: "Equals" in terms of church relationship is all you meant?

Mr. GERICKE: Yes.

Mr. GROSS: There again would you care to express an opinion, without pressing you to do so, with regard as to whether or not in the other Protestant and indeed the Catholic Church, the White and non-White meet as equals although in the same church.

Mr. GERICKE: Whether they meet as equals?

Mr. GROSS: Yes, in the sense in which you used the term.

Mr. GERICKE: Yes, I would imagine they meet as equals.

Mr. GROSS: You would imagine that . . .

Mr. GERICKE: Yes—I do not know.

Mr. GROSS: Now I should like, if I may, Mr. President, to go to the source, and present to the witness the report of a Commission appointed by the Christian Council of South Africa in 1952 entitled "Race—What does the Bible say?"—are you familiar with that report, Dominie Gericke?

Mr. GERICKE: Yes, I have read it but it was about ten years ago.

Mr. GROSS: I will not tax your memory with it—I would, with the President's permission, like to read from it. Is not, as I believe Sir, the Christian Council of South Africa the Council of all Protestant churches in South Africa other than the Dutch Reformed Church, which I understand is not a member of the Christian Council, as are all other Protestant churches?

Mr. GERICKE: The Dutch Reformed Church was a member.

Mr. GROSS: It was a member—when did it leave?

Mr. GERICKE: I am not sure—it must have been in the late 1940s but I am not sure.

Mr. GROSS: I should like to read brief excerpts which you may comment on in your capacity as an expert or otherwise if you wish. First may I read from the foreword by the Archbishop of Cape Town as follows:

"At the present time, the Black population is very much larger than the White but practically all political power is in the hands of the White man and the White man's relation to the Black man is complicated by fear. He needs the Black man's labour; the economics of the country are based upon cheap Black labour and the Black man desires employment in industry. It does not seem possible that the races can be kept apart but the White man is most reluctant to admit the Black man to any kind of equal partnership—he keeps political power in his own hands; he keeps the more skilled forms of labour in his own hands; he desires to avoid so far as may be social contacts with the Black man and his motive is not merely greed—he is anxious to safeguard what he calls 'western civilization' and he dreads race and mixture. These are the conditions under which the Christian bodies in South Africa have to work and in the face of the problems produced by these conditions, Christian opinion is not united."

Would you care to comment, assuming that you would agree readily

that Christian opinion is not united—you do, I suppose, agree to that?

Mr. GERICKE: Yes.

Mr. GROSS: Would you care to comment with respect to the Archbishop's analysis of the conditions under which the Christian bodies in South Africa have to work and the role of the Church in dealing with those conditions? Do you accept what I have read as substantially a fair and correct analysis of the situation?

The PRESIDENT: Mr. Gross, this cross-examination seems to me to be not leading us anywhere at all. I drew attention yesterday—the witness is a witness either as to the fact or as to the doctrine and the practice of his Church. You are now reading to him a large amount of observations made by some distinguished representative of another church.

Mr. GROSS: Yes, Sir.

The PRESIDENT: What is the fact that you are seeking to ask the witness; in what respect is the evidence you are seeking to elucidate by your questions a matter within his competence as an expert, and if it is within one or the other, it seems to me you are not entitled to read a large slab from somebody else's observations which are for the most part political in content and ask him to comment—that is not cross-examination.

Mr. GROSS: Yes, Sir. May I attempt to respond to the President?

The PRESIDENT: Yes, certainly.

Mr. GROSS: The witness yesterday, in response to a question by learned counsel, stated as one of the functions and missions of the Dutch Reformed Church the support of the doctrine, the policy, of separate development. The witness has been asked and, with the Court's permission, I intend to pursue the line of enquiry based upon the testimony which he gave concerning his Church's support for the policy of separate development; and, with respect, Sir, my line of questioning and the quotation from which I have just read by the Archbishop attempting to define problems of a fellow Christian church as he saw them, as a responsible leader, was, it seemed to me, with respect, relevant to eliciting from the witness what is meant by separate development in his terms, and what the function of the Dutch Reformed Church is in espousing it and influencing the Government to further it. I, with respect, would feel that this is a matter which is relevant to his testimony and elucidates the meaning attached by the Church for which he speaks and his own expert view concerning separate development. This, of course, is an over-elaborate answer, but I felt obliged to explain what my effort was, Sir.

The PRESIDENT: Mr. Gross, the Court will not stop you from asking questions, but it does not appear to me that you can quote a large extract from anybody's observations or anybody's work, and then ask a witness to comment; how is that putting a question to a witness? Surely the question must be put to him: does he agree with this statement and with that statement, and if he does not, express why he does not, but to ask him to comment upon a whole number of allegations it seems to me is not cross-examination, and I do not see it is going to assist the Court.

Mr. GROSS: I will, if I may, then, turn to the body of the statement, of the report of the Commission to which I am referring, and ask you, if you will, Sir, to state your opinion regarding the following comment in the report; it is on page 25:

“But, as has already been said, spiritual unity in the Church cannot remain merely spiritual, it must show itself at least within

the Church in outward fellowship between Christians of different races, social status or sex; and if Christians of different races meet in fellowship within the Church, can they refuse to mix when they meet each other outside the Church in the affairs of the world? Unity in Christian fellowship must inevitably spread into fellowship in secular activity."

Do you wish to comment on that, and express your opinion with regard to that?

Mr. GERICKE: Yes. Mr. President, if Mr. Gross would be so kind—there are different aspects of that problem, there are several statements made on that particular page—I will be willing to answer them one by one.

Mr. GROSS: Certainly, Sir, with the President's permission. May I put the central question this way:

"... if Christians of different races meet in fellowship within the Church, can they refuse to mix when they meet each other outside the Church in the affairs of the world? Unity in Christian fellowship must inevitably spread into fellowship in secular activity."

That is the heart of the statement?

Mr. GERICKE: That is true, Mr. President.

Mr. GROSS: This you do agree with, Sir? And finally, in the conclusions of the report under the heading of "Conclusion and Application", the last conclusion of all on page 28:

"The problem of the person is more acutely encountered in race relations. When the Negro or the Asiatic is treated simply as an instance of a racial type, he is merely representative, not unique as an individual. His personal identity is lost in his racial status, and his freedom is restricted by the generalizations about his race."

I will pause there, if I may, Sir. Do you understand this conclusion which I have just read in part and will complete, if I may, to reflect the view held by Protestant Churches, perhaps including yours, that the treatment of a group as such tends to submerge the identity of the individual, and that, in the words of this statement, his personality becomes submerged and he is not respected as a person?

Mr. GERICKE: Mr. President, that is always a danger, when you are treating a group, to submerge the individual, and that is a problem of race relations all over the world.

Mr. GROSS: Would you state it, Sir, as one of the objectives and policies perhaps of the Dutch Reformed Church to encourage in the social life of the Republic the regarding and treatment of individuals regardless of race as individuals rather than as members of groups?

Mr. GERICKE: Mr. President, it is very difficult to answer that question because a man is a member of a group, and you cannot easily dissociate yourself from the group you belong to. There is a danger in the world—in South Africa, everywhere in the world—that in emphasizing the group you forget about the individual; that is always a danger—right through history this was the case, but there is also the opposite possibility, Mr. President; by emphasizing the individual you may neglect the group. It is a question of proper balance.

Mr. GROSS: Do you find it considered as a matter of Church doctrine or policy to give a higher priority to the group or the individual as a principle of religion or morality?

Mr. GERICKE: Yes, Mr. President. The group is important, and more important.

Mr. GROSS: The group is more important than the individual?

Mr. GERICKE: Yes. If I have to make sacrifices as an individual, I have to make those sacrifices in favour of the group. Is that what you mean?

Mr. GROSS: Well, I would invite your own views, Sir. Of course the question arises, then, perhaps you would comment on whether or not it is relevant who determines what sacrifices shall be made?

Mr. GERICKE: Mr. President, perhaps I can refer to a statement by Dr. Snetlage, who said: "It is not what is desired by the individual, but what is desirable for the community as a whole that should be the guiding rule in politics", and I agree with that statement.

Mr. GROSS: Does the doctrine require, or if you wish to state it in terms of policy of the Church or your own expert view, whichever you care to employ, or both, that, with reference to the individual who is a member of a group, and whose innate qualities and capacities bring him above the group level, that it be a social objective to further the interest of the individual and to allow him to accomplish his life in accordance with his capabilities?

Mr. GERICKE: Mr. President, I am sorry, the question is not clear.

Mr. GROSS: The question is not clear—may I repeat it? Would it be a matter of Church policy, if you care to express it in those terms, or your own view whether an individual whose innate capacities are higher than the level of his group, whether it is the objective of the Church and of the social order to permit him to accomplish his life in accordance with his innate capacity and ability? Do you understand my question, Sir?

Mr. GERICKE: Whether I agree with the statement that he should be enabled . . .

Mr. GROSS: To fulfil his capacity.

Mr. GERICKE: Yes, I agree with that.

Mr. GROSS: He should not be called upon to make a sacrifice merely because he is a member of a group—would you agree to that?

Mr. GERICKE: No, I cannot agree with that, Mr. President—I am sorry. Every individual has to make sacrifices because he is a member of a group.

Mr. GROSS: At what point does, if it is possible to answer this in the terms in which we are discussing it in this colloquy, an individual who is, let us say, qualified to reach the top of his profession—at what point is it appropriate from the ethical and moral point of view to impose a ceiling upon his accomplishment?

Mr. GERICKE: No, that is not right, I do not agree with that—that is not ethical.

Mr. GROSS: You disagree with that as a policy?

Mr. GERICKE: Yes.

Mr. GROSS: This is an aspect, is it not, of the job reservation laws?

Mr. GERICKE: Mr. President, as I explained before, if a man has a ceiling in Johannesburg, and that man has no ceiling in Umtata, then it is not an infringement on his rights.

Mr. GROSS: Are you through, Sir?

Mr. GERICKE: Yes.

Mr. GROSS: Is it not correct, Sir, that approximately two-thirds of the Bantu or African population live in rural and urban "White areas"—

many of them for generations—and that many of them are detribalized? Is that a correct statement, Sir?

Mr. GERICKE: Mr. Chairman, as I explained before, this is the aim and goal of the policy of separate development, to make it possible for a man to attain the highest rung on the ladder in his own country, his own homeland.

Mr. GROSS: Yes, I think, with all respect, and I believe it must fairly be said, that you made it clear that that was the objective of separate development. However, I would invite your attention to my question which I should like to attempt to clarify. I am speaking now about the individuals, of whom, I believe, there are some 8 million, if I understand correctly, who live and work in so-called "White" urban and rural areas—many of them have, for generations, and many are de-tribalized and have no homeland and they have been born where they live. Now I am referring to those persons and I am asking you, Sir, to express the view of the Church, or your own view, or both, with respect to the ethical and moral considerations pertaining to the imposition of ceilings upon the accomplishment of such individuals, who spend their lives in the area we are discussing.

Mr. GERICKE: Mr. President, as I explained yesterday, there are certain hardships which have to be endured en route to the goal. I want to quote Dr. Snetlage again, a well-known writer on the subject of ethics: "Hardships are justified when avoiding a greater hardship, and when there are no other viable ways to avoid that greater hardship."

Now, as I pointed out before, Mr. President, we are erecting a building. The scaffolding which is necessary for that building, will disappear in time. To complete the picture there are hardships to be endured on the way.

Mr. GROSS: Would it not be then the essence of your analysis and of your justification of the hardship, as you say, that the objective, the end goal, is a total separation of the races in separate areas?

Mr. GERICKE: That the end is a total separation? I answered that question before—I said, not necessarily.

Mr. GROSS: If the goal is not the total separation of races, then, by necessary logic (I assume you will agree), there will always be non-Whites working and living in the so-called "White areas", serving a "White economy". Is that not correct, Sir?

Mr. GERICKE: That is correct.

Mr. GROSS: Now with respect to those individuals—if we may refer to those and concentrate on them—what relevance is there to their lives and fortunes in the fact that, in homelands, something or other is happening, that Whites are being frustrated or any other conditions exist? What is the ethical or moral explanation, or justification, for imposing ceilings upon these persons to whom we are referring?

Mr. GERICKE: Now are you referring to de-tribalized . . . ?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: Who have not any homeland?

Mr. GROSS: Yes, Sir.

Mr. GERICKE: Now, Mr. President, I think I said before that when this building—if you would allow me to call it a building—is completed, we all hope and pray that it will be easier to make concessions. As a matter of fact, that is what the Prime Minister said in 1961, in a speech in Parliament, that certain regulations will fall away on the way. I do not

know, Mr. President, which regulations will fall away—I am not the political prophet—but I hope that in the process of completing the building certain regulations will become unnecessary and will fall away.

Mr. GROSS: Dominie Gericke, in 1952 the Federal Mission Council of the N.G.K. (the Dutch Reformed Church) stated that its ideal—I am quoting from the record which appears in the "Racial Issue in South Africa", published by the Dutch Reformed Mission Press in 1953 (what I am referring to appears on pp. 4-8, but I will just give a very brief sentence): "... presupposes a long-term policy of 50, or even 100 years, and ... by no means excludes the employment of Native labour for the economic machine of the Europeans for many years to come." Would you share that analysis of the Federal Mission Council of the N.G.K. in the respect which I have just quoted?

Mr. GERICKE: That I share the opinion, Mr. President, that it will take 50 or 100 years?

Mr. GROSS: It may take 50 to 100 years.

Mr. GERICKE: It is very difficult to say, Mr. President. I only hope that it will not take as long as that. That is all I can say.

Mr. GROSS: If there is a reasonable possibility that it might take as much as a generation or two, or three, would that affect your view or the view of the Church with respect to the lifting of ceilings upon the accomplishment of the non-White because of his race?

Mr. GERICKE: Mr. President, if this would take 50 or 100 years, adjustments will have to be made. That is my opinion.

Mr. GROSS: Has the Dutch Reformed Church taken a public decision with respect to the time dimension of this problem in supporting the policy of separate development?

Mr. GERICKE: Mr. President, the Dutch Reformed Church has urged the Government that the development of territories (I am referring to the Bantu homelands) must be speeded up. At the 1956 Conference at Bloemfontein it was one of the resolutions to request the Government to speed up the process.

Mr. GROSS: May I ask you whether you had a reply from the Government?

Mr. GERICKE: There is always a reply when you write a letter to the Government. I have not seen the letter, but I have seen the speeding up of the process. That is all I know.

Mr. GROSS: Could I press you again, Dominie Gericke, for your view, as an individual expert and churchman—would your view with respect to the moral or ethical implications of the Job Reservation Acts be affected by your perception of how much time it will take to accomplish the end result? If you felt that it would take 50 years, would you have a different view about the matter than you do now?

Mr. GERICKE: If it would take 50 years, I am convinced in the course of time that the Church will ask for certain concessions.

Mr. GROSS: Would you care to advise the Court what public statements, if any, the Church has made with respect to the matter of the time element in accomplishment, specifically, if any?

Mr. GERICKE: No. The Church did not mention a deadline to the State—the Church only asked the State to speed up the process, that is all.

Mr. GROSS: With respect to the views of the Dutch Reformed Church regarding the matter of job reservation, still speaking about that, I should like if I may to refer now to the Cottesloe consultation, and, Mr.



President, if I may identify that for the record, from 7 to 14 December 1960 a consultation was held by representatives of the World Council of Churches and the eight churches in South Africa that were members of the World Council at that time; and is it not correct, Sir, that the latter included then the Dutch Reformed Churches of the Cape and the Transvaal and the *Nederduits Hervormde Kerk*? This consultation was held at Cottesloe in Johannesburg at that time, was it, Sir?

Mr. GERICKE: That is correct, Mr. President.

Mr. GROSS: Were you present at that conference?

Mr. GERICKE: No, I was not present.

Mr. GROSS: Is it correct, so far as you know, that these three Dutch Reformed Churches were fully represented at that conference?

Mr. GERICKE: They were represented in this sense, that a number of leaders from all these Churches were invited to the conference.

Mr. GROSS: And they attended, did they, Sir?

Mr. GERICKE: They attended the conference.

Mr. GROSS: Certain resolutions were adopted by the conference with a minimum of 80 per cent. of those present voting in favour. Do you know whether that is correct, Sir?

Mr. GERICKE: That is correct.

Mr. GROSS: I should like to read to you the resolution with regard to certain economic aspects of the policy of separate development or apartheid, and request your opinion with respect to them. I first will read resolution No. 13, which appears at page 75 of the report of the consultation, which reads as follows: "The present system of job reservation must give way to a more equitable system of labour which safeguards the interest of all concerned."

Would you say that that is an objective which the Dutch Reformed Church agrees with?

Mr. GERICKE: Mr. President, I have already given my opinion on this. When looking at the total picture, one must judge this system in the light of the possible alternatives. If a better and a reliable alternative could be found every South African would rejoice, I am sure of that. The Cottesloe consultation did not suggest such an alternative.

Mr. GROSS: Is it known to you to be a fact whether the World Council of Churches has made other pronouncements on this subject, or perhaps it would be fairer to ask whether you are familiar with the report of the Second Assembly of the World Council of Churches of August 1954?

Mr. GERICKE: I have read it—a long time ago.

Mr. GROSS: I think, Mr. President, I will not press the witness with respect to this resolution. I would, however, like to revert at this time to the Cottesloe consultation, since there are one or two other matters there which I should like to have in the record at this point.

In addition to the resolution No. 13, which I have read, with regard to job reservation, the Cottesloe consultation adopted the following resolution, No. 15:

"It is our conviction that the right to own land, wherever he is domiciled, and to participate in the government of his country is part of the dignity of the adult man, and for this reason a policy which permanently denies to non-White people the right of collaboration in the government of the country of which they are citizens cannot be justified."

Would you, Sir, comment with respect to this resolution. Before you do so, however, may I, for the sake of completeness and to remind you, Sir, refer to the fact that in approving this resolution No. 15, which I have just read, a special statement was made by the representatives of the N.G.K. as follows:

“We do not consider the resolutions adopted by the consultation as in principle incompatible with the above statement [which I shall read]. In voting on resolution 15, the delegations of the two Churches [that is, the Cape and Transvaal] recorded their views as follows:

‘The undersigned voted in favour of point 15, provided it be clearly understood that the participation in the government of this country refers in the case of White areas to the Bantu, who are domiciled in the declared White areas, in the sense that they had no other homeland.’”

This was signed by the delegations of the N.G.K. of Cape Province and Transvaal, and I should like to ask whether this reflects the viewpoint, the policy, of the Dutch Reformed Church, or whether you, as an individual or an expert, wish to express an opinion thereon.

Mr. GERICKE: Mr. President, there are two points. First of all, that the right to own land is part of the dignity of an adult man. I have to comment on that point first. Mr. President, if this is true it may seem to indicate that this statement implies that human dignity becomes impossible where you have nationalization of land, or communal land ownership. I am not prepared to subscribe to such a statement or such an inference. That is the first point.

Mr. GROSS: Do you wish to continue or may I ask you a question about that? Whichever you prefer, Sir.

Mr. GERICKE: Yes, please do.

Mr. GROSS: Apropos of the testimony which you have just given, if I understood you correctly you referred to nationalization of land or communal ownership. What opinion would you express with respect to land which is neither nationalized nor communally owned but the ownership of which is limited by law, or reserved by law, to Whites only?

Mr. GERICKE: Mr. President, do you refer to the Bantu people of South Africa? Because that is the point here. Through all the years they have been used to communal land ownership, as you know. I do not know what the position will eventually be in the non-White territories of South Africa. This is for the Bantu people to decide. But supposing the position was open, say, in the Orange Free State, for Bantus to buy land, it would be only just that the position would be open for White people to buy land in the Transkei. That would be just, not so? I am asking this question. If that is taken as a just arrangement then the following must happen. White people with capital will go to the Transkei, which is a very beautiful country, as you know, and will buy up the land. You cannot allow that. But if you do allow the Bantu people to buy land in the Orange Free State then you have to allow White people to buy land in the Transkei.

Mr. GROSS: How many White people live in the Transkei?

Mr. GERICKE: There must be about six, seven or eight thousand.

Mr. GROSS: What is the total population, do you know offhand, Sir?

Mr. GERICKE: About two million.

Mr. GROSS: And in the urban areas, what is the ratio of the non-White to the White? Can you tell the Court?

Mr. GERICKE: No, I am sorry, I have not seen the exact figures.

Mr. GROSS: The figure which I suggested to you earlier, which is the figure which I believe is reflected in the record, is the ratio of something like two-thirds of the Black population of South Africa live in the urban areas, approximately eight million persons according to my information. It may not be correct, Sir. If the figure is wrong, I cannot vouch for it, if you do not know it, I will not press the question.

There is, however, no doubt, is there, that a substantial majority of the population of the urban areas is non-White? Do you have that knowledge?

Mr. GERICKE: Yes, that is so.

Mr. GROSS: Now, in connection with the balance of justice—and we are talking now, I think, are we not, Sir, about the morality and equities in justice, of your view on this matter and of the Church—is it then entirely a question, in your view, of reciprocity which accounts for the fact that no non-White in this majority, in the urban areas, is permitted to own land or acquire the fee to real estate?

Mr. GERICKE: Yes, Mr. President, it is a question of reciprocity.

Mr. GROSS: And is it then possible that the Church would have a different view if the relative numbers were before it, with respect to the number of Whites in the Black areas who would be affected and the number of Blacks in the White areas who would be affected? Would that make a difference with respect to your view or the view of the Church?

Mr. GERICKE: Mr. President, I am sorry but I am not clear on this question.

Mr. GROSS: The numbers involved are quite disparate, are they not, Sir? There are some millions of non-Whites in the White areas, so-called, many of them permanently resident there. There are some thousands of Whites in the Transkei. This is correct, is it not, Sir? I say does the disparity of numbers have any bearing upon the question of the justice or morality of this reciprocity upon which you rely to justify the policy in question?

Mr. GERICKE: I do not see how it has any bearing.

Mr. GROSS: Mr. President, I gather that, with your permission, Sir, the witness would like to refer to the report which you now have had a chance to study. Is that correct, Dominie Gericke?

Mr. GERICKE: Yes, Sir.

Mr. GROSS: With the President's permission, would you have any comments which you wish to make with respect to the matter we discussed?

The PRESIDENT: He would like to identify some passage he was previously referring to?

Mr. GROSS: Yes, Mr. President.

Mr. GERICKE: On page 14 of this same report—

“That the founding and development of independent indigenous churches for the purpose of evangelizing the native races of South Africa was both necessary [and this is important] and in accordance with our understanding of the nature of the Church of the Lord Jesus on earth and has been richly blessed in the many years that have passed.”

Mr. GROSS: Thank you. I am certain that the Court will appreciate the elucidation. Is there any further reference you wish to make to the report, because I do not intend to refer to it again?

Mr. GERICKE: No, Mr. President.

Mr. GROSS: As we draw towards the close of this examination, Dominie Gericke, there are several points which perhaps should be or might well be clarified with respect, first, to certain testimony you gave yesterday in the verbatim, on page 34, *supra*, in response to a question addressed to the witness by the honourable President, which I take the liberty of quoting: "Well, the question is—in your opinion, does prejudice enter into the present separation of the churches into the mother church and the daughter churches?" And the witness's answer is as follows:

"Mr. President, my opinion is that we have passed that stage of prejudice in our church. It must have existed, I think it did exist a century ago, but we have passed that stage. We believe in separate churches for other reasons than prejudice."

And, then, in order just to complete your recollection, Dominie Gericke, on the same page of this transcript, in response to another question by the honourable President, you stated:

"Mr. President, I am so grateful that the one thing happening in South Africa is that prejudice is dying out. In my own Church, and I know that the same thing is happening in other churches, we are preaching against prejudice, and I think we have made a lot of headway. [And then you went on to say, if you recall, Sir:] I will not say that there is no prejudice in South Africa, as a matter of fact, I do not think there is a country where you do not find prejudice, but if I had to answer the question, what is the main thing that happened during the past 10, 15, 20 and more years in South Africa, I would say, it is the dying out of prejudice in that country. That is my impression."

I wanted, with the Court's permission, to be certain that you had that response clearly and fully in mind.

Would you agree, Dominie Gericke, that the analysis upon which that testimony is reflected would enter rather substantially in the determination as to whether or not the policy of apartheid is moral or conducive to the social progress of the inhabitants? Do you understand my question, Sir?

Mr. GERICKE: Yes, Sir.

Mr. GROSS: Would you express your opinion concerning the validity, from a moral, ethical point of view, and the point of view of social progress, of the policy of apartheid if this assumption, which you have testified to, were incorrect? Would you care to answer that?

Mr. GERICKE: If the assumption?

Mr. GROSS: That prejudice is dying out and is not, as I understood your testimony, a major element in the situation in South Africa at the present time?

Mr. GERICKE: Would that have . . . I am sorry.

Mr. GROSS: It is quite all right. I will try to state it briefly. It seems to me, with all respect, that the point is crucial and vital. The church has supported the policy of separate development or apartheid—is that correct?

Mr. GERICKE: That is correct.

Mr. GROSS: Is the support of that policy by the church—does that support reflect the analysis or premise that prejudice does not exist or is dying out and that apartheid does not reflect prejudice, or is not motivated by prejudice? Is this a correct statement?

Mr. GERICKE: Yes, that is a correct statement.

Mr. GROSS: Of your point of view, Sir?

Mr. GERICKE: Yes.

Mr. GROSS: The question I addressed to you was whether the policy of apartheid, from a moral point of view and from the point of view of the promotion of the social, moral welfare of the inhabitants, would be affected for good or ill on the basis of the opinion concerning the existence of prejudice in the Republic?

Mr. GERICKE: Prejudice can affect any policy, Mr. President, and can spoil any system.

Mr. GROSS: To the extent that I would not want to go too far in a hypothetical direction, I think however that it is fair, perhaps, if the President agrees, to ask you whether the premise, from which you proceed—that prejudice is dying out—is what plays a part in the support of the policy of apartheid or separate development—that premise, does that play a part in the support for that policy?

The PRESIDENT: Do you understand the question?

Mr. GERICKE: Mr. President, I am so sorry. I understand the words but it is not clear to me.

Mr. GROSS: Perhaps we may approach it from an entirely different point of view. I am sorry, Sir. Mr. President, I apologize for my obtuse form of questioning.

I would ask you, Dominie Gericke, to express your opinion concerning the following statement by Dr. B. B. Keet in his work which I cited yesterday *Whither South Africa?*, as follows, on page 13. Dr. Keet says:

"It is indeed tragic to see how on all sides colour has become the dominating factor in our assessment of human relationships. It is hardly an exaggeration to say that a man's worth is often measured, not by his innate qualities, but by the colour of his skin. That this is really our attitude needs no proof. Everyone who lives in South Africa is aware of it and yet there are good Christian Africaners who choose to speak of a 'wholesome' colour consciousness that would enable all, even the coloured races, to be proud of their colour. Such people live in a dream world of wishful thinking."

Would you express your opinion concerning the validity or otherwise of the role which Dr. Keet ascribes to the "consciousness" of colour, as he calls it, in the assessment of human relationships in South Africa?

Mr. GERICKE: Mr. President, I do not agree with Dr. Keet that colour has become a dominating factor in the arrangement of affairs in South Africa. It is less of a dominating factor. It was a very dominating factor in days gone by.

Mr. GROSS: At the present time, would you express your view concerning the extent to which, let us say, the Jobs Reservation Acts legislation reflects a fear or a concern or prejudice or any of these with respect to the competition of the non-White?

Mr. GERICKE: Mr. President, I have given my opinion on the Jobs Reservation. I want to stand by that opinion. I have no other opinion on the Jobs Reservation Act.

Mr. GROSS: You feel that you have responded to the question I have just asked in other terms.

Mr. GERICKE: Yes.

Mr. GROSS: Well, could I ask you, Sir, whether the problem of the political rights of the non-Whites is based upon, or does it reflect in any way, in your view, an attitude of White towards non-White based upon colour distinctions?

Mr. GERICKE: Mr. President, I must stress this point.

As I have said before, one must look at the whole picture. South Africa is trying to supply homelands for the different groups because South Africa believes that this is the best arrangement. Now, if you want to make this arrangement, namely to supply homelands for the different groups, it stands to reason that in the meantime you cannot open all the gates. Supposing we were to open the gates in South West Africa—for example, so that the Ovambo would be allowed to buy land in Windhoek, or to vote in Windhoek—then you would have to allow White people to buy land in Ovamboland and to vote in Ovamboland. This must be seen also as an historical development. The territories set aside for the Bantu people at the present moment were the same territories occupied by these people 50 years ago. Then came the industrialization of the country and the Bantu people came to the cities. They came from all parts of Southern Africa and from beyond our boundaries.

Now, if you had to open the gates and give political rights, then it will never be possible to work out this policy of separate development.

Mr. GROSS: Would you apply what you have just testified to, or does it apply in terms of your testimony, to the millions of non-Whites who reside permanently in the so-called White area?

Mr. GERICKE: Mr. President, yes, on condition that you qualify the word "permanent".

Mr. GROSS: Let us say, for life, if you wish to.

Mr. GERICKE: Yes. I have grown up in South Africa and I frequently go to all the territories and to our mission churches in the cities and I meet many Bantu people. Mr. President, I must testify that I have never met a de-tribalized Bantu in South Africa. They all belong to a tribe.

Mr. GROSS: Do you regard, Sir, that the Dutch Reformed Church, in its support of the policy of separate development and its influence upon the Government to further that programme, regards the non-White who resides or is domiciled in the White area—urban or rural—as a citizen of the Republic?

Mr. GERICKE: As a citizen of the particular group?

Mr. GROSS: Of the Republic?

Mr. GERICKE: No.

Mr. GROSS: You cannot answer? I am sorry.

Mr. GERICKE: Mr. President, may I give an example? During the recent elections in the Basutoland there were thousands of Basutos in Johannesburg in the Free State working on farms but when this election took place in Basutoland—which, as you know, was a British Protectorate—these Basutos all voted in this particular election in Basutoland. They maintained their unity with Basutoland as Basutos. Now, the same happened at the election as far as the Transkei is concerned.

Mr. GROSS: Sir, I am not certain that we understand each other in terms of my intended question. I am referring, if you will please bear with me, to an individual non-White who, let us say, has been born in the

outskirts of Johannesburg, just to take the place arbitrarily, has been brought up there, has never been to a so-called "homeland", and now works there and presumably will die there—taking such an individual—they exist, do they, Sir?

Mr. GERICKE: Yes.

Mr. GROSS: Taking such an individual, non-White, in that circumstance—does the Dutch Reformed Church in its support of the doctrine of separate development regard that individual non-White, as a citizen of the Republic of South Africa?

Mr. GERICKE: Mr. President (if you will permit me), if you do not look at this picture as a whole it is impossible to find a solution. What would happen if you had free franchise in Johannesburg, allow the Bantus who live in Johannesburg to have a vote there and you were to give the same right to the Whites in the Bantu homelands, then to me it is clear that it would be impossible to carry out this policy of separate development and give each race his own homeland. It would mean an integrated White section of the country and an integrated Black section of the country.

Mr. GROSS: Sir, I now, still within the area and directed to the point of your testimony yesterday that the Dutch Reformed Church supports the policy of separate development and urges the Government to advance and promote it—in that context, I now ask the view of the Church and, if you care to express it, your view as an expert concerning the following quotation by Dr. Keet in the same book on page 47, the volume *Whither South Africa*,<sup>2</sup> and I will read it with the President's permission slowly:

"The core of the political problem is the question of the vote, the declared policy of our country expressed by the (dominant) White vote is that of apartheid. It does grant the non-Whites some say in the Government of the Country but in such a way that for the purpose of exercising their rights, they are treated as a group while the Whites are treated as individuals and on a geographical basis."

I will pause there and ask whether you agree with that statement by Dr. Keet which I have just read.

Mr. GERICKE: No, I do not agree with that, Mr. President. When Dr. Keet differentiates in that way, namely that in the case of the Whites they are treated as individuals and in the case of the non-White people they are treated as a group, I cannot agree with him.

Mr. GROSS: You would not express it that way, Sir? Would you express your view with respect to the extent to which a non-White is regarded as an individual from the standpoint of franchise voting rights?

Mr. GERICKE: Mr. President, I am sorry I . . .

Mr. GROSS: Does an individual . . . I gather you were going to ask me to clarify the question, Sir, I did not want to interrupt you. If an individual non-White has achieved a degree of education and capacity, let us say to practise law, or to preach the gospel, or teach, and is therefore qualified as an individual by normal standards to exercise the right of citizenship, including the right to vote, does the Dutch Reformed Church have a policy with respect to supporting his right to vote as a citizen of the Republic given his individual qualification?

Mr. GERICKE: The Dutch Reformed Church is in favour of the principle of separate development. Now, the Dutch Reformed Church has not given any view in this particular instance of a man who has become a

minister and here I can only give my opinion. Mr. President, if the policy of separate development is to be carried out and you have open franchise in the White sector of South Africa, then the homelands will have to be open too and then the ultimate picture will be impossible. Supposing there were political rights of the kind you were referring to in the Free State and a Bantu could vote and buy land there, etc., then it stands to reason that in the Transkei voting must be open to White people, and the acquiring of land must be open to White people, and naturally they are going to take full advantage of that—the people who have the capital to do so. Let us move away from South Africa just for a moment; in South West Africa there is no law prohibiting a coloured man or Ovambo to buy land in the rural areas at the present moment—no law prohibiting that—but as far as I understand hardly any Ovambo or coloured man or Herero is making use of the privilege of buying land, say, in Keetmanshoop district.

Mr. GROSS: Sir, we have had testimony and evidence with respect to the rights and limitations of the sort you mention and I would like if I may, with the President's permission, to come back to the question I had intended to pursue with you. I am referring again to the policy and the basis of the policy of separate development as it applies to an individual non-White who spends his entire life in the so-called White area. One of the difficulties I have in explaining myself, I fear, is that when we try to focus on that individual as such, we hear usually about reciprocity or homelands but the individual to which I refer and which I request, if you will be good enough, to express the view of the Church and your view as to his moral welfare and his social progress is an individual person who spends his entire life living, working and bringing up a family in the so-called White area—what of that individual? This is the person I am talking about—how is he affected by homelands or reciprocity or whether a vote is denied some place else?

Mr. GERICKE: Mr. President, in answering this question I must raise a point. If the policy of separate development is to be carried out, you have to take groups into consideration—individuals living, say, in Johannesburg, are connected to their group in the homeland and the idea of this policy is to supply all the privileges in a Bantu homeland.

Mr. GROSS: Whether or not he in fact ever returns; if he does not return or has no prospect of returning or even going to perhaps the homeland he has never seen, how does that affect his life—that there are rights granted or withheld in some distant place in which he does not live and does not work—do I make my question clear?

Mr. GERICKE: Mr. President, you see what my problem is—suppose he should get political rights; suppose the one-and-a-half million Bantus in Johannesburg should get full political rights in Johannesburg—could this policy of separate development be carried out?

Mr. GROSS: Are you referring, Sir, to separate development with respect to the individuals living in Johannesburg?

Mr. GERICKE: Yes.

Mr. GROSS: With respect to separate development, is the concept applied to Whites and non-Whites living and working side by side in the same economy; does the doctrine of separate development also apply to that situation?

Mr. GERICKE: Yes, it does.

Mr. GROSS: And now, if we refer to that aspect of the policy of separate



development in that particular context—would you be good enough to explain what the major incidents or consequences are where the White and the non-White, living side by side and working in the same economy, are granted dissimilar privileges on the basis of race. What is there in respect of the Church support of separate development in that context which in your view justifies the deprivation of the right and the limitation of the freedom?

Mr. GERICKE: Mr. President, if separate development could not give any promise for the eventual self-realization, also politically, for every person in South Africa—if it could not give any promise for the realization of self-development and self-realization, also politically, then separate development is unacceptable. It must lead to that situation of equality.

Mr. GROSS: If self-development and self-realization of every individual is the objective then, in the context of your reply, would it not presuppose total separation of the races geographically?

Mr. GERICKE: Mr. President, my answer to that one was—not necessarily. May I explain—I think I did explain it partly yesterday—when this building is completed, when we have the homelands for every tribe and every race and when these homelands are developed and as you know they are being developed at high speed now—when these homelands are enlarged, and they are being enlarged considerably at the present moment, when this picture is completed and there still remain people, say in Johannesburg, concessions, as I have said before, will have to be made for those people politically and otherwise—I can give no other answer to that question.

Mr. GROSS: Well, I will not press you, Sir. I think that perhaps we have covered that as adequately as seems possible under the circumstances. I should like to move on to a conclusion, Mr. President. The references I shall make are two—one to the World Council of Churches and to the British Council of Churches and ask in each case your opinion with respect to whether the Dutch Reformed Church agrees or disagrees with the pronouncements of these Protestant Churches and if you wish your own personal view with respect thereto. The first is a resolution adopted by the second assembly of the World Council of Churches which met in Evanston, Illinois, in the United States in August 1954, and the first resolution reads as follows:

“The second assembly of the World Council of Churches declares its conviction that any form of segregation based on race, colour or ethnic origin is contrary to the Gospel, and is incompatible with the Christian doctrine of Man and with the nature of the Church of Christ. The Assembly urges the Churches within its membership to renounce all forms of segregation or discrimination, and to work for their abolition within their own life and within society.”

I pause there, and ask you, if you will, Sir, to indicate to the Court the extent to which, if any, this reflects the doctrine or approach of the Dutch Reformed Church and your own view if you care to express it.

Mr. GERICKE: Mr. President, the D.R.C. does not agree with that statement.

Mr. GROSS: For reasons which you consider that you have already explained in this testimony?

Mr. GERICKE: Yes.

Mr. GROSS: Or do you wish to elaborate with specific reference to this resolution, or have you said all you wish to say on the matter, Sir?

Mr. GERICKE: No, I think I have said what I want to say.

Mr. GROSS: That is only a portion of that resolution; I shall not read the rest; I do not think it affects the significance of the first part with which you have expressed disagreement in any event.

The second resolution reads as follows, and I should like similarly to ask your view concerning the D.R.C. attitude toward the policy and your own, if you wish to express it:

"This Second Assembly of the World Council of Churches recognizes that one of the major problems of social justice in situations involving racial and ethnic tensions is that of securing for all the opportunities for the free exercise of responsible citizenship, and for effective participation by way of franchise in both local and central government activity. It commends this matter to the attention of all Christian people for such action as, under God, they may be led to take in order to secure the solution of this problem."

That is the end of the resolution. Would you comment on that, Sir, if you will?

Mr. GERICKE: Mr. President, would Mr. Gross just read the first sentence again?

Mr. GROSS: Of course, if the President permits:

"This Second Assembly of the World Council of Churches recognizes that one of the major problems of social justice in situations involving racial and ethnic tensions is that of securing for all the opportunities for the free exercise of responsible citizenship, and for effective participation by way of franchise in both local and central government activity."

Mr. GERICKE: If that was the truth, and the whole truth, and nothing but the truth, the unqualified truth, then it would be very difficult to understand the position in the United States of America. There you have free franchise, but you still have tensions, you still have your problems in Los Angeles. If free franchise was the cure-all for tensions, then one should not have tensions in the United States of America.

Mr. GROSS: Sir, do you wish to comment any further on this?

Mr. GERICKE: No thank you, Mr. President.

Mr. GROSS: With respect to the situation in South Africa, would you care to elaborate on what you have previously had to say on the subject of voting rights or citizenship rights in the context of this resolution?

Mr. GERICKE: No elaboration, Mr. President.

Mr. GROSS: Is it correct that the Dutch Reformed Churches of the Cape and of Transvaal terminated their membership in the World Council of Churches in 1961?

Mr. GERICKE: That is correct, Mr. President.

Mr. GROSS: Do you think, as an expert and Churchman, that a reason, or perhaps the chief reason, which caused these Dutch Reformed Churches to disaffiliate from the World Council—was their disagreement with the World Council on the racial question?

Mr. GERICKE: Mr. President, there were two main reasons for this. At that time in 1961 the Church was nearing the end of a long road, the Dutch Reformed Churches in South Africa—the long road of union. We had five different White Dutch Reformed Churches in South Africa: one

in the Transvaal, Free State, Natal, Cape Province and South West Africa. Two of these provincial churches belonged to the World Council of Churches, the one in the Cape and the one in Transvaal. The other three did not belong to the World Council of Churches. Now the World Council of Churches has in its constitution a section which makes provision for a church to join this Council as a church, and not for a section of a church. At that time we were nearing the goal of uniting the five separate provincial churches, and in order to make this possible, and in view of the fact that some of the other provincial churches were against joining the World Council of Churches, we had to terminate our membership. This union took place a year or two later. That is the one reason.

Mr. President, another reason for this resolution must have been the influence of the Cottesloe deliberations and what happened as a result of this conference. There was widespread tension and disagreement with the attitude of the World Council of Churches.

I think these are the two main reasons for this resolution.

Mr. GROSS: In this latter reason that you described, is it correct, Sir, that the N.G.K. of the Transvaal at its synod held in April of 1961, when it decided to resign from the World Council, adopted a resolution that its delegates to the Cottesloe consultation had voted in favour of most of the Cottesloe resolutions which were at variance with the policy of the N.G.K. and were embarrassing to the Government, and that the synod resolved that the "highest interests of non-Whites can best be furthered through the policy of differentiation", and in the same resolution that support was pledged for total territorial separation; are you familiar with that resolution, Sir, of April 1961?

Mr. GERICKE: Yes.

Mr. GROSS: Is this a correct rendition or summary of the resolution?

Mr. GERICKE: Mr. President, I read about that resolution in the newspapers; as you know, I am not a member of the Transvaal Synod—I am a member of the Cape Synod—but I take it to be correct.

Mr. GROSS: The reference, Sir, for further checking, if you wish, is *A Survey of Race Relations 1961*, published in Johannesburg, and the resolution is referred to at page 67 of that volume.

The Cape Synod of the N.G.K., I believe, if not mistaken, met in October of 1961, as I say, and it rejected the Cottesloe resolutions as "undermining the policy of separate development" and being in conflict with the N.G.K.'s traditional policy; is that a correct version?

Mr. GERICKE: That is correct.

Mr. GROSS: That is to be found in the same volume, at page 68. The actions taken in both cases therefore would seem to reflect, at least as one of the principal reasons for the disaffiliation, a difference between these two churches and the World Council with respect to the racial questions—is that not correct, Sir?

Mr. GERICKE: That is correct.

Mr. GROSS: In connection with the attitude, the policy, of the Dutch Reformed Church, would you feel it just to say that it is pretty much alone among churches in its support of racial segregation or racial separation in terms of church structure and apartheid?

Mr. GERICKE: Mr. President, the Dutch Reformed Church is not alone—I am referring you to the Reformed Ecumenical Synod of Grand Rapids held two years ago.

Mr. GROSS: Perhaps the Court is not familiar with that . . .

Mr. GERICKE: Mr. President, there was one resolution passed by that conference at Grand Rapids, U.S.A., which said that the policy of separate development is not un-Christian, whereas the World Council of Churches says by implication that it is un-Christian, and unscriptural.

Mr. GROSS: Can you advise the Court, Sir, what churches or groups of churches were represented in the conference to which you have just referred?

Mr. GERICKE: It is a number of Reformed Churches in the United States, the Reformed Church in Holland, I believe there are a few churches in England; it is a large body; I cannot give you full particulars, but I can supply them to the Court if you wish it.

Mr. GROSS: Just a matter of evaluating. Are you familiar, Sir, with the resolutions adopted by the National Council of Churches of Christ in the United States?

Mr. GERICKE: Yes; of the United States?

Mr. GROSS: Yes, Sir—are you familiar with these resolutions?

Mr. GERICKE: No, I am not familiar with that.

Mr. GROSS: You would not be prepared, therefore, to comment with respect to the difference between their attitude and that of the conference?

Mr. GERICKE: No, Mr. President, I am not familiar with the resolutions of the National Council of Churches in the United States.

Mr. GROSS: Are you familiar, Sir, with the resolutions adopted by the British Council of Churches?

Mr. GERICKE: I am familiar with these.

Mr. GROSS: Are you familiar with the British Council of Churches' statement in 1954, as follows—I quote from the book published for the British Council entitled *The Future of South Africa, A Study by British Christians*, published for the British Council of Churches in London in 1965; page 91 in this work reads as follows—in 1954 the British Council of Churches expressed its belief that—

“the policy of the South African Government, as expressed in the Native Resettlement Act and the Bantu Education Act, whereby it is proposed to ensure the mental as well as the physical segregation of the Bantu ‘in his own community’ and to deny him any place ‘in the European community above the level of certain forms of labour’ is not only an offence against human rights, but also against the Divine Law as set forth in the Bible”.

Has that statement by the British Council of Churches been previously called to your attention, Sir?

Mr. GERICKE: Yes.

Mr. GROSS: Would you care to express the view of the Dutch Reformed Church with respect to it, or your own view if you wish?

Mr. GERICKE: Mr. President, first of all I must say I do not agree with that statement, especially when that statement says that this is contrary to the Bible. If I may say so, Mr. President, the way the Bible has been implemented in that particular statement or statements by the British Council of Churches—I can never agree with it. I can give you examples, if you want me to.

Mr. GROSS: If you wish, Sir, and the President permits, I feel that you may answer the question.

Mr. GERICKE: Mr. President, one of the statements is that the policy

of apartheid is a sin against the Holy Ghost. Am I correct in saying that?

Mr. GROSS: Are you referring, Sir, to anything I have read?

Mr. GERICKE: No, am I correct . . . ?

Mr. GROSS: In this quotation?

Mr. GERICKE: Not in that particular quotation, but the statement by the British Council of Churches which says apartheid is a sin against the Holy Ghost. Mr. President, now when the churches make a statement like that, one thing is certain, and that is that they are not taking into consideration biblical principles, because, according to the Bible—St. Matthew, the 12th Chapter: "The sin against the Holy Ghost is committed when a man ascribes to the devil the work of the Holy Ghost." That is the only sin against the Holy Ghost that the Bible knows of, and I am now quoting the words of the Lord Jesus. That is what he said about the sin against the Holy Ghost (Matthew, Chap. 12). Now, how a church body, consisting of ministers who should know their Bible, could make a statement like that—"it is a sin against the Holy Ghost"—is very difficult for me to understand. That is how I am referring to what you just said, i.e., that this statement is in accordance with the Bible.

Mr. GROSS: Have you finished?

Mr. GERICKE: Yes.

Mr. GROSS: The reference (unless there be any confusion of the record on this) was the reference by the British Council of Churches to the policy of the South African Government as expressed in two designated bits of legislation; they made a Resettlement Act and the Bantu Education Act—I just wanted that clarified for the record. In 1960, the British Council reaffirmed (this is from the same page, from 91 of this work) "its wholehearted support for the statement on race relations made by the Second Assembly of the World Council of Churches, which includes the declaration that (and I quote from the Second Assembly resolution): "segregation, in all its forms, is contrary to the gospel and is incompatible with the Christian doctrine of man and with the nature of the Church of Christ. The Assembly urges the Churches within its membership to renounce all forms of segregation or discrimination and to work for their abolition within their own life and within society." You may recall, Sir, that I read this before, but I am putting it into the record again because it reflects in this context the British Council of Churches' affirmation of support for that resolution. Do you have any further comment with respect to this quotation from the Assembly of the World Council of Churches?

Mr. GERICKE: Mr. President, with due respect, I think I gave my Church's opinion on separate development and also my own. Now, I cannot see the point of pressing this again and again, if I may say so. I have given my Church's opinion and that is directly against the view of the British Council of Churches. I think I have given my opinion on that already.

The PRESIDENT: Your answer is the same no matter how many Churches or Church councils express their views in similar terms?

Mr. GERICKE: The answer is the same, yes.

Mr. GROSS: Then you are beyond persuasion, Sir? I would like to ask one final question and this relates not to the statements by sister churches, but by, again, finally, Dr. Keet, of your own Church. It appears on page 80 of the same volume and reads as follows:

"As everyone knows, South Africa, with her policy of apartheid,

stands quite alone today in a world by no means kindly disposed towards her. It is not only with Liberalist, or even Communist, opinion that we are in conflict, but with all Christian trends that approach the question of race relations from a biblical standpoint. We are out of step with the universal Christian Church. At the present moment, therefore, we are faced with a choice of whether we will continue on the road we have taken and defy the whole world and the whole Church, or whether we will seek a better way—one that is more in accord with our vocation as a Christian nation."

And it is my final question to you, Sir, to ask whether you have, in your own estimation sufficiently adverted to this matter, or whether you have any further comment to make?

Mr. GERICKE: Mr. President, I have already indicated that South Africa is not standing alone and I think Dr. Keet is not correct when he says that. I have referred to the Ecumenical Synod. That is my first remark.

When Dr. Keet says, "We are defying the whole world", if I may say so (let me say this as a friend of Dr. Keet and one who admires Dr. Keet—he is my old professor), when he says, "We are defying the whole world", it is a very unkind and a very unchristian remark. We are not defying the world—we are following the road which we consider as being the right road. We are not walking on that road as people who are cocksure of themselves. On the "road of progress", the cocksure man is a very dangerous bed-fellow, but we are following this road because it is our conviction. Mr. President, we are not defying the world. We are seeing this road as the only road to the solution, that is all. Thank you, Mr. President.

Mr. GROSS: Mr. President, may I, with respect, thank the witness for his patience, and the honourable President, and that concludes my cross-examination.

The PRESIDENT: Certain Members of the Court desire to ask questions of the witness. Sir Gerald?

Judge Sir Gerald FITZMAURICE: Mr. Gericke, I would be grateful if you could clarify a little the relations between the Dutch Reformed Church and the South African Government. In general, would it be true to say that the policies and actions of the Dutch Reformed Church are entirely its own, or are they in any way inspired by the South African Government—or, to put the matter a little differently, has the South African Government, which is the Respondent in this case, any responsibility for the policies or actions of the Dutch Reformed Church?

Mr. GERICKE: Mr. President, no responsibility for the action of the Dutch Reformed Church, direct or indirect, but many of the adherents—members of the Dutch Reformed Church—are supporters of the Government, naturally.

Judge Sir Gerald FITZMAURICE: So that, Mr. Gericke, when the Dutch Reformed Church, for instance, decides to set up separate or daughter churches, or perhaps separate Communion tables, that is entirely its own act and not, as it were, inspired by any suggestions or instruction from higher quarters?

Mr. GERICKE: Mr. President, we had this pattern of church life long before there was any Government policy on this point. The first man who spoke in favour of this policy was General Smuts in 1917—that was

the first time the word "apartheid" was used: but long before that we had this pattern of church life.

Judge Sir Gerald FITZMAURICE: Thank you.

The PRESIDENT: Judge Jessup.

Judge JESSUP: Mr. Gericke, there are just one or two questions about your testimony yesterday, and I put my question solely for the clarification of the record before us and, of course, without any intimation of the importance or relevance which might ultimately be attached to the points at issue.

On page 4, *supra*, of the transcript of yesterday's testimony you testified that you are a member of the Federal Council of the Dutch Reformed Churches of South Africa. You agreed with Mr. Rabie's statement that this Federal Council is a body composed of representatives of the European Coloured and Bantu Reformed Churches in South Africa.

Mr. GERICKE: That is correct.

Judge JESSUP: And at page 8, *supra*, in referring to the role of the Federal Council you used the expression "At this top level, the Federal Council provides the opportunity for discussion of matters of policy . . ."—is the Federal Council in the hierarchical organization of the Dutch Reformed Church the highest body in South Africa?

Mr. GERICKE: No, Mr. President, in our Church organization—as a matter of fact, in all the Reformed Church organizations also in this country—the highest body is the synod. Now, the procedure is the following when there is any resolution by this Federal Council, it must be referred to the General Synod of the Dutch Reformed Church.

Judge JESSUP: That is, there is a general synod for the Church of South Africa as a whole, which has the highest authority over all of the Dutch Reformed Churches, whether White, Bantu or Coloured?

Mr. GERICKE: No, Mr. President, I am sorry, it is my mistake if there is a misunderstanding. There are different synods. There is the synod of the Coloured church; there is the synod of the Bantu church in South Africa and the synod of the White church. Now, the synod is the highest authority. The resolutions of this Federal Council must be referred to all these synods for action.

Judge JESSUP: So there is no body other than the Federal Council which has superior jurisdiction over the synods of all of the separate churches?

Mr. GERICKE: No, Mr. President.

Judge JESSUP: Does the Federal Council have any power of decision, or merely of discussion and recommendation?

Mr. GERICKE: Merely of discussion and recommendation.

Judge JESSUP: And how many members of the Council are there?

Mr. GERICKE: About 34, Mr. President.

Mr. JESSUP: And how many of these are White representatives or from the White churches?

Mr. GERICKE: I would say about fifty-fifty.

Judge JESSUP: Half White and half non-White? And of the non-White, could you indicate to the Court how many are Bantu and how many are Coloured, to use your terminology?

Mr. GERICKE: I will have to make a guess, now, Mr. President, because I have not the list in front of me.

The PRESIDENT: If you are going to guess, make it an intelligent one.

Mr. GERICKE: A guess is never very intelligent, Mr. President, but I

will try. I would say about 20 per cent. of the Coloured section, 30 per cent. Bantu and 50 per cent. White.

Judge JESSUP: And do I understand, from what you have just said, that there is one, what I may call a "high synod" which has authority over all of the synods of the particular Bantu churches?

Mr. GERICKE: No, Mr. President, the general synod of the White church has no authority over any Bantu or Coloured synod.

Judge JESSUP: No, but my question is—I take it that there is a White synod which has authority over all the White churches?

Mr. GERICKE: That is correct, Mr. President.

Judge JESSUP: Is there another high synod which has authority over all the Bantu churches?

Mr. GERICKE: That is correct.

Judge JESSUP: And a third which has authority over all the Coloured churches?

Mr. GERICKE: That is correct.

Judge JESSUP: And there is no organ of co-ordination or of domination or supervision above these three synods?

Mr. GERICKE: No, there is not.

Judge JESSUP: Thank you very much.

The PRESIDENT: Does any other Member of the Court desire to ask any questions? Sir Louis.

Judge Sir Louis MBANEFO: Do any of the synods depend on another for financial support?

Mr. GERICKE: Yes, Mr. President, I think I have explained it. At the present moment the Coloured church and also the Bantu church need the support of the White section, in the form of money and of personnel.

Judge Sir Louis MBANEFO: Could you give us some idea of the extent of the financial help? Could you say what the Bantu synod, for instance, gets from the White synod?

Mr. GERICKE: Mr. President, I cannot differentiate, but I know that the annual figure which reflects the support of the White church to the non-White churches, that is including the Coloured church, is at the present moment 6 million Rand. The major part of this support goes to the Bantu churches because the Coloured church is well on its way to independence, also financial independence.

Judge MBANEFO: Thank you.

The PRESIDENT: There are just a few questions I would like to ask you, Mr. Gericke. In your answers to Judge Jessup's questions you have clarified the position considerably. The Federal Council operates as a recommending body?

Mr. GERICKE: That is correct, Mr. President.

The PRESIDENT: But each of the churches, that is the mother church and the daughter churches, have their own independent synods? And no one of them has any control over any other?

Mr. GERICKE: No control whatsoever, Mr. President.

The PRESIDENT: During the testimony you spoke about the advantages of this church system: I want to ask you whether there have been revealed to you any disadvantages. For example, have you experienced any sense of resentment or sense of inferiority amongst the congregation of the daughter churches, because their churches are separate from the White church and that there is not any multi-racial church?

Mr. GERICKE: Mr. President, I get in contact with many Bantu and



Coloured church leaders—it is my responsibility in the Commission of the Dutch Reformed Church. I meet many of them in my home, I have very frequent discussions with both these groups. I frequently visit all our mission fields. Mr. President, I can testify that I have not come across a single Coloured man or Bantu in the Dutch Reformed Church who has resented this position. By saying this, I want to be fair. I do not say that there is not any resentment. But not that I know of.

The PRESIDENT: Well have you experienced any sense of resentment or sense of inferiority on the part of any member of the Bantu people who are not members of the various daughter churches?

Mr. GERICKE: On account of the division in the Church, Mr. President?

The PRESIDENT: Though not members of the Church they must know about it: have you experienced any resentment on the part of non-members of the daughter churches who are of the Bantu people?

Mr. GERICKE: No, Mr. President, I have not. As a matter of fact, a few weeks ago I met two Bantu people in Cape Town who had to take me to a distant place. One was the driver of a friend of mine in Cape Town. As I sat with them in the car, I asked them to which church they belonged and they both told me that they belonged to the Dutch Reformed Church. In reply to the question: since when? They both told me that they joined the Dutch Reformed Church in the course of this year. When I asked them for an explanation they replied that they liked the system which gave them their own church.

The PRESIDENT: The answer to my question is that you have not experienced any expression of resentment, on the church formation which exists, on the part of non-members of the daughter churches.

Mr. GERICKE: I have not experienced any resentment.

The PRESIDENT: Have you been in a position to ascertain whether it exists or not, or have you been so removed from all except members of your Church that you would not know one way or the other?

Mr. GERICKE: Mr. President, I come in contact with the members of the Dutch Reformed Church but not very frequently with the members outside the Dutch Reformed Church.

The PRESIDENT: The only other question I wanted to ask you relates to the difference in the doctrine and practice in your Church compared with what I might call the multi-racial churches, where the church is in effect one foundation: yours rests on a number of foundations, I gather. That is correct, is it? You have got the mother church and the daughter churches.

Mr. GERICKE: That is correct, Mr. President.

The PRESIDENT: And they provide a church for different peoples. In the case of the multi-racial churches—I do not want to mention any specific one—you did indicate that in some of them, whilst the Bantu people and the White people, and Coloured people, are all members of the one church, nonetheless different services in the same church are provided for them. Do I understand the picture is that there is the one church, firstly in a spiritual sense, the one church, one foundation, and then in another sense there is the physical edifice which is the church which they attend?

Mr. GERICKE: Yes.

The PRESIDENT: Is it common that when a service is being held in the churches you have been speaking about, for example, where attended by Whites, that any member of the Bantu or Coloured people would attend?

Mr. GERICKE: Are you speaking of the English churches now?

The PRESIDENT: I am speaking of any.

Mr. GERICKE: No, it is not a very common practice. It happens in certain places. I know of two, Cape Town and Johannesburg, two cathedrals.

The PRESIDENT: To what extent is there a commingling on the part of the congregation of different races in both those cathedrals?

Mr. GERICKE: Mr. President, I can only give an impression. First of all I think that the attendance is very small on the part of the non-White community. I do not think there is very much social intercourse.

The PRESIDENT: Are you able to say whether, for example, Communion is given at the same altar rail at the same time to the White people and to the Coloured and Bantu people in any one of the multi-racial churches?

Mr. GERICKE: I am not in a position to say, Mr. President.

The PRESIDENT: Not one way or the other? That is all I wanted to ask. Mr. Rabie.

Mr. RABIE: Mr. President, I wanted to ask the witness one or two questions simply to clear up some points. I will not be more than a minute or two.

Mr. Gericke, my learned friend, quoted some passages to you from a report of what is called the Cottesloe Consultation. He read to you certain resolutions, as he called them, being Nos. 13 and 15. I merely wish to read to you one or two passages from the very same document to explain, as I see it, the real nature of what were described as resolutions.

Mr. President, this is really leading the witness but I do not think my learned friend will object as I am reading from the same document which he read to the Court. The first point is this, that what my learned friend called resolutions were really certain agreements to which the members at this consultation came, and these agreements were to be submitted to the synods of the different churches.

Mr. GERICKE: That is correct, Mr. President.

Mr. RABIE: If I may read the passage to you, it says at page 73 of the document:

“In the nature of the case the agreements here recorded do not—and we do not pretend that they do—represent in full the convictions of the member churches.”

In the next paragraph we find it stated that there was a call upon members to ask their churches to consider the various points mentioned. Is that correct?

Mr. GERICKE: That is correct, yes.

Mr. RABIE: One further question, and that is the last one. In connection with the question which was put to you by one of the honourable Members of the Court with regard to the relationship between your Church and the Government, and decisions taken by either the one body or the other, can you state whether, to your knowledge, all the members of the Cabinet of the South African Government at the present time belong to one church or to different churches?

Mr. GERICKE: No, Mr. President, they do not belong to one church. There are members from different churches, two English churches and two different Afrikaans churches.

Mr. RABIE: Yes. Do members of the Cabinet belong to, shall we say, English-speaking churches?

Mr. GERICKE: Yes, and at least two to another Afrikaans-speaking church, not to the Dutch Reformed Church.

Mr. RABIE: Not the Dutch Reformed Church; thank you.

The PRESIDENT: Mr. Gross, will you need the attendance of Mr. Gericke any further?

Mr. GROSS: No, Mr. President.

*[Public hearing of 22 September 1965]*

The PRESIDENT: The hearing is resumed. Mr. Muller, will you present your next witness?

Mr. RABIE: Mr. President, honourable Members, the next witness for the Respondent will be Professor Krogh. Before he is called, may I indicate to the Court that Professor Groenewald, whose name appears on the Respondent's present list of witnesses, will not be called. Mr. President, on 30 July the Respondent notified the Deputy-Registrar that Professor Groenewald would testify on certain points which were exactly the same as those indicated in the case of the Reverend Mr. Gericke. It was subsequently decided to let one witness cover the whole field, and for that reason not to call Professor Groenewald.

My learned colleague Mr. Muller will lead the next witness.

The PRESIDENT: Mr. Muller?

Mr. MULLER: Mr. President, Professor Krogh's evidence will relate to the issues raised under the Applicants' Submissions Nos. 3 and 4. We have also intimated to the Registrar and to the Applicants that the points to which his evidence will be directed will be the following, and I will just read it from the letter addressed to the Applicants for the purpose of the record:

"Circumstances and conditions in South West Africa which materially influence and affect economic development of the territory.

The necessity of applying measures of differentiation between the various population groups in South West Africa in the economic development of the Territory."

May I ask that Professor Krogh be introduced to the Court and make both the declarations provided for in the Rules, that is, as witness and as expert?

The PRESIDENT: You may make the declarations.

Mr. KROGH: In my capacity as a witness I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth. In my capacity as an expert I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

Mr. MULLER: Professor Krogh, your full names are Desmond Charles Krogh, is that correct?

Mr. KROGH: That is correct, Sir.

Mr. MULLER: You were born in South West Africa, and lived there until you had completed your schooling, is that correct?

Mr. KROGH: That is also correct, Sir.

Mr. MULLER: Did you then proceed for further study to universities in South Africa and overseas?

Mr. KROGH: Yes, Sir.

Mr. MULLER: I will state your academic qualifications, and ask you to indicate whether the statement is correct. You hold the Bachelor of Commerce Degree of the University of Cape Town?

Mr. KROGH: That is so, Sir.

Mr. MULLER: Master of Arts of the University of Cape Town in Economics?

Mr. KROGH: In economics. Yes, Sir.

Mr. MULLER: A Doctoral in Economics of the University of Amsterdam?

Mr. KROGH: Yes, Sir.

Mr. MULLER: And a Doctor of Philosophy, University of Pretoria?

Mr. KROGH: That is correct, Sir.

Mr. MULLER: Have you held any teaching positions in universities in South Africa?

Mr. KROGH: Yes, Sir, I have held teaching positions at the University of the Orange Free State, the University of Pretoria and at the University of South Africa.

Mr. MULLER: What is your present position?

Mr. KROGH: I am at present Professor in Economics at the University of South Africa and Head of the Department of Economics and Economic History at the University of South Africa.

Mr. MULLER: Were you at one time the Assistant Economic Adviser to the Economic Advisory Council of the Government of South Africa?

Mr. KROGH: That is so, Sir.

Mr. MULLER: Do you serve on various committees concerned with economic affairs?

Mr. KROGH: Yes, I do, Sir. I serve at the moment on the committee concerned with the development of Bantu areas in South Africa; on an advisory committee for economic planning in South Africa; on a committee for national or economic accounting, in South Africa; and I also serve on a advisory committee for economic research at the Africa Institute in Pretoria.

Mr. MULLER: Are you attached to any economic institutions and societies?

Mr. KROGH: Yes, Sir, I am a research assistant at the Reserve Bank of South Africa; I am a member of the International Association for Research in Income and Wealth; I am also, of course, a member of the Economic Society of South Africa, and I have been the Secretary of this Society until very recently.

Mr. MULLER: What is your special field of study, Professor Krogh?

Mr. KROGH: My special field of study, and the one that interests me most at the moment, concerns the use of economic accounting in development planning with particular reference to Africa.

Mr. MULLER: Have you done research work in various countries?

Mr. KROGH: Yes, Sir; apart from extensive economic research in South West Africa and of course South Africa, I have visited Ethiopia and Kenya in this connection, and have also paid a very brief visit to Mozambique, or Portuguese East Africa. I might add—I was thinking in terms of Africa—that I have also had the opportunity of studying national accounting and economic development research at institutions in America.

Mr. MULLER: Are you the author of several publications on economic affairs?

Mr. KROGH: Yes, Sir, I am the author of *The National Income Framework of South West Africa from 1920-1956*. Then I am the author of *Economic Aspects of the Karakul Industry in South West Africa*. I am also the author of the first *Inter-Industry Analysis of the South African Economy*, apart from various articles on economic matters.

Mr. MULLER: Am I correct in stating that you have an extensive knowledge of economic conditions in South West Africa itself?

Mr. KROGH: Yes, I think I have.

Mr. MULLER: Before I ask you specific questions relative to economic conditions in South West Africa, will you give the Court a very brief outline of economic conditions in the Territory before 1920 when the Mandate was assumed?

Mr. KROGH: Well, Sir, in order to be very brief on this but nevertheless comprehensive, allow me to divide this period into two—namely the period before the German Occupation, which lasted for 30 years until the outbreak of World War I, and the period preceding this. I can be very brief about the first and the second period. As far as the first period is concerned—this is before 1884—for centuries Portuguese, Dutch, British and even the Cape Government showed interest in the Territory of South West Africa. In fact, they sent expeditions to the Territory to ascertain its economic possibilities and prospects, and I have studied some of these reports in the course of my research. They were all very discouraging from the viewpoint of the economic possibilities in the Territory. The reasons given, without exception, were that the cost and difficulties of administration would far outweigh any known economic possibilities that the Territory might offer. And subsequently, as you probably all know, this led only to the annexation of the harbour of Walvis Bay, which forms legally part of the Cape Province of the Republic of South Africa.

As far as the internal position of South West Africa is concerned, it was very much like the rest of Africa before the turn of this century. There was no peace and security for man or property in the Territory. It was populated by a large number of different groups, living in virtual economic isolation from each other, and of course from the rest of the world. Subsistence activity was their way of earning a living from the soil, which was very precarious under South West African conditions. Furthermore, their techniques of production were not only primitive compared to modern standards of agricultural development and of earning a living, but they were also static—there are no signs that they were improved even in terms of generations. The position in the south was that, this area being much less fertile and Nature being very much less kind, the population density was much lower. There were more population groups, many of which had either been pushed out from areas adjoining South West Africa or had come there from fear, or at least for protection, knowing that they would not be pushed out of this area by groups that might think this area favourable to any other area. I am thinking particularly of the Bushmen or Damara—in a historical sense of course. There is also evidence that private traders and hunters frequented the internal part of the area, obviously for economic gain. They traded largely with liquor and fire-arms, which were in great demand, and further, of course, did not help in any way to establish peace or keep the peace in the Territory. As a matter of fact the sale of fire-arms and of liquor to Natives in the Territory was specifically prohibited in the

Mandate, if I recollect correctly. They practised what we would call a type of *Raubwirtschaft*, which means that they were not concerned about the conservation of the few trading products that Nature in fact produced in the Territory—this largely took the form of ivory and ostrich feathers. It did not take long before the Territory was nearly completely depleted of these articles of exchange.

Mr. MULLER: Will you deal next with the second period before 1920, that is, the period under the German regime—very briefly, please?

Mr. KROGH: Yes. It always seems strange for an economist, who studies the economic history of these territories, to find the reasons why a particular modern metropolitan country should show an interest in a particular African territory, and we have seen and I have pointed out, that not only the Portuguese, the Dutch and the British, and even the Cape Government, had shown interest, in the Territory, but they did not regard it as in their interests to assume responsibility for its administration and development. It is very difficult to establish exactly what the motive was for doing this, but I can assure you that it was not economic. As a matter of fact, the Germans, as we all know, were late-comers to the colonial scene and, to put it very popularly, "they went in where angels fear to tread". Their period of 30 years of administration proved that they had to learn the problems of administration and economic development in South West Africa the hard way. They were inexperienced with these problems and, in fact, the first 15 years of German administration were, for all practical purposes, ineffective from the viewpoint of establishing control, or introducing law and order or security in the territory. There were no economic developments in the Territory during the first 15 years worth mentioning, not only because of the lack of economic possibilities in the Territory, but also because of the lack of means, in the case of Germany, to develop territories. She was not, at that stage, a capital exporting country, as Britain and France and the other metropolitan countries were. Nevertheless, this all culminated a few years later in the well-known German Native wars in the territory (internal wars), which disrupted the little security there was and led to a great loss of lives and livestock and, of course, involved considerable financial costs to the German Imperial Government. In fact, during the first 22 years of German administration—which brings us to 1907—German public money to the extent of £21 million had been spent on the Territory, three-quarters of which was for military purposes, not for any constructive, economic development purposes.

It was only during the last eight years—that is, the remaining eight years before World War I—that law and order had been established in part of the Territory, in the so-called "Police Zone". This, by the way, is a concept that is derived from the German period of administration, indicating the extent of their administrative penetration into the Territory. It has been retained to the present for administrative purposes.

As far as economic development is concerned, part of what we call the infra-structure, this means of communication and transportation, had been established. Furthermore, mining (in the meanwhile diamonds had been discovered, and copper, too) was in the process of being developed as an export industry. This only happened after the German Native Wars, during the last few years before World War I.

There was also the beginnings of the development of a modern live-

stock industry in the Territory, but there were no exports of such products. The industry was still in a pioneering stage, although important improvements had already been made in this respect and these had been effected by way of encouraging the settlement of Germans in the Territory to develop a modern livestock industry. It is important to remember that these economic innovations did not extend over the whole Police Zone. This economic penetration had only been established in the central part of the Police Zone, but it proved to be very promising indeed. It was all suddenly arrested, of course, with the outbreak of World War I, and the subsequent short period of military administration.

I think I can conclude by looking at the period as a whole, that during the period of German administration it was largely experimental in nature. The Germans first tried to develop and administer the Territory by way of a commercial company (the Deutsches Kolonialgesellschaft für S.W.A.); followed by a period of military administration; and then, shortly before World War I, there was a form of local government coupled with White settlement. The latter had been encouraged to develop the modern livestock industry in part of the Police Zone. Economic development was slow and, in fact, limited.

Mr. MULLER: Would you describe the position, also briefly, in South West Africa after World War I—that is, when the Mandate was assumed in 1920?

Mr. KROGH: Well, I shall try to be very brief, Sir. I think the best way to do this is to divide the Territory largely into a northern part where more than half the population of the Territory lived, and the southern part. I do this for the simple reason that administratively and economically speaking, the quarrels which led to an internal war and the economic developments in the south (the establishment of a modern economic sector), had, in fact, not affected the greater part of the population at all—that is the area which is generally known as the northern part of the Territory, or the area outside the Police Zone. The land was more fertile here, but it was economically less accessible. It was relatively peaceful compared to the south, where there were more different groups with greater social differences between them and nature was less kind in the south than in the north. The economic landscape in the north was rather even and static. There were no considerable signs of economic unevenness or imbalance, but very important, too, it was virtually static for all practical purposes—there were no dynamic elements of economic improvement from within the greater part of the population.

Now, turning very briefly to the south, this, in contrast, was very much less fertile, but economically more accessible. The area was inhabited by more groups, but because it was a larger, being less fertile, area the population density was very low. These groups lived in mutual suspicion of each other, not trusting each other, and, of course, most of the inter-tribal wars, and even the German-Native Wars, took place in the southern part of the Territory. Meanwhile, however, it is also important to remember that the economic landscape (I am referring now to 1920) was very uneven compared to that in the northern part of the territory. This was so for the simple reason that there were important regional differences in the carrying capacity or economic possibilities of the south than there were in the north. And more important still, is the fact that there were quite different groups occupying this area—different that is from the viewpoint of their economic viability or their capacity to

establish and develop modern economic activities. There factors accounted for the great economic unevenness, but most important I think, from the viewpoint of economic development, is that there was an important dynamic element of development in the southern sector as I have sketched very briefly as regards the German period. There was already established modern mining activity and there were the beginnings of a modern livestock industry.

Finally, I think, it is also important to mention that, at this stage, the Territory could not pay its own way. By this I simply mean that it could not, in fact, finance (as it proved very clearly in the German period) its own development efforts to extend its productive capacity, nor, in fact, was it able always to rely on its revenue largely derived from mining activity to finance its ordinary administrative expenditure, let alone the financing of capital investments, because of the instability of this source of revenue. This was clearly shown later in the 1930s, for example, when it could not even pay its ordinary administrative staff, let alone finance any capital developments, as a result of drought and the Great Economic Depression. But this is going beyond 1920.

Mr. MULLER: Now will you tell the Court whether, in your opinion, there are any basic problems with regard to the economic development of South West Africa?

Mr. KROGH: Well, Sir, very briefly, and I think most economists would agree, there are at least five outstanding, I should say, structural problems of economic development in South West Africa that any administration, or anybody who assumes responsibility for the development of the Territory, would have to face. I stress the word "structural", Sir, because these problems cannot be solved in any short period of time. They are structural in the sense that with even the best will and the most generous purse, it would take generations to change these structural characteristics of the Territory. The five I want to mention relate very briefly to, first of all, the size or vastness of the territory; the second to the nature of its natural resources; the third refers to the size of the population; the fourth to the nature of the population and then, finally, but by no means the least important, Sir, is the social environment in which economic development policies have to be pursued.

If it suits you, I will deal very briefly . . .

Mr. MULLER: Yes, will you deal with the five problems in the sequence in which you have mentioned them, starting first with the size of the territory and its implication for economic development?

Mr. KROGH: Yes, Sir. As far as the size of the Territory is concerned, I need not be very long. I take it that you are acquainted with the fact that South West Africa covers a very vast area—in fact, to give you a sense of proportion, I think one could draw a comparison and say it covers an area seven-and-a-half times, for example, of that of Liberia, or 20 times that of the Netherlands. Now, the implications for economic development are rather self-evident—to establish in any short period of time effective administrative control, means of communication, transportation and so forth over an area 20 times that of the Netherlands, is technically and financially simply an impossible task. It would take a very long time to extend the necessary public utility services for the encouragement of economic development over so vast a territory.

Mr. MULLER: The second point mentioned by you was that there were no natural resources—would you deal with that?



Mr. KROGH: Yes. Very briefly and speaking generally, I think South West Africa can be described, from the viewpoint of economic development and looking at its natural resources—as a poor territory. It is not only poor, but also displays great variety or differences in the location or quality of its resources. To begin with, I think I can mention that there are, to this date, no known mineral fuels in the Territory, and one of its scarcest factors, but most important from the viewpoint of economic development (especially agriculture and also industry), is the lack and difficulty of water in the Territory. As a matter of fact, by far the greater part of South West Africa can be described as an arid or semi-arid region.

Now the lack of any mineral fuels means that all forms of power for agricultural or industrial modern development on any substantial scale will have to be imported from outside. This makes cost of production considerably high, of course, and in most instances rather prohibitive. Furthermore, in order to obtain water very capital intensive operations are necessary, pushing up costs further and requiring technical knowledge and ingenuity that is not generally available in other parts of the world. They have special problems in this connection.

Looking, very briefly, at the livestock carrying capacity of the Territory, it is found not only to be poor, generally speaking, but it also varies considerably, as I have tried to point out earlier on. You find, for instance, moving from the south-west of the Territory right across to the north-east that the carrying capacity varies from 45 hectare per large stock unit to 6 hectare per large stock unit. This means that in the south-western parts of the Territory the livestock carrying capacity is very much poorer, in fact seven times poorer, than that in the north-east of the Territory.

To indicate the general poorness of this carrying capacity, it is probably instructive to remember that the carrying capacity in England, France and the Netherlands, for instance, is less than one hectare per large stock unit.

As far as the cropping potential of the Territory is concerned, more than half of it is nil—there are no possibilities of raising crops—whereas as you move towards the north-east of the Territory you in fact find that the cropping potential of the Territory becomes normal.

Next there are the mineral resources of the Territory. There are two known mineral sources worth mentioning and developing on any considerable scale and they are, as you know, diamonds in the extreme south and copper in the north. I should imagine that the distance between them should be in the vicinity of, say, six to seven hundred miles.

Finally, there are the fishing resources. The sea fishing resources of the Territory were not in fact known until quite recently. It was only discovered and became properly assessed after World War II. It only became developed since the early 1950s.

That briefly, Sir, I think indicates the scope and nature of the known natural resources of the Territory, showing great diversity and variety over so vast an area as I have sketched.

Mr. MULLER: You mentioned as the third problem the human resources. Could you deal with that?

Mr. KROGH: Yes. First of all, very briefly, there is the size of the population. In 1920, as you know, the size of the population was a quarter of a million: today it counts half a million. It has more or less doubled itself in 40 years. The importance of the size of the population is that

such a small population scattered over so wide an area obviously does not offer any considerable internal market, either for industrialization or for encouraging modern economic activity. Surplus products cannot be disposed of in so small a market. In other words, all modern forms of economic activity, virtually without exception, will have to be directed towards foreign markets, rather sophisticated export markets.

But this is not the only important implication deriving from the size of the population from the viewpoint of economic development. If we bring the size of the population in relation to the vastness of the area, and remember that the population is not concentrated at one point but spread over the larger part of the area, then we find that South West Africa has, in fact, the second lowest population density in the whole of Africa—its neighbour Bechuanaland having the lowest. And, also to be remembered here is the fact that Africa as a whole has the lowest population density of all continents in the world. So South West Africa is in fact an exception in Africa, which again is an exception in the world.

Low population densities, apart from indicating the necessity for exporting because of a limited local market, also add weight to the difficulties already mentioned with regard to the vastness of the Territory in supplying modern means of communication and administration. They increase the cost thereof, often making it quite prohibitive with regard to the output or the revenue to be obtained from undertaking any economic activities on a purely economic basis.

An important last point remains with regard to the population density. It also means, of course, that the land labour ratio is very favourable in the case of South West Africa. There is probably much more land per head of the population than in most other African territories or in most other parts of the world. This indicates, from an economic viewpoint, that agriculture, rather than industry, enjoys a comparative advantage in the case of South West Africa. Its economic future lies, I think, more in its agricultural development than in its industrial development.

Mr. MULLER: Will you next deal with the nature of the population, which was the fourth problem which you mentioned.

Mr. KROGH: Yes. I shall try to be brief about this. The most distinguishing feature from the viewpoint of the nature of the population, irrespective of its size, is the dearth or the lack of entrepreneurial or enterprising elements in the Territory. Now this is not unusual. You find this to be characteristic of most types of societies that we and the sociologists have lately come to refer to as "tradition-bound" societies. They do not display internal enterprising elements that strike out and supply the necessary dynamic momentum, from the economic viewpoint, to the society as a whole. They cannot overcome these major economic problems that I have mentioned. They cannot establish and create modern economic opportunities and activities. This is the one characteristic.

The second characteristic of the population is, of course, that you had in South West Africa this White section of the community that did not belong to this type of society. You need not research to establish this—it is quite obvious that they belong to a quite different type of society, from the economic development viewpoint. They are members of what we would call a modern, economic dynamic society. They are persons who spontaneously or automatically discover, undertake, and organize modern economic activity in those parts of the Territory which they

inhabit. Thus, there is not only a general lack of enterprising qualities in the Territory, to undertake modern economic activity, to establish it, to maintain it, to organize it, to expand it, but there is also this great difference in the economic qualities, the economic performance, the economic aptitudes and attitudes of these two sections of the community.

Mr. MULLER: You mention social environment as being the fifth problem in the list of five that you indicated to the Court.

Mr. KROGH: Yes. As if South West Africa does not suffer from enough economic problems of development, it moreover does not share an economic advantage often enjoyed by small populations in other parts of the world, namely the presence of a homogeneous social environment. The latter is characteristic usually of small populations, and in this respect they usually enjoy an economic advantage over large populations that, generally speaking, are inclined to be more heterogeneous. Social mobility, or the social environment, is an important aspect of economic development. This is increasingly being discovered and is increasingly being studied and stressed. It is a great mistake, and quite misleading, and, I think, can be disastrous, to equate the social atmosphere or environment of a relatively homogeneous European or other country's population with that found in a territory such as South West Africa. It is important because social mobility permits and allows certain members of the community to make sacrifices for the benefit of the rest and the whole community. On the other hand where you have a plural type of population, this sacrifice in having to adapt yourself, or in having to move from one place to another because of economic considerations, is not seen to be in the interests of the community, but of a homogeneous community as a whole as part of the family, in fact as a sacrifice of one group to the advantage of another group.

This advantage and disadvantage approach does not really occur or it is not viewed that way; it is in fact tolerated in a relatively homogeneous society, but this unfortunately is not the case in a plural population. Here their loyalty is first and foremost to, and their interests are seen to be those of their particular group rather than that of the population considered as a whole. I make this point, Sir, because it is very difficult, under such a set of circumstances, to devise a policy of administration and development that could in fact satisfy every group, and every member of every group, all the time everywhere in the Territory. To deny that this exists is, without doubt, inviting disaster and strife in the Territory.

Mr. MULLER: Mr. Krogh, how would you describe the type of economy which has such large regional as well as population differences as you have indicated to the Court?

Mr. KROGH: Well, Sir, these wide regional and group differences from the viewpoint of economic performance, and from the viewpoint of economic absorptive capacity, are not peculiar to South West Africa.

It is receiving more and more attention in the literature on the subject of the economic development of underdeveloped countries. As a matter of fact some very eminent economists recognize this as a special feature of underdeveloped countries.

I do not want to linger on this point. I just want to mention that these diversities vary of course in intensity. In any case it leads to the fact you do not have a single economy, but special problems affecting special areas or groups in a territory. This leads to a division of the economy

into, not different compartments, but in fact, different economies. Hence, the concept of economic dualism that has come to receive general recognition in the literature on this particular field.

With the permission of the Court, Sir, I would very briefly like to quote a passage from an eminent economist, Professor Albert Hirschman, who was until recently Professor in International Economic Relations at Colombia University and, I believe, at present, Professor in Economics at Harvard University. I will be quoting from his very well-known book *The Strategy of Economic Development*. I believe that this dualistic approach with regard to underdeveloped countries was inspired by French literature on the subject. I quote from page 184 to illustrate the point that economic dualism is quite often found to be the case in the underdeveloped world and, that these diversities vary in intensity and hence also the type of development problem and the extent to which this has to be specially recognized and respected, with regard to economic development policy:

"The ability and tendency of growth [this is economic growth] to round itself out for a long time within some sub-group [and sub-group refers here to human group], region or country while backwardness retains its hold elsewhere has often been noted. If the tendency manifests itself along clearly marked geographic lines, the result is the division of the world into developed and underdeveloped countries and the split of a country into progressive and backward regions. On the other hand, progress and tradition may dwell in close spatial proximity by simply fastening on different human groups and economic activities that exist side by side. This state of affairs, often encountered in developing countries, has been aptly termed 'dualism' . . ."

I want to mention in this regard that, you find, of course, different types of dualism. It is most striking in the case of South West Africa, both with respect to regional differences—the variety and diversity in the economic capacity of the Territory—and also with regard to the different population groups in the Territory. Because the latter is, in fact, so striking from the viewpoint of economic development in the Territory, I should think it would be a better description to refer to the economy of South West Africa as a type of socio-economic dualism, stressing not only that this dualism exists as a result of purely technical and economic reasons, but also because of major differences in the social structure and atmosphere in the whole Territory. I might just mention for the sake of interest that "socio-economic dualism" is a concept that was first coined by Professor Bocke from the Netherlands. It is only during the last five to seven years that this subject, after having been neglected, is again receiving special attention.

Mr. MULLER: Professor Krogh, before we proceed, do you know whether the publication to which you have just referred is in the library of the Court?

Mr. KROGH: Yes, I have established that this is available, not in the library of the Court, but I have been assured that it has been quoted in the documents that have been submitted to this Court.

Mr. MULLER: In the written pleadings?

Mr. KROGH: Yes, Sir. I have been assured of that.

Mr. MULLER: Now, to proceed. What contribution could and did the

European population group in South West Africa make in economic development of the Territory?

Mr. KROGH: Well, Sir, without repeating myself, I think it could be said that there was no population group in the Territory other than the White group that could be expected to discover the possibilities to introduce or undertake modern economic development in the Territory. There were no signs of this. In fact, there were more warring groups, the one taking away openly by way of warfare from the other whenever there was drought and they had to live or die; that was the only choice open to them, and I personally think this was the main reason for these very many inter-tribal warfares. It is simply that very often in this particular territory they had no choice—they had either to take from the other one or die through lack of the basic means of subsistence during periods of prolonged drought which we all know were very frequent in the Territory. But this is from the viewpoint of an economist. There might be other reasons for this, too.

The point is that the White population group and its individual members sought out—they automatically do so, it is inherent and this is characteristic of them from an economic development viewpoint—the modern economic possibilities, the investment of funds, the experimentation with different techniques that are most appropriate or suitable to the particular area which they develop and, in fact, by doing this, they not only demonstrate, they also develop and organize modern economic development in the Territory, thereby creating the necessary knowledge for the development of the other parts of the Territory which are traditionally and otherwise occupied by other sections of the community. It is impossible to think that this could simply be imported from outside because the development problems of most countries cannot just simply take over the techniques of production developed in other societies. A particular regional, marketing and natural resource base requires different application so that this necessitates the adaptation of techniques of production that already exist to the particular economic possibilities of the area. But this is not the only factor. The point is also that—and most important I think—undertaking this, establishing these modern economic developments in the Territory, in fact creates economic opportunities that allow and, in fact, are taken up by the members of other sections of the population in the form of labour employment. This is the only by-the-way product that they could contribute at this stage of their economic development to the development of the Territory—this is their, in fact, comparative advantage (these other sections of the community) whereas the White sector, or the White communities, in fact, invest capital, introduce modern techniques of production, modern methods of farming and lead to initiation, establishment and extension for expansion of modern economic activity.

Mr. MULLER: On the other hand, again, just to complete the picture, were the Native groups on the whole able to make any contribution to the modern economy of the Territory? You have mentioned that they could provide labour. In addition to that, do you think that they could have been entrepreneurs or in any other way assisted in the economic development of the Territory?

Mr. KROGH: Well, generally speaking, I think not. They could not, in fact, contribute to any important or considerable extent to the introduction, organization, maintenance and development of modern economic

activity until quite recently. You now find clear signs that these people, in areas specially set aside for them and protected from competition, can, in fact, make this contribution, but this, as it were, in economically protected areas and avenues for them. For the rest, and seen from their viewpoint, they are, in fact, linked up with and related to the modern economic sector, and in this sense contribute to the modern economic activity in the Territory, largely as unskilled and also to a considerable extent as migrant workers. This is of course not peculiar to South West Africa. It is a quite common phenomenon in the rest of Africa, especially in Southern Africa, where the modern sector of the economy is far more advanced than in other African territories. It is true that traditional subsistence activities have been commercialized in other territories but this is just one little step further in the stage of economic development from the traditional which uses primitive means of production and non-capital intensive production methods. Commercialization is a transitional stage from a traditional subsistence to a modern type of economy that uses highly scientific means of production, capital intensive forms of production requiring highly skilled labour.

Therefore, when I speak about the modern economy I do not mean to refer to a stage immediately following the traditional subsistence type of economy. There is a transitional stage of commercializing traditional economic activity and this is still a very far way off from undertaking, managing, organizing and financing modern economic activity as we know it, for instance, in the Netherlands, or in the most highly developed countries of the world. This is also increasingly being recognized and, in fact, made explicit in studies on the economic development of under-developed countries.

Mr. MULLER: In regard to the conditions described by you in South West Africa, would it have been advisable to have introduced an integrated economic policy—a policy of economic integration in the Territory?

Mr. KROGH: No, Sir, and I feel and think this is quite obvious to an economist. By integrated—different social sciences mean different things by the word “integrated”—the economist would understand, if I understand your question, free competition—by that I mean “the best man wins”. Then, I would say “no” under the circumstances in South West Africa because I think it would be grossly unfair to the economically weaker groups to compete on a free basis with the traditionally stronger economic groups. I think this would be unfair to the economically weaker population groups, and I am now referring to the private sector. Turning to the public sector I would say that in the interest of economic development there is no doubt that it would be wasteful to extend uniform standards of public administration and services, such as transportation, communication, telephone services, forms of law and order and other public facilities that would normally be taken to facilitate private economic activity to every part of the Territory, or to every group irrespective of its economic absorptive capacity. Now by this concept I simply mean irrespective of the extent to which they could in fact make productive use of these resources.

Mr. MULLER: What in your opinion would be a more advisable approach?

Mr. KROGH: Sir, I think you must bear in mind your ultimate aim. Your ultimate aim, I think, from the viewpoint of economic development

is to obtain a more productive use of available resources. In the case of South West Africa this to me, and I think to any other economist, would be to introduce and develop—modern economic activity—to bring modern techniques of production and outside capital to bear on the economic problems of development in the territory—its natural sources and its population. Next, to develop this modern sector of economic activity and to use the revenue and the surplus value (if I may use that concept in the economic development sense and not in the sense of some other economic ideology), to develop the other areas and economically less developed population groups—to extend as it were the modern sector of economic development once it has been introduced, firmly established and consolidated, to other parts of the Territory that had previously been economically less accessible either because of the distance factor or because of the poor economic viability of the people who occupied these areas. Meanwhile, of course, they would not in any way be excluded, but in fact share in the advantages of the development of this modern sector or modern economy. They would enjoy the advantages and have the benefit of living at higher standards of living by virtue of being employed in the modern sector as wage earners, and furthermore to acquire experience and skills, thereby making them economically viable. It is clear to me that in the case of South West Africa, the problem of establishing and developing a modern economy is largely an economic and technical problem, whereas the expansion and extension of modern economic activities to those underdeveloped areas of the Territory that are inhabited by what we technically call economically static and tradition-bound societies would necessarily be quite a different problem. It would be a problem of human development rather than a purely technical economic development problem.

I would also like to say, with particular reference to South West Africa, that it is all good and well to say that you have got to make the most productive use of available resources, but it is not to be forgotten that you have to achieve this in a social atmosphere that is distinctly different from that which is normally encountered and experienced in relatively highly developed industrial societies in Europe, for instance, or in America for that matter. You will have to recognize the diverse and heterogeneous nature of the population that is organized in different groups, primarily seeing their economic interests from the group rather than the national viewpoint. You will have to remember this all the time in order to ensure social peace and their co-operation—if you do not get their co-operation you will not have modern economic development and if you do not have social peace you will not have modern economic development or reform anyway. So, it is all good and well to state this objective but you must take into consideration the particular social and regional problems in the Territory. You will have to pursue a policy of economic development in a social and administrative framework that would ensure social peace and the co-operation of the different groups in the difficult task of development. I would say this is a prerequisite for modern economic development in the particular circumstances as presented in South West Africa, Sir.

Mr. MULLER: Does the approach just described by you imply differential treatment as between the different population groups in the Territory?

Mr. KROGH: I am afraid, Sir, that I might repeat myself but I shall be very brief about this. In view first of all of the fact that the problems of

economic development in South West Africa are not the same everywhere in the region—there are great regional diversities—hence, even if you had a very socially homogeneous population you would still have to have a differential policy with regard to the striking differences in the natural climatic nature of the Territory. This would naturally mean a decentralized form of government in any case, because the south is quite different from the north or centre from the purely natural resource viewpoint of development. But apart from this, the most important difference is that the problem of economic development as I have pointed out in my previous reply, Sir, is quite different in the case of the White population group compared to that, as we economists would say, of the most backward or primitive economic groups, such as, for instance, the Bushmen. There are also other population groups that differ considerably from each other in respect of economic viability, but I am mentioning these two simply because it is more obvious and evident that the economic absorptive capacity of the White group on the one side is definitely, as far as I am concerned—and I am sure that every economist would agree with this—generations removed from that of the traditionally subsistence organized type of societies and their economies. In the one case, it is a human problem; in the other it is a purely economic-technical problem. Hence, because your problems are different you will have to have different approaches and you will have to use different measures. You will have to have different policies with regard to the economic development of these particular groups and the areas which they occupy, Sir.

Mr. MÜLLER: Would you in the circumstances say that it is necessary to have different promotional measures, for example?

Mr. KROGH: Yes, Sir. I think we can illustrate this with regard for instance to the acquisition of land and the improvement of land, and then we can also try and take another example. But let us first concentrate on the acquisition of land. In view of the high agricultural potential or productivity displayed by the members of the White group, they are in a position to acquire land as a means of living or to effect economic activity by purchasing it. They can recoup the cost or repay it from the proceeds that will be derived from the productive effort that will go into the development of this land and the productive use that will be made thereof. In other words, there is no need to give them land as they can acquire this by way of individual purchase with a view to the prospect of the high productive use to which they will put this land.

In contrast to this, you will find that in the case of the non-White groups, the individual who wants to acquire land will not be in a position to acquire this by paying for it in the same market. This to me clearly reflects the differences in the productive use to which the two members of these different types of societies make of land, that is the difference in their productive capacities. In fact, if you do not give this land to non-White groups gratuitously I cannot see how else they will acquire it if they have to compete in the same market for the land with members of the White community.

I can very briefly illustrate this point further. Let us take it that they do acquire land one way or another, say through differential measures in which case it is given to the one and the other has to purchase it in order to hold it for his economic benefit; improvements to that land will be affected automatically or spontaneously, as it were, by the initiative and again by the finance of the individual White farmer. You can in fact



rely on the White farmer to bring this about. He just operates this way traditionally and, of course, with the aid of knowledge that he has acquired over many generations. The initiative he displays in this respect—his economic enterprise to bring about these improvements, to organize them and finance them privately are traditional. Now, I am afraid that if you rely on the private individual in the case of the members of the other groups to bring about automatically or spontaneously, as it were improvements to the land, given to them gratuitously, remember, no such improvements will be forthcoming without outside encouragement and outside demonstration by way of example, without outside organization and by way of outside finance. He is just not at an economically productive level that would justify him financing this privately with the prospect of paying for this out of the productive use he would make of the improved land. This does not refer only to agricultural development, I can also very easily illustrate this with regard to the development of non-agricultural activities, but I think another very good example which is very much relevant to the case of South West Africa is that of drought relief. This can be regarded as a form of "promotion" rather than rehabilitation in a type of country where droughts are normal, such as in South West Africa. Here you find that in the case of the White farmer, for instance, you can rehabilitate him by advancing repayable loans to him with the knowledge again that he will within a relatively short period be able to repay these due to his higher level of productivity and the productive use he makes of his land. But in the case of the non-White farmer the amount will necessarily be smaller because he has no large productive debt to begin with. Secondly, it will largely take the form of relief and consist of basic foodstuffs and animal feed to keep man and beast alive. It cannot possibly be expected of the member of the second type of society to repay this in view of the low productive use to which he puts the land. I think this illustrates the point clearly that you have to use differential measures in order to be fair and productive at the same time. You have to recognize the different stages of economic development, and hence the different problems which to my mind necessarily calls for differential economic policy measures of development.

Mr. MULLER: The position that you just described—does that apply in respect of all the members of the different populations or have you already in South West Africa attained a position where certain of the non-White people have progressed towards the modern economy?

Mr. KROGH: Sir, bearing in mind that I make a technical distinction between a modern, a commercialized and a traditionally subsistence economy, I have no doubt that since 1920 most of the members of the tradition-bound subsistence economies have in fact advanced to the stage where their ways of earning a living are commercialized, both in the sphere of agriculture and in the sphere of wage-earning, generally speaking. I cannot take every group individually now. They are no doubt advancing towards a type of economy that I have described as modern, using modern techniques, modern forms of organization, modern investment and finance, but I cannot see this happening in terms of years or even decades for that matter. This is a slow process of gradual development. It would be completely wrong I think, and misleading, to imagine that this can come about overnight or in the period of a five-year development plan. This is absolutely false from the viewpoint of economic development.

Mr. MULLER: Professor Krogh, before we recessed we were dealing with differential measures of promotion. Would you tell the Court whether the measures mentioned by you, or any other measures, are in the nature of protective measures, that is, protective in the interests of different population groups?

Mr. KROGH: Yes, Sir. If we could take two examples to illustrate this it might become clearer. With regard to land ownership, it follows from what I have said previously in reply to other questions that it would be necessary to protect the economically weaker or less productive or less viable groups against the economically stronger and more resourceful with regard to land ownership. Thus, for example, it would be necessary to ensure that the economically more resourceful and stronger group would not transgress onto the land owned by the economically weaker and less productive, for if this protection was not given I have no doubt that in a relatively short period of time the economically weaker groups holding land would not have an opportunity to earn a living on the land; they would, in fact, become a landless people if no protection was afforded in this respect.

Similarly, Sir, I can also, with reference to the whole plural nature of the population of South West Africa—by “plural” I of course mean different social groups living in the Territory—very well understand and appreciate the need for protection or restrictions on the ownership of land by one member of one group in the area traditionally set aside, or since set aside, or occupied by the members of another group for the sake of social peace. There may be the fear of land alienation—that the opportunity to earn a living on the land will be taken away, and might only after many generations again become available for the members of that particular population group. First, then—I shall put it very briefly—to protect the economically weaker against the economically stronger and more resourceful, and also for the sake of social peace. I could very well imagine that even in the case where population groups are at the same level of economic development, it could very well lead to social strife and upset the delicate social balance in the Territory if members of one group insisted on obtaining, or in fact obtained land occupied by another group, if this other group felt that this would lead to the alienation of their land. This does not only, Sir, apply to land owned by Whites on the one hand and the different non-White population groups on the other. It also refers, Sir, to the occupation of land by members of one non-White population group that may be at the same level of economic development as another group. This is a fact that you cannot ignore, and you will ignore it at the expense of social peace and therefore, indirectly, at the expense of economic co-operation and development in the Territory.

I can also illustrate the need for protective measures, Sir, with regard to employment opportunities. It may be lamentable from the viewpoint of economic development, but it is no use lamenting it or ignoring it; you have to tackle these difficult problems and devise policies designed to ensure the co-operation of the different groups and to ensure social peace before you can think in terms of economic development. The point here is that I can very well understand that the members of one population group would give preference to job opportunities created by them or, in fact, created in their area or available in their area. They may prefer that these jobs should be occupied by members of their group, and this is a very obvious phenomenon, internationally and even in the admission of

migrant labourers from the Mediterranean countries to the more economically developed countries here, in the rest of Europe. The job opportunities created, and those that do in fact exist, are occupied largely by the members of a particular group in an area in which they occupy and live: if they are economically weaker to occupy those jobs, then you will have to protect them against these jobs in fact being occupied by the economically more skilful or stronger. This may not be in the economic interest of the Territory viewed as a whole, but you cannot, under the particular set of circumstances such as in South West Africa, always regard the Territory as a whole as your socio-economic unit. You have to recognize, in addition, just as you would in the international world, different population groups, and that these population groups in fact constitute the socio-economic units of development for policy purposes. I can also very well understand that in the interest of the economic security of members of certain groups, if their job opportunities that are occupied by them are in fact threatened, if their employment conditions and their prospects for employment are threatened, they would in fact insist upon protection against the alienation, as it were, of these job opportunities by members of another group. Therefore I think there is room for protective measures with regard to the protection of the economically weaker against the economically stronger, and purely with regard to social considerations of security and for the sake of social peace. I cannot over-emphasize the need and the difficult task of ensuring social peace under the circumstances of South West Africa. It is a Territory where wars and mutual suspicions have characterized its long history before 1920, and I feel that there is room for these protective measures in the interest of economic welfare, as seen from the standpoint of the different population groups, as the social units, and not purely as seen from the standpoint of the Territory viewed as a whole.

Mr. MULLER: The measures which you have mentioned—do they impose restrictions on individuals, members of different population groups, and if so, do you think that is justified?

Mr. KROGH: Well, Sir, I am not aware of all the restrictive measures and regulations operative in the case of South West Africa, nor am I fully acquainted with all the considerations that underlie the imposition of these restrictive measures, but I do know of restrictive measures operating in South West Africa with regard to land ownership for example. I know that a number of other non-White population groups and, for that matter, the members of the White group, are not in fact permitted or allowed to own land set aside for the exclusive ownership of the members of some non-White population groups. I can explain this, for instance, with regard to Ovamboland, or the Okavango, or Kaokoveld, any of these places, where members of the White group are not allowed to own land. Neither are members of other non-White groups—for example, from the south—allowed to own land in, for instance, Ovamboland. Now, I can understand the White group being excluded from owning land there from the viewpoint of protecting the economically weaker against the economically more resourceful and stronger. I can also understand that there would be social strife and upheaval if the Herero, for instance, were to come into Ovamboland and be permitted to occupy large parts of the land set aside for the Ovambo.

I can very well understand that the authorities would be approached to prevent and protect the land from being alienated from the Ovambo

to, for instance, other population groups; or, the Ovambo entering again an area set aside for the Bushmen, for instance. I can very well understand all this and that it may be necessary, for the sake of social peace and the wishes of these different population groups, that there should be protective measures in this regard.

I also know of protective measures operating in the White area. I know that non-White members coming to the modern economy in the White areas, seeking employment and being in fact employed there on a large scale as wage-earners, are not prohibited from occupying land, for instance, in the urban areas, for residential or business purposes. This is land which is set aside for them and they are allowed to occupy it but they are, however, not allowed to own this land. This is a condition, as it were, set by the White population group, that they are allowed to reside there, to have the benefit of occupation of land for business and economic purposes. They can, in fact, improve and put up businesses there and use the economic benefit derived from the occupation of the land. This does not prohibit them, or this does not in fact stop them from doing this.

I have seen this very often myself. I was there very recently again. They put up businesses, they enter into business, they improve their assets on this land occupied by them, not feeling that these assets would ever be taken away from them, or that they would be confiscated—never. They would be compensated for this, I can assure you, if they were not tolerated by members of the White group, but to my knowledge they are not allowed to own land there.

I also know that there are no restrictive measures operating on the ownership of land in what I call the "White rural areas", except, I think, with regard to certain probational settlement schemes, but on the whole there are no restrictions placed, for example, on the ownership of land in the rural White areas with regard to non-Whites. In fact, as far as I know, there are no Natives owning land in the White rural areas and this, to my mind, illustrates that they are either not able to afford this land—because the market value is determined by the productive use made thereof by White farmers and they cannot afford this and cannot use that land productively—or even if they can afford it, that they probably will not wish to stay there among these White farmers.

I also know that there are restrictive measures with regard to prospecting and mining rights. I know that Whites are prohibited from prospecting or acquiring mining rights in the areas set aside for the non-White population groups. I also know of similar measures operating in the White sector—that non-Whites are, in fact, excluded from prospecting or obtaining mining rights in the White area. Why does this operate, this last restriction? This is not on the grounds of protecting the economically weaker against the economically stronger. It makes no sense. But I can very well appreciate that this is for the sake of social peace and in the interests of the White population group laying down these particular restrictive measures, through feeling that the members of the other population groups have equal opportunities for owning, of prospecting and of obtaining mining rights in their areas. This is a restrictive measure, I think, that might be justified under the circumstances by the authorities in view simply of the need for social peace, without which there cannot be any considerable modern economic development in the Territory.

I also know of restrictive measures with regard to the holding of jobs. As I have illustrated, I know that administratively—I do not know all the regulations and laws, I do not know all the details—there is preference given to the employment of Ovambos in, for instance, jobs available and created in Ovamboland. I have in fact been there quite recently and I have seen that in the field of public administration, jobs are being held and preference is being given to the Ovambo to the extent that these people are available. They are encouraged to hold jobs in the field of public administration. I have also seen them doing skilled jobs connected with development projects that are in progress there on a large scale. I have seen Ovambo contractors making bricks, driving tractors and employed in all sorts of other occupations. I saw a factory there quite recently, at Oshikati, not far from Ondangua, where on the factory floor there were Ovambo skilled and unskilled workers. I cannot quite recollect the number but I should put it, very roughly, at let us say something like 25 or 30 of them working there, and there were only at that time two Whites serving there to demonstrate to them and to manage this particular factory, but on the express understanding by the authorities that as soon as a qualified member of the Ovambo group was able to do this job this would be given to him, even if he were, economically speaking, less qualified than the White manager to do this. This is, I believe, also the wish of the Ovambo. I can quote other examples but I do not think that will be needed now.

I also know that such restrictions on job opportunities, or what is generally referred to as the reservation of jobs, exist in certain posts in the mining industry in the White sector. I am aware of these restrictions. I am also aware that in the supply of public transportation services in the White sector there are restrictions on certain employment opportunities giving preference to members of the White group. I can very well understand that for the sake of economic security and for the sake of avoiding any social strife, these reservations operate with regard to certain posts to ensure the employment conditions and prospects for members of the White group if they were in fact threatened. I know of this and I can understand why these restrictions operate, but at the same time it is very important to remember that a much wider range of restrictions operates with regard to job opportunities in the non-White areas compared with these few posts in the mining industry and in the supply of public transport.

I know in fact that preference is given to the employment of non-White transportation personnel for the operation of road motor services in non-White areas. I can understand the reason for these restrictions—yes. They are in the interests of protecting those who would otherwise have to face unfair competition from the economically stronger. I can also understand that where this is not the case, even if they were at the same level of economic development, that it is simply a matter of the group insisting upon and wanting these job opportunities not to be occupied by members of the other group—that is wanting preference to be given to the members of its particular group. Such restrictions are therefore for the sake of social peace without which, I cannot over-emphasize, there is little prospect of economic development in the Territory anyway.

Mr. MÜLLER: Mr. Krogh, I have one final question. I want you to express your opinion on what the effect would be if these differential measures of promotion and protection which you have mentioned were

to be done away with by reason of applying a norm, or a rule, or a standard which prohibits differentiation on the basis of membership in a group, or race, or tribe.

Mr. KROGH: Well, Sir, under the circumstances I have sketched to you, and bearing in mind these diverse social and economic conditions in South West Africa, I have little doubt in saying that it would lead to the rapid deterioration of the material and economic welfare of the majority of the population, and by this I particularly refer to the non-White population groups. I can also see that they would not tolerate this and that this might very well lead to social strife, that would in fact arrest the economic development of South West Africa. The economic development of this Territory is exceptional in Africa, even having grown from a lower base than that of the Republic of South Africa, it has advanced at a rate faster than that of the Republic of South Africa during the last 40 years during which the latter experienced a phenomenal industrial revolution. Confidence would be lost, economic development and betterment would be arrested as a result of encouraging, as it were, social strife in the Territory. And, I cannot see how the long-term basic problems of economic development in South West Africa would thereby be made any easier. In fact, I believe that more problems would be added to its economic development.

Mr. MULLER: Thank you, Mr. President. I have no further questions.

The PRESIDENT: Mr. Gross.

Mr. GROSS: I have questions, Mr. President.

Dr. Krogh, before asking you certain questions arising out of the testimony which you have just given to the honourable Court, may I enquire, Sir, where you were born?

Mr. KROGH: As I have said in my testimony, I was born in Windhoek.

Mr. GROSS: In Windhoek: I am sorry I did not hear that, Sir. And how long have you lived in South West Africa?

Mr. KROGH: I lived in South West Africa until my seventeenth year when I left the Territory to study further in South Africa, and thereafter overseas. I have lived in South Africa ever since, where I work, and I have never held any jobs or positions in South West Africa.

Mr. GROSS: Could you indicate to the Court, let us say to take an arbitrary period, during the past five years, how much time, if any, you have spent in South West Africa?

Mr. KROGH: Sir, the nature of my research that I have mentioned is such that it is most time-consuming, particularly the calculation of the national expenditure and income series for South West Africa covering the period 1920 to 1956, which was one of my important publications. In the course of this work it was necessary for me to visit the Territory quite frequently.

I have also visited the Territory occasionally, that means not regularly, for the purposes of vacation, but I have not stayed there, in the sense of living there, since my seventeenth year.

Mr. GROSS: You have travelled throughout South West Africa extensively, have you?

Mr. KROGH: Yes, I have travelled in the course of my research, of course, and during vacations. I like the Territory very much—most people cannot quite understand that, but I think that you have to be born there in order to appreciate it. I have travelled in the Territory but because of the vastness of the Territory I have not, of course, been to

every corner of it, or to every part of it; neither was this required for the purpose of my research.

Mr. GROSS: Was most of your research carried out in Windhoek? Or did you visit the northern areas for any extended periods as well?

Mr. KROGH: I must put it to you this way. There are two publications of mine on the economic aspects of South West Africa: the one is the national income series. For this I did in fact spend most of my time in Windhoek as you can appreciate. This is the administrative capital and this means that most of the material is available there. But I have also had the opportunity and in fact visited Ovamboland in order to assess the economic possibilities there, and in order to ascertain, calculate and estimate the production, the output, of this particular area. I also visited some of the non-White Reserves in the southern sector of the economy but, as you can know, I think there are quite a number—something like 17 or so—and it was not necessary in the course of my research to visit every one of these non-White territories.

Mr. GROSS: With respect to Ovamboland, Dr. Krogh, would you indicate to the Court approximately how much time you have spent in Ovamboland?

Mr. KROGH: Yes. This was in connection with my research, because I did not go there for any vacation purposes. I can remember very clearly that I have been to Ovamboland for a period of three days. It was not necessary, for my particular research purposes, to go for any longer period than that or to travel to every part of Ovamboland.

Mr. GROSS: Altogether you have been in Ovamboland three days, or were these three-day trips? I did not quite . . .

Mr. KROGH: No. I have been there for three full days.

Mr. GROSS: I see. Altogether.

Mr. KROGH: Yes.

Mr. GROSS: Did you, while you were there, have occasion to discuss matters with the inhabitants of the Territory—economic matters or other matters pertaining to their life or livelihood?

Mr. KROGH: I have not discussed this in any detail with individual Ovambos. It is for me, as somebody who has had experience in this kind of research, to determine their main economic activities, to assess the value of these and to look at the different economic opportunities open to them. As a matter of fact, I recall now that I visited quite a number of the individual businessmen who operate their businesses in Ovamboland, which was a very encouraging sign. I discussed their problems with them; asked them where they purchased their wares and what problems they experienced with regard to the expansion of their businesses. I did not discuss in detail the agricultural problems of development with the people of the Territory, but I did, however, obviously discuss this with the agricultural officers who are acquainted with these problems and, who are in fact, doing everything in their power to improve the agricultural potential of these territories, and also the plans they envisage in this regard.

Mr. GROSS: Were they Ovambos that you were referring to just now?

Mr. KROGH: Yes.

Mr. GROSS: In what language did you speak with them?

Mr. KROGH: The traders were, in fact, Ovambo (it was very interesting in this regard) who had been to the southern sector of South West Africa as migrant workers and had since returned to establish and undertake

these businesses in Ovamboland, and they could speak Afrikaans to me. This is a language I am very well acquainted with. They must have acquired the language either in schools or in the course of their work in the southern part of the Territory.

Mr. GROSS: Did you encounter other Ovambos engaged in other pursuits or occupations who also can speak Afrikaans or English?

Mr. KROGH: Yes. The Ovambos who are working in the administrative offices can, of course, speak Afrikaans fluently, usually having been to school for a long period. I think this is a qualification they have to have in the public administration services. Yes, I could communicate with them in Afrikaans.

Mr. GROSS: As an economist, Sir, would you say that the knowledge or the capacity to speak Afrikaans would be an important factor in their economic life and activity?

Mr. KROGH: Sir, most of the communication with the outside world which they have to have in order to pursue any modern economic relations in South West Africa—and this is true of the Territory as a whole to get outside and is also true with regard to groups having economic relations with the modern economic activity—their orders, their communications for business purposes in fact—it is usual in your business interest to learn the language of your customer or of your source of supply. This is the case all over the world and, in fact, I should think that they would regard this as in their business interest either to acquire German, English or Afrikaans to establish and maintain economic and business relations with other sections of the community.

Mr. GROSS: Are you familiar, Sir, with the approximate number of Ovambos who annually come to the southern sector for employment purposes?

Mr. KROGH: Yes. I know these figures and their proportions.

Mr. GROSS: Would you mind explaining to the Court how many are, on the average, each year, from Ovamboland?

Mr. KROGH: Yes. I would not be able to give you this figure with regard to Ovamboland alone, but if you will permit me to give you an approximate figure in respect of the area lying to the north of the Police Zone, this would include then Okavango and the Caprivi, but I know the number from Okavango and Caprivi is relatively small in relation to the total number. In the 1960 census this was determined to be virtually 28,000—it is 27,000-odd. I just want to point out in this connection that this figure refers to the Police Zone—that is it refers to the number at a particular hour or evening of the census.

Mr. GROSS: Incidentally, for the sake of the Court's convenience, perhaps it might be as well to point out that the figure just cited by the witness corresponds to that which appears from the tables in the Odendaal Commission report which is before the Court in these proceedings. The tables 18 and 19, which may be found at pages 39 and 41 of the report, do indeed confirm the figures you have just stated, Sir. With respect for a moment again to this language question that I was pursuing, do you regard, as an economist, that the knowledge of Afrikaans, or any other lingua franca would be important to their pursuit of their livelihood, or their economic advantage?—I am referring to the Ovambos or other migrant labourers.

Mr. KROGH: Sir, when you have economic (you want to use purely an economic sense) relations, the two parties involved—and it is in the



interest of these two parties to have these economic relations, otherwise they would not have them, and it is in the interest of both parties to try and understand each other better. Therefore you will find (I know for a fact) that many White farmers, for instance, and urban White dwellers in South West Africa do speak some of these Native languages, that they have in fact acquired, and they have found it in their interests to acquire this knowledge in order to address, to inform and instruct these wage-earners as to what exactly is required of them in the course of their work. So it is in their economic interest to communicate with these people better. Similarly, I would say that it would be in the interest of the party coming from Ovamboland and working, for instance, in the White sector, to acquire, at least the most important single keywords or means of instruction that are relevant to the nature of his employment. This would satisfy his employer, just as the employer would think that to learn the language of the other group would satisfy the employee, and it would be in the economic interests of both these people, to the extent that they communicate with each other, to try and acquire a better understanding of the language of the other if they have different languages.

Mr. GROSS: How many vernaculars or tribal languages are roughly spoken in the Territory?

Mr. KROGH: Sir, I could not possibly give you an answer. I know that there are a great number, but I would not be able to give you that off-hand.

Mr. GROSS: So that with reference to my question concerning the desirability of a lingua franca from the economist's point of view, would your answer be that it is of importance to the development of the economy of the Territory, and of the individual, in pursuing his livelihood?

Mr. KROGH: To the extent that they have economic relations with each other, I think that any means of better communication or understanding among the parties would be in the interest of both parties.

Mr. GROSS: I assume, Dr. Krogh, that the Court is to understand that your reference to economic relations refers to potential as well as present economic relationships?

Mr. KROGH: Yes, I would imagine so.

Mr. GROSS: In that case, just to clarify the point one step farther, would the development of a lingua franca in the Territory, to the extent feasible, facilitate increased economic relationships?

Mr. KROGH: I would answer that question with regard to South West Africa, I think, in this way, by saying that obviously it would improve economic relations between them, but of course, if this has to be at the expense of a particular group's language there will be difficulty. I can very well understand that, and we have this problem even in the White economy in South Africa. We have the two official languages, as you probably know—English and Afrikaans—but you find that the Afrikaans group has a long history of having fought, politically speaking and socially speaking, for the right of their language to become an economic language. As you probably appreciate, the two languages—English and French—are virtually the international commercial languages of the world. But if this has to be at the expense of the development of other languages—I can very well understand that they would insist upon this not happening or, in fact, coming about at the expense of this particular

language. I can imagine this could very well be the case, but I must say, and this is definitely true, that if you can improve understanding between parties participating in economic relations, that this would be to their individual benefit unless any one of the parties would object to this on other than economic grounds. It is very important, I think, to remember that economists should constantly bear in mind that economic considerations are not always and everywhere the prime and overriding consideration.

Mr. GROSS: But to the extent that we are speaking here, and you are speaking as a distinguished economist, you have, I think, fairly testified that there is a relationship between the establishment of a communication by common language, whatever it may be, and economic development. Would that be a fair version of your testimony?

Mr. KROGH: Yes, I could say this, but may I just add that it is becoming increasingly appreciated among economists that the subject of economic development is far too difficult and important a problem to be left to economists alone. They are inclined to think that economic development is the only and prime consideration and this is not always the case and they are increasingly appreciating this.

Mr. GROSS: Thank you, Sir. I think that, at this point, it may perhaps be well to set a focus for subsequent questions that I intend to put to you and where you speak as an economist you will undoubtedly, in the light of what you have just said, also consider pertinent sociological, or human, or other points of view that are within your sphere of experience.

I should like to read an excerpt from Article 22 of the Covenant of the League of Nations which defines the sense and purport of the mandates system, and have it in the record at this point so that it may be in your mind, Sir, as we discuss matters from here on.

I have no doubt you are familiar with Article 22, paragraph 1, of the Covenant, which I should like to place on the record at this point.

"To those colonies and territories which, as a consequence of the late war, have ceased to be under the sovereignty of the States which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant."

I emphasize for this purpose—the purpose of my questions to you, Dr. Krogh—the concept of territories "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world".

And, then, one more brief reference to what is undoubtedly well known to you from the second Article of the Mandate itself:

"The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the Territory, subject to the present Mandate."

In the discussion of the development—the history of the development—which you traced at the outset of your testimony—the economic development of the Territory—would you say, Sir, as an economist, that, in any scientific sense of the word or technical sense of the term, the inhabitants of the Territory at the present time, in the words of the

Covenant, are now "able to stand by themselves under the strenuous conditions of the modern world"?

Mr. KROGH: Sir, I would say that, economically speaking, they are well on their way to arriving at positions where they could be expected in due course to become economically viable. Yes, I would say that they are definitely far more advanced than they were in 1920 and that the prospects of them acquiring and in fact fulfilling the desire and ideal expressed by you, as in the documents, are well advanced. This whole situation is dynamic. It shows a process whereby new opportunities are continually being created for them. It is only during the post-war period that they have, in fact, begun to display enterprising qualities of undertaking businesses on their own in their particular areas. And this is a most encouraging sign. I believe this to be the result of the security they have in this regard—the establishment of law and order, good forms of public administration—and then there is also the market that has been growing in South West Africa giving them increasing incentives. They are not engaged in any export activity at this stage but they are, in fact, exploiting economically the growing market possibilities that are spreading all over the Territory in view of modern economic developments.

I would say, furthermore, that it would be very unfair and, in fact, misleading to expect these people to become economically developed in the modern sense of the word in terms of two generations. I think it would be very unwise to expect that to come about.

Mr. GROSS: Would you say, Sir, that the development of accomplishment to which you have referred could be interpreted as a response to the economic and educational opportunities which have been offered to, or created for, the inhabitants?

Mr. KROGH: Yes, I would say that the incentives for economic development—the opportunities, and the qualities of the people have improved. Definitely, yes, I think they have improved considerably. As a matter of fact, I think it is a record to be proud of.

Mr. GROSS: Would you say, Sir, as an economist and as a person who, as you have testified, has an extensive knowledge of economic conditions in South West Africa . . . ?

Mr. KROGH: Yes, Sir, I would say fairly extensive, as I have indicated just now, the nature of my interest . . .

Mr. GROSS: I had not quite finished my question. I was not questioning you—I was referring to it in that setting. Would you tell the Court what your appreciation or understanding is of the "lack of enterprise", which was the phrase you used, with respect to the non-White groups? I believe I fairly reflect your testimony. Will you explain to the Court what you meant by reference to "lack of enterprise", to what you attribute your judgment in that regard?

Mr. KROGH: Well, Sir, the enterprising qualities of a people are not determined purely by technical aspects nor simply by education. This is an illusion that is increasingly being realized and appreciated with regard to the development problems of underdeveloped peoples. In fact it is recognized, if you study the economic plans of development in the rest of Africa, that in view of the lack of indigenous enterprising individual qualities, that major emphasis is placed on these enterprising functions being undertaken by the State, that is by the public authorities now especially, after they have become independent. I have this on record if you would like it. I have quite a few authoritative studies that,

in fact, substantiate this. I can think of a particular one by the Economic Commission for Africa. If you like I could supply that for you. It is not just simply a matter of the lack of economic opportunity or of a market, this is something that goes much further than the economist can explain. It is a socio-cultural factor that goes further back, and on which I am not an expert, although I have some knowledge of it in view of the nature of the problem, but I have not studied the socio-cultural origins of these varying enterprising qualities and aptitudes displayed by members of different groups. But this is quite well known internationally and, it is recognized as the main source of sustained economic development—a source of development that can be relied upon in certain types of societies but not in others, and in the case of the latter this has to be supplemented or taken over by public initiative, organization and finance, at least at a particular stage of development, Sir.

Mr. GROSS: Without pursuing this matter too much further but for the sake of understanding, you have testified, I think, that in South West Africa the advancement, you say if I recall your words, is rather gratifying or remarkable or words to that effect. Would you elaborate again, if you will please Sir, whether the "enterprise"—in the sense in which you use the term—which is reflected in this advancement is the result of opportunity, education and economic opportunity which has been available to the indigenous inhabitants during the past years?

Mr. KROGH: Yes, it is the essence of development, to create economic opportunities, to extend the market and, in fact, to improve the qualities of the population, to perceive, and to exploit these economic opportunities.

Mr. GROSS: Would it not follow, Sir, then, that enterprise is a consequence of opportunity?

Mr. KROGH: Not necessarily, no. In fact it is quite common in South Africa, where you have . . .

Mr. GROSS: May I address myself to South West Africa, if you do not mind?

Mr. KROGH: Yes, I just thought I might take a good example from South Africa.

The PRESIDENT: The witness may give his answer in relation to any country if you ask that general question, Mr. Gross.

Mr. GROSS: Mr. President, with respect, I thought it might aid the witness if I clarified and limited my question but of course he can answer it in any way.

The PRESIDENT: But you put to him a general question and he may give a general answer.

Mr. GROSS: Yes, Sir, of course. Will you please answer it in whatever way you wish.

Mr. KROGH: I can also answer this with reference to South West Africa. You find in the Native reserved areas purchasing power or a market, brought about by the people bringing in funds or their income as migrant workers returning home—this is the one main source of income. The other source of income is through the commercialized sale of their livestock, for instance, and this gives them large amounts of money. Now, this market—this purchasing power—is available there but you would often encounter nobody in fact exploiting this particular market. You find that these people would travel long distances and also, in fact, return as migrant workers bringing with them goods from other areas.

This illustrates that there is a market available there but that the economic opportunities are, in fact, not perceived nor are they exploited by members of this group. This, to my mind, clearly indicates that there is not a lack of economic opportunity to exploit. However, these opportunities must of course be there to encourage or to make this possible eventually. I can name you quite a few examples where such opportunities were permitted to be exploited by members of the White group who were allowed under special permit to have trading stores or business premises in these areas. I witnessed just about a month and a half ago a case in the Ovitoto Reserve where a non-White business man was being assisted to take over the business premises of a White trader. The particular Herero, in fact, came from Katutura to take over this business, and it is of course the policy of the administration that the Herero should have preference in his area.

There had not previously been a Herero that would, or could, exploit these trading possibilities. Nevertheless there are definite signs—very encouraging signs—that this type of business people are emerging, as it were, at this stage. But these opportunities had already existed previously as was witnessed by the fact that it was exploited by a member of another group.

Mr. GROSS: Would you say, Sir, that there were factors that might be called innate, or are there factors to which you refer as cultural or traditional which inhibit enterprise where opportunity is presented?

Mr. KROGH: Sir, as an economist, I would say that cultures are different. Certain cultures emphasize certain human qualities or values in contrast to others. Furthermore, cultures are never static, they change over time. Economic history shows that private enterprise is not restricted to a particular culture.

At one time it was believed that private enterprise only emerges from a particular religion or a particular culture, but this is not generally accepted today. It can be shown that in cultures which had previously not delivered or in fact brought forth enterprising units, such people would in fact come to the fore after the social structure had changed or the culture had incorporated certain other elements.

The important point is, however, that cultures differ. It may take a very long time for one culture to produce this type of enterprising units for economic development units. It may first have to change in order to bring them forward, or even have encouragement and incentive to do so. Other cultures again deliver the people spontaneously, as it were. Over the centuries, they have already adapted themselves. As a matter of fact, it is quite interesting to mention, Sir—I do not like to use the terminology here, because it is restricted to a technical field and has particular meanings there and may be misconstrued here, but I may mention the work of the eminent economist Professor W. W. Rostow in this respect. In his *The Stages of Economic Growth*, which is widely quoted and widely used he makes the distinction between what he calls “tradition bound” and “free-born societies”. Now these terms are used in the economic sense, it is not to be construed in any wrong or bad sense. They just mean in the case of the latter that there are no cultural constraints on people to pursue individual economic opportunities—it seems to come automatically as it were in that type of culture. In “free-born” societies the individual is not culturally bound in the economic sense. On the other hand, there is a type of society which is usually found in the

under-developed world—economically known as a “tradition-bound” society. This simply means that the problem of economic development lies in gradual cultural change, and is not simply a matter of supplying foreign aid and technical assistance to them. It is not a pure economic-technical problem, it is basically a social cultural problem that it takes a long time to produce these enterprising people. Nevertheless, the fact is that they are in due course produced—there is no doubt about this—it does not mean that it is a particular race or peculiar culture, it just takes time to change cultures.

The two concepts mentioned make it quite clear to me that as far as the cultural factor is concerned, one type of culture or way of life will produce enterprising and dynamic economic units (units refer to people) much quicker, easier, automatically and spontaneously than another. This is generally recognized in the literature on problems of economic development with regard to the cultural aspect, but there is no question of the one being superior or inferior to the other. This is purely an economic issue and a culture, as you no doubt very well appreciate, consists of very much more than economic values, Sir.

Mr. GROSS: Sir, if it is accepted, as you testified, that there are factors other than opportunity which condition development or enterprise, would it be equally fair to say that from an economist's point of view there is a correlation between the degree of opportunity and the degree of development or enterprise, everything else being equal?

Mr. KROGH: I would appreciate if you . . .

Mr. GROSS: Is there a correlation between the degree of opportunity available and the degree of development accomplished—is there a correlation between those two factors from the economist's point of view, everything else being equal?

Mr. KROGH: Sir, I would say that if you have an economically viable people and there are not opportunities to develop, they would create them. This is the characteristic feature of economic development. It is not just a matter of giving people an opportunity to develop—if they cannot develop due to the lack of opportunity they create these opportunities by undertaking and improving and automatically negotiating and trading with outside people and in fact creating economic opportunities. This is the main characteristic of economic development.

Mr. GROSS: By “they” in the context of your reply to my question do you mean the people themselves—are you referring to those people?

Mr. KROGH: Yes. I think I see what you are getting at now, Sir, namely whether you can facilitate this process. Yes, that is possible. You can make it easier for them, after all that is the purpose of aid to the economically less-developed countries of the world, namely to facilitate the process. But you cannot “push a rope”—this simply means that you cannot make them develop with the best will and the most generous purse if, in fact, they cannot make use of these opportunities. This is generally acknowledged, Sir.

Mr. GROSS: Thank you. I was intending to refer, Sir, to the mandate undertaking to which I referred and without engaging you in what would properly be regarded no doubt as a legal interpretation, which I do not intend to. Would you understand, Sir, that from the economic point of view that the promotion to the utmost of welfare and progress as a mandate duty would involve pains, assistance and expense from outside the group itself in order to bring them along to the utmost as

rapidly as possible? Would this affect in any way your earlier response to the effort implied by the word "they" as you used it? Do I make my question clear, Sir?

Mr. KROGH: Am I interpreting you correctly when I say that I must try and give my opinion on what is understood to be "to the utmost"?

Mr. GROSS: In the context of South West Africa and as an economist interpreting, if you will, the trust obligation, the mandate obligation, I am asking you, Sir, to evaluate as an expert the importance of the factor of external assistance to the development of enterprise and opportunity in the Territory—is that an important factor, can you answer that yes or no?

Mr. KROGH: Yes, Sir. I think assistance would be important, of course, and depending where this assistance comes from. If you take South Africa, for instance—it was understood to be the Mandatory I take it—it was itself at an early stage of economic development. It is only since the beginning of World War II that it has really become industrialized, and has only now arrived at a stage where it can be regarded as a capital exporting country. It was a capital importing country itself, being highly dependent on foreign sources of savings, and supply of skill and enterprise, for that matter, to develop it. So I think it would be misleading to compare the situation of South Africa today with that before World War II. It could then not possibly have assisted the Territory's economic development to the extent that Great Britain or France or Belgium could have assisted the development of their African territories. I think this would be an unfair comparison and I do not think that this could have been expected under the circumstances. I think that clears up the point with regard to external help and assistance.

The approach to South West Africa was to create modern economic activity in the Territory itself that would in due course supply the necessary public revenue and experience, extend the market and at the same time offer employment opportunities. The latter expressed as a ratio to the population of South West Africa is several times higher than that in any other country in Africa, with the exception of the Republic and partly also Southern Rhodesia.

Mr. GROSS: I should like, with the Court's permission, to revert to that question subsequently. I would like to revert now, however, to the question arising from your testimony with respect to the development of enterprise and the, shall we call it, modernization of the individual—would that be an acceptable phrase incidentally, Dr. Krogh?

Mr. KROGH: This is an American phrase. I object to the use of the term because I feel that it is not a technical phrase. It is a popular phrase conveying the idea that you can just take people and modernize them overnight, as it were. I object to that concept.

Mr. GROSS: I will cheerfully withdraw the expression. Shall we say, in the case of South West Africa, the change from a traditional subsistence economy to a modern economy in the language of the economists?

Mr. KROGH: Yes, Sir.

Mr. GROSS: So what, Sir, would you say, is the effect upon such a transition, such a change of a long continued association in the economy of White and non-White in the same area in South West Africa?

Mr. KROGH: Sir, I would say it is generally recognized—and I am not quoting economists now, I am quoting reports from the International Labour Office who have studied the problem of economic development

and commercialization in Africa and I rely not only on them but I rely on the expert views also of the Economic Commission for Africa which, in fact, has stressed it—that the most important way and the most effective way of changing a type of subsistence economy into a commercialized and modern economy is in fact by way of wage earning. In other words, more so than through the commercialization of subsistence cropping.

The PRESIDENT: I did not catch precisely what you said about “wage earning”.

Mr. KROGH: Development through wage earning rather than through crop raising, because it involves a complete social change, much more so than in the case of crop raising. In the case of the latter, primitive techniques of production become commercialized and it is only a slight step further or beyond that which had traditionally been undertaken in the subsistence type of economy. In the wage economy, on the other hand, which is completely foreign, it is a major break-away, as it were, from the traditional type of subsistence economy, and this is probably the most important way of bridging this gap and in speeding this transition from a subsistence type of economy to a modern economy. In fact, Sir, this is the main economic objective of development in African States today. They want industrialization to create wage-earning opportunities rather than concentrate on the very gradual process of agricultural development by way of commercialization. This is stated in virtually more than half, I should say, of their development plans. The point . . . I am probably not answering your question, I have forgotten the second part of it I am afraid . . .

The PRESIDENT: Perhaps you might have a look at it between now and tomorrow morning. Mr. Gross, if it is convenient we will adjourn now.

*[Public hearing of 23 September 1965]*

The PRESIDENT: The hearing is resumed. Doctor, will you go to the podium, please. Mr. Gross.

Mr. GROSS: Dr. Krogh, it may be convenient to yourself and to the Court if we were to place into the record at this point—and it will be relevant to certain questions which I propose to address to you—the general picture of the population of the southern sector, or Police Zone, in the Territory of South West Africa. With the President’s permission, I should like to refer to the tables 18 and 19 at pages 39 and 41 of the Odendaal Commission report, which is in the documentation of these proceedings.

The PRESIDENT: This document you are referring to, Mr. Gross, is already in evidence?

Mr. GROSS: Yes, Sir. Dr. Krogh, are you familiar with the Odendaal Commission report?

Mr. KROGH: Sir, as you will appreciate, it is a very voluminous report and I have not studied the whole report, only those sections which interest me for my particular field of study. I am therefore aware of the tables to which you are referring, and also know more or less the proportions involved in the population distribution.

Mr. GROSS: Now referring specifically to the portions of the report



which relate to economic or demographic factors, were you, if I may ask Sir, consulted by the members of the Odendaal Commission or staff with respect to the report itself in any aspect?

Mr. KROGH: Sir, I appeared as a witness before the Odendaal Commission, yes.

Mr. GROSS: It is correct, is it, Sir, that your works are cited in various portions of the report?

Mr. KROGH: Yes, Sir, they refer to me in that connection.

Mr. GROSS: I did not quite understand the answer to my question. You say you appeared as a witness before the Commission? Did I understand you correctly, Sir?

Mr. KROGH: Yes, I appeared as a witness before the Commission.

Mr. GROSS: On economic factors pertaining to the Territory?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Did you prepare or draft any sections of the report?

Mr. KROGH: No, Sir.

Mr. GROSS: The tables which I have in mind, which, with the Court's permission, I should like to insert here in round numbers, include the following and relate to, first, the southern sector, or Police Zone, as a whole, and then certain areas thereof.

The total population, as I understand it, 240,000, in round numbers, including migrant labour, approximately 27,000, on the average, a total of 267,000.

The total White population, those classified as White in the census category, is about 73,000. The total non-White population is approximately 166,000, and including migrant labour, present temporarily at any one time, 194,000.

Now, secondly, with reference to the total non-Whites outside the Reserves, they are 128,000, and including migrant labour, 155,000. In the urban areas the figures are for non-Whites as follows: those classified or referred to as Natives, 49,000, and those classified or referred to as Bastards or Coloureds, 10,000.

Now coming to the non-Whites in the rural areas, those classified as Natives, 64,000, and those classified as Bastards and Coloureds, 4,000: total of non-Whites in the rural areas, 68,000.

Then, coming to the Reserves in the southern sector, those classified as Natives, 29,000, Bastards and Coloureds, 10,000: a total of 39,000 non-Whites in the Reserves.

Then, just to complete the picture, Whites in the urban areas, 54,000: Whites in the rural areas, 20,000.

The PRESIDENT: Mr. Gross, could you give the Court the pagination of the Commission's report, from which these figures are taken?

Mr. GROSS: Yes, Sir, I was just about to do that. These figures are derived entirely by computations made from tables 18 and 19, at pages 39 and 41, respectively, of the report of the Odendaal Commission, technically known and published as the *Report of the Commission of Inquiry into South West Africa Affairs, 1962-1963*, published in South Africa as document RP No. 12/1964.

The PRESIDENT: If you are going to cross-examine the witness on these figures I think perhaps it would be convenient if the witness had a copy of the Odendaal report before him.

Mr. GROSS: Yes, Sir, that would perhaps be convenient to the witness. I had, Mr. President, advised the witness, just prior to the commence-

ment of the proceedings, that I would ask certain questions with respect to the Odendaal Commission report.

The PRESIDENT: Pages 39 and 41—the tables.

Mr. GROSS: Yes, pages 39 and 41—the tables. However, I do not propose, Dr. Krogh, to ease your mind on this, to cross-examine you with respect to the accuracy or otherwise of these figures, which are accepted, but to focus on certain questions on the situation from an economic point of view with respect to the economy in the areas of the southern sector, outside the Reserves particularly. I will remind you from time to time, if it is helpful, that we are dealing primarily with that area and the numbers, therefore, to fix them in your mind again, Sir, outside the Reserves—total non-Whites, including migrants, 155,000. That is broken down (non-Whites), in urban areas, 59,000, in rural areas, 68,000.

Now, Sir, do you have any question about those figures, incidentally?

Mr. KROGH: I think that they are quite clear. I cannot check them just at the moment, I will have to look for them but I know what you have in mind.

Mr. GROSS: I would like first to refer to another section of the Odendaal Commission report, which has been the subject of previous testimony, to which I shall refer briefly, and in particular turn your attention to page 31 of the report, paragraph 113, at the bottom of the page, and I should like, if I may, to read it. This refers to the Damara tribe and is part of the study on population, which is the heading of Chapter 2 on the previous page.

“With the arrival of the Whites, resulting in increased personal safety and greater development, the Damara were able to evolve a totally new way of life. Large numbers were absorbed in the economy of the southern part of the country and displayed exceptional aptitude as employees.”

May I pause there to ask you, let us say as an expert, what meaning you would attribute to the phrase “absorb in the economy”? What significance would you attribute to that phrase?

Mr. KROGH: Sir, as an economist and as somebody who knows and has some knowledge of conditions in South West Africa, I would say that it is an unfortunate choice of terminology because it is misleading. It gives the wrong impression. It reflects the idea that these people are a homogeneous section of the White economy in the sense that as any other factor of production they enjoy complete freedom of movement, of location, and, in fact, participate in this economy, irrespective of their membership of a group. This is not true. They do not, in fact, form a homogeneous unit of the economy as any other factor of production would in a homogeneous society.

Hence, I think the word “absorbed”, if it conveys the idea that these people are so intimate a part and parcel of the economy that you cannot distinguish between them as economic units, and, for instance, the White members of the White group, as economic units, then I think it is misleading. I would prefer—and I think it would be a better reflection and a true description—to say that these members (the Damara we are referring to at the moment) are economically inter-related with the modern White economy—the economy of South West Africa—is it not homogeneous in the sense that these people participate in it as a member would of a homogeneous society. To the extent that the word “absorbed” gives

the idea that they form a homogeneous part of the White economy, I think the term is misleading. It is an unfortunate choice of terminology. A much better description of the economy would have been given if it was said that these people, became, in fact, inter-related with, or, took up employment in this economy.

Mr. GROSS: Do you distinguish then, Sir, as an economist, between employment, on the one hand, and entrepreneurial participation in the economy, on the other? What is the distinction which you would draw in technical or economic terms between absorption and employment in the sense in which you distinguish them?

Mr. KROGH: You see, Sir, an economist would say you have a homogeneous economy if the factors of production (that would be, very briefly, labour, capital, entrepreneurship and ownership of land) were, in fact, freely used, without any limitations or restrictions, by all the members of this particular community. If there was complete freedom of competition, and freedom of movement, applying to all the members of that particular society, then you would refer to it as a homogeneous economy. You find this, I think, well illustrated on the international level. You have an inter-related world economy composed of different national economies. The factors of production move freely and compete freely in the national sphere of the economy but not in the international sphere of the world economy. Therefore, to refer to, for instance, Britain as forming an integrated part of the world economy is not, technically speaking, a true and correct description. The point is that England is inter-related with the world economy. It is a rather important distinction because terminology such as "absorbed" or integrated sometimes used loosely in journalism, wrongly conveys the idea that there are no restrictions or limitations on the movement of, for instance, labour into Britain from the outside world, or of the outflow of capital, or on the ownership of the production factor—land, for instance—relative to the outside world. I think this example illustrates what I have in mind. If you use the word "absorbed" you would mean there would be no limitations whatsoever on the movement of the production factors between different economies and I, therefore, think it is an unfortunate choice of terminology.

Technically speaking, an economist would say that an economy is homogeneous if there are no customary, administrative and other forms of restrictions on the movement of production factors, or the ownership of these production factors, within the national boundaries of a country.

This is the point I tried to make with regard to the dual economy earlier yesterday. In this case there is usually no freedom of movement of labour or even in the ownership of land. There are, in fact, two different economies. There is this difference, yes, Sir. I would not say that this is an integrated economy, but a dual economy. I also want to stress the point that these differences compare with those that exist between national economies in the world economy.

Mr. GROSS: Would you say, Dr. Krogh, that the economy in the southern sector of the country could purportedly be called "diversified"?

Mr. KROGH: Sir, to speak about a diversified economy is to indicate different types of economic activity. If you only had agricultural activity, then you would say this is a monoculture or a non-diversified economy. If you have considerable manufacturing industry, and service industries as well, and so forth, you would say it is a diversified economy—it has

more than one type of economic activity—but this does not refer to the production factors that I referred to just now. "Diversity" refers only to the industrial structure of the economy. If it did not have different avenues or types of economic activity, then it is a non-diversified economy. If it is highly industrialized, and has agriculture, mining and fishing activity developed, then we refer to it as a diversified economy.

Very briefly, if you want to industrialize, for instance, and you have an agricultural economy, you would say that the objective is to diversify the economy. It is to develop other new avenues of economic activity, apart from agriculture, Sir.

Mr. GROSS: On the basis of this analysis, then, if I may revert to my question to you, would you characterize the southern sector of the Territory as a diversified economy? Could that be answered "yes" or "no"?

Mr. KROGH: It is difficult to answer "yes" or "no". It depends on whether you are comparing the southern sector of South West Africa—the economy of the southern sector of South West Africa—with, for instance, the Republic of South Africa, or the United States, or Ghana.

If I must say "yes" or "no" I have to know what you have in mind because this is a comparative concept. It depends on what your basis of comparison is. I would say that, relative to tropical Africa, it could be described as diversified, but as compared, for instance, to the Republic of South Africa, it is definitely not diversified.

Mr. GROSS: What I had in mind, Sir, was with reference to paragraph 127 on page 33 of the Odendaal Commission report, from which I read the following:

"Approximately half of the Herero are absorbed in a diversified economy of the Southern Sector of the country, while the other half are herdsmen in the home areas."

You have already indicated, if I understood correctly, a difference of opinion or question about the use in the Commission report of the word "absorbed". Do you wish to elaborate your response with respect to the use of the phrase "diversified economy of the Southern Sector", as used in the Commission report?

Mr. KROGH: Well, Sir, as I explained to you, it depends on what the Commission compared it with. The Commission probably compared this with the northern sector of South West Africa. I think they had that in mind and, therefore, I think the southern sector could be described as diversified compared with the economy of the northern sector of South West Africa, but it would not and could not be described as a diversified economy compared, for instance, with that of the Republic of South Africa, Great Britain, Europe or the United States of America. I do not think it is a fair description at all, as far as that is concerned.

Mr. GROSS: You think that the Odendaal Commission description is not a fair description? Did I understand you correctly, Sir?

Mr. KROGH: Sir, it depends on what you have in mind and I think the Commission must have had in mind contrasting here the southern economic structure with that of the north of the Police Zone. I would imagine that is what they had in mind and, used in that context, I think the south could be described as having an industrialized, diversified economy, comparatively speaking, if this is what they had in mind and I think, indeed, they had that in mind, Sir.

Mr. GROSS: Dr. Krogh, in your testimony before the Commission, were you questioned by the Commission or did you advert to the character of the economy in the southern sector?

Mr. KROGH: Sir, I can remember quite well that when I appeared as a witness before the Commission they did not consult me on technical matters of terminology—no, they did not consult me on that.

Mr. GROSS: Would you regard the description of the economy as a technical matter? If so, I would like to rephrase my question? Did you in your testimony before the Commission testify, or were you asked for your views, as an expert, concerning the nature of the economy in the southern sector in economic terms?

Mr. KROGH: Yes, Sir. They asked me about the possibilities of industrialization in the southern sector and what I would regard as the basic problems of economic development in South West Africa, at its present stage of development. They did ask me about the nature—yes.

Mr. GROSS: Of the economy?

Mr. KROGH: The prospects and possibilities and the extent to which progress had been made, and so forth—they asked me such questions, yes. I cannot quite recollect exactly what they asked me but I know it was concerned with these matters.

Mr. GROSS: Now, would the explanations you have given to the Court with respect to these terms, and your appreciation of them as an expert, also apply to the finding in section 133 of the report on page 35, from which I read the last sentence as follows:

“The economy of their area [parenthetically, this refers to Ovamboland] is stimulated by the approximately 27,000 workers employed at any given time in the diversified economy of the Southern Sector of the country for periods varying from one to two years, in the case of married persons, and one to two and a half years, in the case of single persons.”

Do you wish to elaborate, or amend in any way, the testimony you have given with respect to the use of these phrases in other contexts of the report I have read?

Mr. KROGH: Sir, I do not think it is necessary to elaborate on that. It is quite clear to me, and I think it is completely correct with regard to the stimulation of the private economy in the northern sector. I know that the purchasing power in the private sector largely derives from the southern sector as income that is brought back by these migrant workers and, as I illustrated to you yesterday, the individual business men and traders, who are, in fact emerging and establishing themselves in Ovamboland, had without exception, been migrant workers in the South. So, I would say that the stimulus for the economic development of the private sector in the northern territories originates, and its momentum is derived from the contact that migrant workers have with the southern sector.

The PRESIDENT: This question is directed, is it not, to the word “diversified”, Mr. Gross?

Mr. GROSS: Yes.

Mr. KROGH: The word “diversified”—yes, this confirms what I suspected just now, namely that the comparison is between the southern sector and the northern sector.

The PRESIDENT: In other words, the word “diversified” has no absolute meaning, it has a relative meaning.

Mr. KROGH: It is a relative term and it has become more so with the increasing number of studies that are being made of underdeveloped countries, and of their comparisons. It was previously used to contrast underdeveloped with developed countries but with the increasing number of comparative studies of underdeveloped countries, it has become a completely relative term. It must be read and understood in its particular context.

Mr. GROSS: Now just one more reference—this will be the last along this line—would your appreciation of the matter be affected by the following statement in the report at paragraph 137 of page 35? I quote the sentence beginning at the bottom of page 35 and it refers to Okavango:

“Approximately 1010 or 4% of the people of this group are absorbed in the diversified economy of the southern sector of the territory, while employees are also recruited among the Mbkushu for the mining industry in the Republic of South Africa.”

Here again, would you regard the reference to the diversified economy and the absorption of non-Whites referred to in that diversified economy as in any way to be distinguished from employment in, let us say, the mining area or the rural area in the southern sector?

Mr. KROGH: Sir, as I have explained previously, I think it is an unfortunate choice of terminology that conveys a wrong description of the extent to which these people proceeding to work in the more diversified southern sector are in fact integrated in that economy. I think it is misleading to that extent.

Mr. GROSS: Now, Sir, in your testimony a few moments ago, if I understood you correctly, you referred to “freedom of movement” as one of the factors by which the nature of the economy is described—is that correct?

Mr. KROGH: Well, it gives you an indication of the extent to which the factors of production in the southern economy are homogeneous with regard to the freedom of their application, use and movement. I use those examples to indicate that they are not, in fact, an integrated or homogeneous part of the economy, and I think it would be misleading to describe them as such.

Mr. GROSS: Now could you explain to the Court, what the phrase from the economic point of view, “freedom of movement” means—does that refer to movement from place to place or does that refer to movement within the levels of employment and management or both?

Mr. KROGH: Sir, it refers to both.

Mr. GROSS: It refers to both?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now, would it be a factor, in appraising this relative term “diversified economy”, whether the freedom of movement was inhibited by law or regulation as distinguished, let us say, from natural economic forces—would that make a difference in your economic analysis of the use of the phrase or its significance?

Mr. KROGH: Sir, these restrictions that operate are, to my mind and knowledge, largely of a social and customary nature. It is true that they are embraced here and there with regulations and laws but the limitations that operate are of a social and customary nature, as you would find in many other parts of Africa. As a matter of fact, the lack of social mobility and of economic freedom in the rest of Africa, where you also have dif-

ferent social groups—non-White population groups—is characteristic of these economies. They are generally and technically described as heterogeneous economies indicating that there is not complete and free movement of production factors either in the ownership of land or the movement of labour such as you would expect in a typical highly developed Western type of economy. This is characteristic of these types of economies. If you would permit me to indicate to you, very briefly, what exactly is meant by this, I would like to refer here to the *Economic Bulletin for Africa*, Volume II, No. 2, of June 1962, that contains an article written by the staff of the Economic Commission for Africa which, as you know, is an agency of the United Nations. Now, they make this point very clearly, not with particular regard to South West Africa, but to Africa generally. They say in this respect, if you will allow me to quote very briefly from page 9:

"It is commonplace among students of African conditions to say that it is impossible to make generalizations. This is unfortunately no less true for individual countries than for the Continent as a whole: wide and profound regional variations in characteristics exist in almost every respect *within national boundaries as much as among different countries* . . . Most of the countries under discussion [and they refer to tropical Africa] have *not as yet achieved the state of a single integrated economy, or even nation*, the typical feature being that of weakly linked and more or less self-sufficient local economic units. Pockets of development exist alongside areas living in different degrees of isolation. Consequently, in the case of all country averages shown in the study, the uneven distribution of economic activity should be kept in mind." (Italics added.)

This I think makes the point clear that you cannot use words like "absorb" in the sense that you would in an economy such as Great Britain, the United States, or in Europe where it would make sense. They do not, in fact, have an integrated economy. They are composed of different social economic units operating within the domestic boundaries of these areas. That is what I was trying to say when I explained that the concepts "integrated" and "absorbed" are an unfortunate choice of terminology and that the restrictions are not in all respects legal. I am sure that most restrictions that operate in this regard are of a sociological and of a customary nature, embraced here and there by regulations—administrative or legal. That is the point I was trying to make, Sir.

Mr. GROSS: Thank you. Now, Dr. Krogh, without in any way wishing to impede or impair the fullness of your answers, I would like to invite you, if I may, to direct your attention specifically to the extent possible to the sector we are discussing, and if you would please revert to my question to you, which was intended to ask and on which I would appreciate elaboration from you—is the "freedom of movement", to which you refer as an economist, an element in determining whether or not you would properly refer to an economy as "diversified"—could you answer that yes or no, Sir?

Mr. KROGH: No, Sir. The concept of diversification is not used technically with regard to the movement of production factors at all. It describes the industrial structure of an economy, Sir.

Mr. GROSS: Are you finished, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Perhaps we could approach the matter from a different point of view. There are, in the sector to which we are referring, some thousands of persons classified as non-White, whom the Odendaal Commission rightly or wrongly described as being absorbed into a diversified economy. I will not ask you, unless you wish to, to elaborate further on the use of terminology. I am referring however, to those persons in that economic context. Now adverting to those persons in that context, I should like to ask you whether the freedom of movement of those individuals, either with respect to advancement or with respect to physical relocation or in any other sense, affect their relationship to the economy and if so, what is the impact upon them of such restrictions?

Mr. KROGH: I take it, Sir, that that question refers to two aspects. The first, if I get your question correctly, is that you want to know what extent the movement of these people in the White sector of the economy reflects the extent to which they form a so-called integrated part of the economy?

Mr. GROSS: Yes, Sir, the first part. Please continue, Sir.

Mr. KROGH: I would say that it is a fact that they do not move and own production factors to the same extent as the White members of the economy owing to custom and administrative regulations and otherwise. They are not absorbed by the White economy but related to it, just as migrant workers coming, for instance, from the Mediterranean countries to Germany, Holland or Switzerland would first have to apply for work permits to enter the territory, and such work permits are issued on condition that these people do not endanger or displace a national of the receiving State. Hence, such workers occupy jobs conditionally—they are not free in the same sense as the nationals of the receiving State are. Therefore, I would regard this as a distinguishing feature and say technically speaking that such a worker is not absorbed in the economy as is the case with the members of the national group.

Now many of these restrictions operate customarily, as I also explained to you earlier on yesterday, I think, with regard to land ownership, for instance, in the rural White areas. With the insignificant exception relating to certain probational land settlement schemes there is no regulation, as far as I know, that prohibits any member of any other group from owning land in the White rural sector of the economy. Nevertheless, apart from one or two exceptions—I am not quite sure—for all practical purposes there are no members of other groups that own land there, without there in fact being any legal restriction on this. This to me again reflects that the members of these other social units or groups are not, in the technical sense of the word, absorbed in the economy. If there are any restrictions that operate with regard to their owning land in this area it is customarily. It might in fact be quite mutual as far as the members of these different groups are concerned. That is the first part of the question, I think, Sir.

Mr. GROSS: May I pursue your response to the first part before coming to the second?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Is the imposition, by custom or law or otherwise, of restrictions upon movement or advancement, a basis for your distinguishing between the relative position of the White and the non-White in respect of the economy in which they are both serving—is that the principal basis of your distinction of their relationship to the economy?



Mr. KROGH: Yes, Sir, as an objective observer I take into consideration all limitations—customary, legal or social—on the movement of production factors within the national boundaries of a territory, and with the aid of that I say whether this constitutes a heterogeneous or non-homogeneous economy or not.

Mr. GROSS: Sir, I am trying to get, for the benefit of the Court, an elucidation of the actual effects upon individual persons in this sector we are talking about of the difference between the White and the non-White, and the effect of that distinction, however drawn and why drawn, upon their economic role and relationship to the economy of the territory. With that introductory explanation, would you then go back, if you will, to my question, which was intended to ask you whether the different role and relationship of White and non-White to the mixed economy which you describe reflects and is caused by the restrictions upon the non-White group, however or why ever those restrictions are imposed; is this the central point of distinction in defining the relationship of the White and the non-White group towards this economy?

Mr. KROGH: This is one of the major criteria I would take into consideration. Others would be the extent to which the members of these particular groups other than the non-White groups are entrepreneurs relatively to the rest of their population; the extent to which they use advanced techniques of production; the extent to which they make use of advanced forms of organization, and of financing their economic activity. Therefore it is not only a matter of movement, there are also other features that I mentioned yesterday in reply to other questions that would suggest to any economist that these people are, economically speaking, of a different viable nature.

Mr. GROSS: Of a different what, Sir?

Mr. KROGH: Economically viable nature.

Mr. GROSS: In order to clarify that last description, would it be in any way reflected in the comparative viability, as you describe it, of a White employee, let us say, on the railroad as distinguished from a non-White employee on the railroad, as between those two individuals, the distinction being one of colour or race—does your answer with respect to viability or otherwise have any relevance to their relationship to each other or to the economy as a whole?

Mr. KROGH: Sir, I am afraid I will have to go into the use of concepts again, and I do not really want to do this, but the concept of viability does not usually refer to the individual, it refers to a group of individuals or to an economy viewed as a whole. But I think it can very clearly be said that the attitudes, the aptitudes and the willingness to undertake economic activities would convey to you the extent of economic viability of a community—that is, these qualities, would reflect their economic viability. Sir, with all respect, I think that the impression has been created here that these people . . .

Mr. GROSS: Are you referring to non-Whites, Sir, by "these people", if I may interject?

Mr. KROGH: I think that is what you had in mind.

Mr. GROSS: I just wanted to understand you, Sir.

Mr. KROGH: That they are being held back like race horses waiting at the gates—that it only requires to take the gates away then they would run all the way. Now this to my mind, is completely false, Sir—this is not the case. To the extent that restrictions operate against their occupying

certain positions, or their displaying the economic viability they have, they are to my mind of a marginal nature in the case of South West Africa. There are, as I pointed out yesterday, economic opportunities that are in fact exclusively reserved and put aside for these people against the economically stronger Whites. All these are not in fact exploited or occupied, or maybe even perceived, by the members of these groups. This to me reflects that it is not principally a matter of there being restrictions on these people to either develop, or display their economic viability. I will go further, and say that the situation is not static in South West Africa. It is dynamic in the sense that increasing opportunities and possibilities to apply their economic aptitudes and qualities are in fact being created at a rate for them that I think compares very favourably with anything elsewhere in the underdeveloped world, and particularly in tropical Africa. So it is not a matter of restricting these people—these restrictions operate, I must admit, but from an economic viewpoint they are in fact marginal, they are not of any major economic significance. An economist must appreciate that in order to make more productive use of available production factors under such a set of heterogeneous social conditions, restrictive measures may very well be required in the interest of social peace. As I pointed out yesterday and tried to emphasize, social peace has in fact been maintained in order to get on with the more important job of economic development creating more economic opportunities.

I think, Sir, that the answer to the question is given in the same document that I quoted just now, namely the *Economic Bulletin for Africa*, if you would allow me, very briefly, to quote from it again. It puts this very clearly that it is not a matter of legal restrictions operating against these people from developing economically. The restrictions are of a human and cultural nature that are in fact changing in the case of South West Africa. Very briefly, on page 7 of the same *Economic Bulletin for Africa*—they put it much better than I can and while I am having difficulty in explaining this, I would be glad if you would allow me to quote from it—I have it here:

“The take-off stage is from the standpoint of the less developed countries the critical phase in the growth process, and has consequently operational significance as an objective of Policy. It is important to know how the development path from the traditional society towards take-off can be described and how the factors favourable to growth should be arranged so as to result in the most efficient allocation of resources during this stage. It is obvious that it is not justified to assume that the latter process [this refers to the most efficient allocation of resources] follows an optimum path automatically or even that growth itself comes about on its own accord [in these types of traditional societies], especially in the countries at the bottom of the development ladder . . . It is well-known that traditional societies have found it difficult to foster integrating growth forces from within strong enough to overcome the resistances mentioned above. [These resistances mentioned above are not legal resistances.] Normally exogenous impulses are required. The levels of living attained and the existence of modern knowledge and technology in developed countries and the possibility of the latter's transfer to the less developed areas represent such an exogenous impulse.”

This clearly indicates that the members of one society are economically more viable than those of the other. It would be false to compare and to create the impression that these differences are due to legal restrictions or the withholding of the members of one group—to, in fact, better their economic positions.

Mr. GROSS: Sir, I have noticed, as I am sure the Court has, your repeated references to analogies in the form of relationship between the members of one society or another and your reference, also by analogy, to the situation of emigration of one nationality to another nationality. Does this analogy, or this form of analysis intend to describe the relationship between the non-Whites and the Whites in the sector to which we are referring—to which I would like your continuing attention? Does it infer the relationship between the Whites and the non-Whites on the basis of ethnic or colour differences or alien or different societies, in the sense in which you use the term?

Mr. KROGH: Sir, I think it would be a better description for the simple reason that most of the members of one group would view the members of another group as foreigners very often even more than you would find between, for instance, Great Britain and America, or between the Netherlands and, say, Belgium. I think it would be more appropriate to describe these differences in that way than to regard them as a homogeneous people, with the same degree of economic viability and qualities and attitudes.

I think these examples would give a more instructive impression of the relationship between them, and it does not only operate between the members of the non-White population groups on the one hand and the members of the White population groups on the other. This is more conspicuous because the differences are so much the greater in levels of economic and general development but it also operates, and in fact operates quite effectively, with regard to members of different non-White groups, just as it does in most of the other parts of Africa.

Mr. GROSS: Sir, when you referred earlier, if I understood you correctly, to two of the factors which added to the consequences or the reasons for differential treatment between White and non-White you mentioned, I believe, that a major factor to explain the different relationship of both groups to the economy was the restrictions, however or why ever imposed, on freedom of movement. I believe that is correct, Sir, is it not as a major factor? Is that what you described? Secondly, you referred, if I understood you correctly, to another factor, which was what you referred to as the entrepreneurial aspect of one group, by which I assume you meant the White group. Is that correct, Sir?

Mr. KROGH: Yes.

Mr. GROSS: Now, in respect of the question I asked you some time ago—how that analysis relates in economic and social terms to the extent that the two are necessarily related, to a White individual, who is, let us say, working as a fireman on a railroad, and a non-White individual who would be clearly qualified to do that same work, hypothetically—does the factor of White entrepreneurial skill or tradition in any way enter into that situation as between those two persons?

Mr. KROGH: No, Sir. It does not, in that particular example; no.

Mr. GROSS: Would you say that therefore, to the extent that the restrictions and reservations, job reservation policies and legal restrictions, to which I shall avert more specifically shortly, in principle—I

think that is what we are talking about now—economic principle—I would like to come back and ask you whether you could clarify as sharply as possible whether or not the relationship between the White and the non-White to the economy, which we shall not call diversified although the Odendaal Commission does, is fundamentally affected and conditioned by the freedoms of movement and advancement which are imposed on the one group and not on the other?

Mr. KROGH: Sir, I do not think it is fundamentally affected by it. I think it is marginally affected by it.

Mr. GROSS: Now, in addition to the entrepreneurial distinction which referred, I think you said, to the group as a whole, but not necessarily to all individuals within the White group, are there any other factors which perhaps you have not mentioned, or which have not been understood by me, which bear upon the question we are discussing in terms of the different relationship between White and non-White to this "diversified economy", in Odendaal terms? Are there any other factors which you consider relevant, as an economic expert?

Mr. KROGH: Yes, I think economists also look at the use made of technical means of production and modern farming methods and forms of economic organization and of finance. These are criteria which are, in fact, employed by economists to distinguish one stage of economic development from another, looking at the type of economy. For instance, you would look at these factors when studying the economic history of the development of Great Britain and you would say that the use of technical means of production, of economic organization and of finance were at a relatively primitive stage a century ago compared to what they are today. These are criteria that they would use to say that Britain was at a much lower level, or stage, of economic development then. These are some of the criteria that economists look at, reflecting the extent to which modern techniques of production and modern forms of economic organization are being employed and used in the economic process.

Mr. GROSS: Let us take as another example, if I may, Sir, with the President's permission, the restriction in the mines—the European-owned mines, and I believe that there are no other mines in the Territory—placed by administrative fiat, rather than by custom, or in addition to custom if you wish, with regard to the promotion or advancement of non-Whites on the basis of race to—I quote from the Rejoinder, VI, at page 231:

"The posts which Natives may not be appointed to in such enterprises [that is European-owned enterprises] are the following: Manager; Assistant, sectional, or underground manager; Mine overseer; Shift boss; Ganger; Engineer; Person in charge of boilers, engines and machinery; Surveyor; Winding engine driver; Banksmen or onsetter."

Now, Sir, would you advert to this illustration of restrictions, which are legal restrictions? Would you be good enough, Sir, to explain to the Court whether anything you have said or analysed by way of difference of relationship between White and non-White to the economy explains or clarifies from an economic point of view these restrictions which I have just enumerated?

Mr. KROGH: Sir, as I tried to point out in my evidence yesterday, these restrictions operate with regard to mining being carried on in

White areas. Similar restrictions would, in fact, operate in the non-White areas where mining operations exist or will in due course be developed. I also want to point out in this connection, Sir, a second point, namely that these posts enumerated there sound as if they cover a large number of the employment opportunities open in the mining industry. This is, in fact, not the case. I am sure, although I cannot quote the figures offhand, but I have the sense of proportion to tell you that those restrictions are relatively insignificant to the number of posts that are, in fact, occupied by members of the non-White groups in the mining industry in the White group. And a third point that I would like to make, and I made this point yesterday, too, and that is, that I, as an economist, have to take into account and recognize that such restrictions are a cost—are, in fact, necessary under the particular set of socially diverse circumstances in a territory such as South West Africa. Seen from the viewpoint of the economy as a whole, this might and in fact could lead to a non-economic application of production factors. Only if it can be shown that these jobs can in fact be occupied by people who can do them better than those who are occupying them at the moment, can it be said that there is an uneconomic allocation of resources in the Territory seen as a homogeneous or integrated economy, but I think it is false to regard the economy of South West Africa as being composed of a homogeneous people, and that there is complete freedom in the movement of production factors there as you would expect in a homogeneous economy. I can very well see that such restrictions may have to be applied for the sake of social peace, which is an important consideration in the interest of getting on with the important job of economic development, Sir.

Mr. GROSS: Now speaking still as an expert, witness and economist, would you say to the Court that the restrictions which are opposed by the mining regulations, to which I have referred, have any economic justification?

Mr. KROGH: Sir, I would like to ask you what exactly do you mean by economic justification?

Mr. GROSS: Are they justified by any economic factor peculiar to the mining industry, or peculiar to any of the economic aspects of marketing the products of mines, or any other economic factor related to the industry in which the restrictions apply?

Mr. KROGH: They have, of course, absolutely nothing to do with the marketing of the product of the mining industry, as you will appreciate, but I think they are important from the viewpoint of economic development in so far as they may be required to ensure social peace, which is a *sine qua non* for economic development in the Territory.

Mr. GROSS: Sir, are you there making a social value judgment with respect to the attitude of Whites versus non-Whites? Will you clarify your answer to the Court?

Mr. KROGH: Sir, if you look at the economic history of territories or countries that have a similar population structure, such as, for instance, South Africa (and this, I think, is relevant, because the policy applied here is, no doubt, affected by experience there), you had a civil war in 1922 in the mining industry, leading to the destruction of property, loss of lives and so forth, being a reaction of White miners to the suggestion or, as the circumstances were, the attempt to employ members of non-White groups to do certain jobs that were, in fact, being occupied by

Whites. This led to open rebellion. As a matter of fact, I was informed just yesterday that under a nearly similar situation a large-scale strike has started in South Africa upon this very issue, despite the fact that the Government have tried to convince the White workers that this change would be in their ultimate interest and in the interest of the economy as a whole. Apparently, however, the members of this group were not prepared to sacrifice their group interests in the interest of the national economy, and this is not abnormal. This may happen quite frequently and, in fact, constitutes a problem that you have to take into consideration. This, of course, also applies the other way. It is not a one-way relationship. These groups see their economic positions—their welfare positions, their income levels and so on from the viewpoint of their social unit or group rather than from the national economy. This complicates the matter terribly. It is a difficult problem and difficult to deal with, but to ignore it is to invite economic disaster. I do not have the answers to all the ways and means of dealing with it.

Mr. GROSS: Would you say that there is any question that the restrictions to which I have referred impose upon the non-Whites a barrier to any economic advancement, development of skills and, of course, greater livelihood? Is there any room for doubt upon the impact on these individuals who are subject to the regulations?

Mr. KROGH: Yes, Sir, I think there would be an effect on them but I think this effect would be marginal.

Mr. GROSS: If a non-White individual working in a mine has the capacity or the potential to fill one of the listed higher posts in the mining industry, ignoring him as an individual, can there be any question about the impact upon his economic welfare? Is that marginal, Sir?

Mr. KROGH: It is marginal viewed from the economy as a whole or from the group from which that member derives. It may affect his position at this stage of the development of economic opportunities in the Territory, but it is definitely marginal. I think it would be unwise, Sir, of any responsible authority under such a set of conditions to try and solve the problems of individuals and thereby create much larger social problems. You must view this thing in its total social situation. I must admit however, that, for that particular individual, it may affect his living standard at that stage of development of the Territory where not sufficient conditions and mining opportunities exist in other areas. I can appreciate that point and I admit that that is so. Yes, Sir. But I think that it is marginal from the viewpoint of the economic advancement of that particular group and I think it is even less important viewed from the national economy as a whole. I think it is marginal. Just to concentrate on and solve the problem of a particular individual, would, to my mind, from a responsible authority, be shortsighted, narrow-minded and, in fact, irresponsible, Sir.

Mr. GROSS: Dr. Krogh, in respect of the questions and your response thereto concerning the regulations on the mines, works and minerals (Ordinance, as it is called), I should like to refer to your comment—if I understood you correctly, Sir, according to my notes but correct me if I am wrong—that the Natives, so-called, occupy many posts in the mining industry. Did I understand you substantially to say something like that, Sir?

Mr. KROGH: Yes, Sir, I said "employment opportunities". They are,

in fact, the majority, as far as the labour force is concerned in the mining industry in the White sector of the economy.

Mr. GROSS: If you did use the word "posts", were you or were you not referring to managerial or supervisory positions in the mines?

Mr. KROGH: No, Sir, I was not referring to those positions in the mines in the White areas.

Mr. GROSS: That was just to clear up any possible misunderstanding, on my part. Now, Sir, with respect to the distribution of mineral resources in the Territory, are there any mines or mineral deposits in operation, being exploited, in the northern areas of the Territory?

Mr. KROGH: As far as I know, there is, I think, a salt mine operating in the northern part of the Territory. Yes, I think so, Sir.

Mr. GROSS: Are there any other mines, metal or other mineral deposits, which exist and are being exploited in the northern territory?

The PRESIDENT: They might exist without being known, Mr. Gross: any other mineral activities?

Mr. GROSS: Thank you, Mr. President. My stress is on the words "being exploited", which of course presumes their existence; yes, Sir.

Mr. KROGH: Not as far as I know, Sir. But the mineral resources of the Territory are, of course, those of which knowledge exists today. That is clearly understood.

Mr. GROSS: My question is intended to be directed toward the current condition, the current situation, and that which has prevailed in the last years. Your answer is directed toward that time span, is it, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Would you say, then, that it would follow necessarily and logically that the employment opportunities for mine workers, outside the salt mines, to which you refer, are non-existent in the northern territory at the present time?

Mr. KROGH: At the present time, yes, Sir, but this does not, of course, exclude the discovery of new mineral resources or of known mineral resources being exploited, becoming economically feasible to exploit in due course. We have many examples of this. Take Libya, for instance. For years it was regarded as a textbook example on the subject of economic development, of a territory that should be left alone and not developed because it had no natural resources. We know from fact, however, that during the last few years large and very valuable oil resources have been discovered and are now being developed in Libya. This sort of thing happens all the time. It does not mean that mining is excluded from future development. It is only the position at this stage of development.

Mr. GROSS: At this stage of economic development there are no mineral or other deposits being exploited in northern territories other than salt mines; that is your testimony, is it not, Sir?

Mr. KROGH: That is correct, Sir.

Mr. GROSS: As an economist and an expert I address this question to you: if the fortunate development which takes place, which all would hope for, that mineral deposits are discovered for exploitation in northern areas, would there be, on the basis of your economic analysis of the population in the Territory, persons, non-Whites, who would be readily available for managerial and supervisory posts in such enterprises?

Mr. KROGH: Sir, they would not be readily available in the sense that they could be employed immediately. They could, however, be trained

in a relatively short period of time to occupy many of these posts. As a matter of fact, now I come to think of it, there is an important tin mine, for instance, in the new and large proposed Damara land, that is in operation and in fact is being exploited, and I take it that this would give an opportunity to train these people, if these mineral resources should become economically feasible to develop in the northern territories. Then I take it that there would be people qualified and experienced to undertake these developments, and to the extent that they are not available they will in fact, I am sure, be assisted and guided by White managers and skilled people to develop these mines and be trained to occupy these posts.

Mr. GROSS: The White persons to whom you have referred would, under those circumstances, be residing and working in the northern territories, would they, Sir?

Mr. KROGH: On a temporary basis with the very clear understanding that they could not claim job security. They would be there on a temporary basis until and when these posts could in fact be taken over by members of the group in whose area the mine was being operated.

Mr. GROSS: They would be contributing to the development of the economy, I take it. That would be the case, would it not, Sir?

Mr. KROGH: Yes, Sir, otherwise there would be no development.

Mr. GROSS: And while they were making that contribution to the economic development, would they be subject to restrictions upon their promotion or the jobs which they would be entitled to hold in the Territory?

The PRESIDENT: That is something in the future, is it not? Would they be in the future subject to restrictions?

Mr. GROSS: Under the conditions envisaged by this witness as an expert, Sir, in the development of the mines we are projecting, if I may pursue that.

Mr. KROGH: I think it would be made very clear to them, as a condition, that they could not have any basis for a claim, or if there was a claim for job security, or for the advancement of employment prospects in this mine, this claim would not receive priority compared with that of the members of the local group—that is the latter would, in fact, receive preference in this respect. I can also very well imagine that they would be protected against any such claims emanating from the members of the White group.

Mr. GROSS: I think, Mr. President, that I am leading the witness into a hypothetical future contingency and I will not pursue that line any more, Sir.

However, I should like now to turn to another form of imposed limitation upon economic advancement or position. I refer to the pleadings, Reply, IV, at page 419, from which it appears (and this, I believe, is undisputed in the record) that the Apprenticeship Ordinance of 1938 and Government Notices supplementing it provide that only European minors may execute contracts of apprenticeship in various industries and one of them is the furniture industry. Are you familiar, Sir, with that Apprenticeship Ordinance or the regulations pertaining to that matter?

Mr. KROGH: Sir, I do not know the exact content or legal provisions of these regulations—no, I do not. I am, however, aware of the fact that this Ordinance, as you call it (I take it, that is the technical term for it), was introduced just before World War II (I am not quite sure about the



date but it was shortly before World War II), but that it was not, in fact, applied until quite late in the 1950s. That would be some 20 years later. Then I am also aware that, in order to have it applied, certain trades have to be proclaimed, and I think you are correct in saying that one of the few trades that have been proclaimed in this connection is the furniture business. As I tried to explain to you yesterday in my testimony, a furniture factory is, in fact, operating in Ovamboland where these people are being trained as skilled persons to operate the factory in this particular example you have mentioned.

This illustrates to me, again, then, how this proclamation may very well have prohibited the training of skilled furniture operators after 1957-1958 (I think it was 1957-1958 that it was brought into operation—it is only quite recently—a few years ago). Nevertheless, they are now being employed, protected and trained in a furniture factory operating in the northern territories, which clearly illustrates that this proclamation does not apply to employment conditions in the northern territories, Sir.

Mr. GROSS: We are referring, Sir, to the southern sector, and the Apprenticeship Ordinance of 1938 and supplementary regulations, or Notices, to which I referred, do not, as far as I am aware, apply to the northern territories.

Now, within the southern sector, the same Ordinances and the Ordinance and Notices provide that only European minors may execute contracts of apprenticeship in the following industries: I have mentioned furniture. In addition, building, clothing, carriage-building, electrical and mechanical engineering, baking, butchery, leather, mining, motor industry, printing and painting and decorating—would you comment, Sir, with respect, as an economic expert, or witness, or both, to the economic reason or justification for such a restriction in the economic sector of the southern area?

Mr. MULLER: The conditions of apprenticeship, referred to by my learned friend, have not been applied in all the trades mentioned by him. I would, in that respect, refer to the Rejoinder, VI, at page 281, where the following is stated:

“As regards the industries mentioned by the Applicants, it should be observed that conditions of apprenticeship have not, as yet, been prescribed in respect of certain designated trades, viz., the boot-making, clothing, carriage-building, food (baking and butchery) and leather trades, which means that the Ordinance is not yet in effective operation in the case of these trades.”

Mr. GROSS: I thank the learned counsel for the clarification, which I was aware of, and was going to refer to. I am now referring to the Ordinance of 1938 and Notices which I have read, the existence, Mr. President, of which is not denied in the pleadings.

The PRESIDENT: Has the Ordinance been applied?

Mr. GROSS: The Ordinance has not been applied, has not been made effective, as yet, according to the Respondent's pleading, to which counsel has referred in certain designated . . .

The PRESIDENT: It simply means that this power is taken but that this power has not been exercised.

Mr. GROSS: That is right, Sir, and I was, with respect, coming to that point, Sir, but I am leading to it by reference to the statutory scheme—the policy implicit in it as a scheme—and I was coming to the implementation of it.

With respect, Sir, to the existence of the Ordinance and the policy which the adoption of the Ordinance implies, would you comment, as an expert, with respect to economic rationale or justification for such a policy of restriction in principle?

Mr. KROGH: Sir, I would say that if you ignore completely the social structure of the particular territory—which operates not only between the White and non-White population groups, but also with regard to the different non-White population groups—I think you must, as an economist, say that these regulations would be designed to limit the number of skilled people in the territory, viewed as a homogeneous whole, to qualify for particular trades. But such restrictions, of course, as we all very well know, operate even in professions and in other skills and trade avenues in a highly industrialized economy—the number is obviously restricted, economically speaking, to protect those that are already in that trade, for if these numbers were increased without control, this would increase the supply of these qualified people, thereby endangering the living standards and employment opportunities of those existing members in the particular trade.

Yes, I think such restrictions, in the case of South West Africa, and the economic effects thereof that it may have to the detriment of the development of the Territory, are, in fact, compensated for, and, in fact, circumvented by a policy which creates opportunities for training of the skilled people in a different organization.

As a matter of fact, if I am allowed to put it to you that we may look at the Republic of South Africa as an example of things to come, then it is very clear to me that no restrictions would be placed on the training of these people. As we all know, it is in fact a positive and concrete development policy in South Africa to train these people, but not as minor apprentices working alongside White workers, as I would imagine this would be a provision reflecting again, or being an economic cost due to the complex and delicate social situation in such a particular set of circumstances.

The PRESIDENT: Doctor, could I interrupt for a moment?

Mr. KROGH: Yes, Sir.

The PRESIDENT: You spoke about "in other countries"—there are a number of countries throughout the world in which the Court would know, in general, limitations have been placed upon the number of apprentices that can be taken into a trade, and in those countries is it not quite clear that it is for the purpose of protecting the working rights of those already in the trade?

Mr. KROGH: That is correct, Sir.

The PRESIDENT: And is there any reason to suppose that in the case of this ordinance its purpose was precisely the same?

Mr. KROGH: This would be the motive behind it, Sir.

Mr. GROSS: Sir, could you refer the Court to any such procedures or regulations which are based upon the exclusion of one group or another on the ground of colour or race?

Mr. KROGH: Sir, I cannot think of one off-hand at the moment, but I can understand that it so happens that most of the people under these particular circumstances who might be excluded in the White sector from acquiring skills may be people of a different colour. Yes, I can very much see this, but this makes my point, and that is that these people distinguish themselves on the ground of colour. Therefore, apart from the point,

Mr. President, that was made quite clear just now with regard to restrictions existing even in homogeneous societies, that is where there are no differences in colour, these restrictions are not always interpreted as restrictions for the benefit of those already in the trade but are often viewed as racial restrictions which may in fact incite social strife, and in order to circumvent these, separate opportunities are created, not to prevent these people from acquiring these skills but in fact to avoid social friction. In this particular case the race factor operates between the races to the advantage of each group and all concerned in this particular Territory, Sir.

Mr. GROSS: When you say, Sir, that certain opportunities are created—the phrase you use—would you be, for the benefit of the Court, more specific as to where such opportunities are created, and what sort of opportunities they are, in the terms which you have used?

Mr. KROGH: Sir, I have explained to you previously that opportunities for employment are being created—at a rate that I think is impressive—for people that might aspire to occupy positions that are at the moment being occupied by members of another group—in the urban areas which they occupy in the White area, in the field of public administration and of private enterprise and agriculture in the so-called non-White areas, where there are of course not as many opportunities at the moment as there are in the economically much more viable White economy. And, if we look at the recommendations of the Odendaal Commission, which I take it you are acquainted with, then you will see that there are prospects of even more being created—by the word “create” I mean assist with all the means possible, even subsidizing these opportunities for a long period of time, which can now in fact be afforded by having first developed a modern economy. This could not, for instance, have been afforded or done, let us say 30 or 40 years ago, because at that stage you were still in the process of establishing a modern economic growth-point in the Territory. I think that at the moment the current situation is that these opportunities are in fact being created at a rate that I, as an economist, would often say is outright subsidization, that they would not be completely justified under purely economic conditions if you had a completely homogeneous population, but by that I would be denying the social problem in this connection. Furthermore I feel that there are very good prospects that more and more of these opportunities will in fact become available. I must point out to you, Sir, that this is an economic cost if it reflects as an uneconomic measure viewed from an approach that would deny these differences in these problems: this is an economic cost that has to be paid by a society composed of different groups that are in fact heterogeneous. Sir, this is an economic disadvantage which I tried to point out in my evidence yesterday—the social atmosphere in which economic development has to be effected. Plans and policies have to be devised that would seem quite peculiar and strange to an economist having in mind a society that is completely homogeneous with respect to the welfare of the population as a whole. This is an economic cost, just as you suffer under other disadvantages such as the lack of natural resources, or the lack of transport facilities, canals, lack of rainfall or things like that. This is an economic disadvantage that a territory such as South West Africa has compared with other countries, as if it has not got enough problems to face with regard to its economic development. This particular one is also present in the Territory of South West Africa, Sir.

Mr. GROSS: Now, Sir, may I come back to my question, as related to the southern sector of the economy of the Territory? I referred to the section in the Odendaal Commission report which is headed "Economy of South West Africa" and begins at page 315 of the report. I should like, if the President permits, to read just two sentences. In paragraph 1284:

"The economy of South West Africa may be described as a dual economy, consisting of a predominantly modern money or exchange sector and a traditional subsistence sector. To a great extent, however, the modern exchange economy has already strongly influenced the subsistence economy of a large part of the population."

Do you agree or disagree with that characterization of the economy of South West Africa, Sir?

Mr. KROGH: Yes, Sir, I think I could agree with that, although I am not quite happy about the terminology used. But I do not think that would make any significant difference to the impression that is being created there. Sir, with a few qualifications, as I tried to explain yesterday with regard to the use of the terms such as "subsistence"—this could very well assume a commercialized form—it does not mean that if you commercialize or trade in certain products you are in fact a modern economy. This is generally being appreciated in the literature on economic development, that there is a three-stage distinction.

The PRESIDENT: You made these points yesterday.

Mr. KROGH: Yes, I think that was made clear yesterday, Sir.

Mr. GROSS: Do you agree or disagree specifically with the description of the "predominantly modern money or exchange sector"—do you find difficulty with that language of description?

Mr. KROGH: No, with those qualifications that I have stated.

Mr. GROSS: We are now discussing in terms of my proposed question the "modern money or exchange sector", in the terms of the Odendaal Commission report which I take it, does it not, Sir, refers to that portion of the Territory which has been described as the southern sector outside the Reserves—is that correct?

Mr. KROGH: Sir, yes, if you have to delineate this on a regional basis, I think the White economy would for all practical purposes cover that area in the southern sector to which the White members of the group are in fact restricted in the occupation of land or the holding of jobs—yes, Sir.

Mr. GROSS: My question was whether the modern exchange sector is or is not coterminous with the southern sector or Police Zone outside the Reserves—is the answer yes or no?

Mr. KROGH: Yes, Sir, that is so.

Mr. GROSS: That is what I wanted to clarify. Is it, then, in that area in which the population as reflected in the tables of the Odendaal report at pages 39 and 41, with which we started our discussion this morning, is as follows: non-Whites in urban areas, Natives, 49,000; non-Whites in rural areas, 64,000; those are the figures of non-Whites in the area of the southern sector outside the Reserves which is the modern exchange sector—is that correct, Sir, according to your understanding? I believe we have already been over this; I just wanted to clarify it at this point.

Mr. KROGH: Yes, Sir.

Mr. GROSS: In respect of restrictions on job opportunities, is it or is it not correct to say that the heaviest impact upon the non-White falls

precisely in this sector to which we are referring—is this not where the restrictions apply, when they do apply?

Mr. KROGH: Sir, you are referring to 15 per cent. of the total Native population in the Territory—that is the first point.

Mr. GROSS: I am not referring to a percentage, I am referring to a group of individuals, if that is relevant to your answer.

Mr. KROGH: Yes, I am trying first of all to give you a sense of proportion of the importance of this particular concentration of non-Whites in the urban areas, Sir. Secondly, there is only one urban area in which there is an important mine, and this is a copper mine in Tsumeb. In other words, the mining posts referred to just now as falling under legal restrictions placed on the advancement of members of the non-White group in the White sector do not in fact operate in the case of the majority of these people to whom we have been referring here. There are no mines in other urban areas, where these people reside, apart from this particular one in Tsumeb.

The other legal restrictions refer, Sir, to the supply of public transportation services. These are, of course, spread over the Territory, but I think that the number of people employed in the South African Railways and Harbours Administration, which is a public organization supplying public utilities, such as transport, harbour, air and motor transport services in the Territory (I am not quite sure about the percentage employed there), is somewhere less than 11 per cent. of the number of non-Whites employed in the southern modern economy, Sir. I do not know of other legal restrictions, but I am very well aware, as I have said before, that there may be, and in fact are, customary and social restrictions voluntarily, as it were, operating without being embraced by legal regulations or restrictions in this sector.

Mr. GROSS: Was the answer to my question yes or no, Sir? Do the restrictions that are imposed bear principally upon the non-Whites who live and work in the modern exchange sector?

Mr. KROGH: Yes, Sir.

Mr. GROSS: That was my question, Sir. Now with respect to the Apprenticeship Ordinance of 1938 and the Government notices supplementing it, the industries in which it has been made effective include the following: electrical and mechanical engineering. Could you advise the Court what job opportunities exist for mechanical and engineering skills in the northern areas at the present time, if any?

Mr. KROGH: Not in the electrical field of engineering, but, as you very well know, one of the greatest development projects envisaged (I want to make this point because you must not think of this being a static situation, or a permanently constant situation) is the development of hydro-electricity in the northern part of the Territory, and it would be express policy to train electricians for this particular area in order to operate, to maintain and to manage these very large hydro-electric schemes. The output would be marketed in the White area because there is no demand for electricity in Ovamboland at the present stage of its development. Nevertheless, the fact that it would supply its output to the modern White economy has nothing to do with the fact that such jobs would be given to, or reserved for, as it were, members of a non-White group. The natural resource potential that is about to be tapped and developed falls within a northern Native Territory, and preference would be given to the training of non-Whites in this particular area, Sir.

Mr. GROSS: Dr. Krogh, if my questions are not clear to you, I would appreciate it if you would indicate that. I would be glad to clarify them. I was referring, I thought, to the present available job opportunities in the northern areas for electrical and mechanical engineers. Was your answer that such opportunities now exist, or not?

Mr. KROGH: They do not exist at the moment, Sir.

Mr. GROSS: We have already covered the mining restrictions, both with respect to the job reservation and with respect to the Apprenticeship Ordinance. You have testified, have you not, Sir, just to complete the record at this point, that no mines other than a salt mine and a tin mine exist outside the exchange sector—that is correct, Sir?

Mr. KROGH: Outside the modern sector, yes.

Mr. GROSS: And with respect to those mines, I would have liked to have asked you before if you know what percentage of the mineral production of the Territory as a whole is reflected in the output of those mines?

Mr. KROGH: I can give you an approximation.

Mr. GROSS: Would you please give the Court the approximation?

Mr. KROGH: I think the output would be definitely less than 10 per cent. of the total. The two mines—the diamond mines and the copper mines—are, I think, responsible for round about 90 per cent. of the total value, but as you will appreciate, of course, this does not mean that they are great employers—in fact, they are very poor employers of labour. Mines are poor employers of labour, relatively to, for instance, the farming industry or the service industries. It is not a matter of output value because diamonds, for instance, is a small commodity with a great value—the employment opportunities are not reflected in the value of the product or of the total output of the mine.

Mr. GROSS: Sir, would it be relevant, from your point of view, relatively speaking, that the Apprenticeship Ordinance and the Government Notices had seen fit to prohibit non-Europeans from entering into such contracts in the mining industry?

Mr. KROGH: In those particular posts in mining that you have mentioned in the White sector of the economy, yes, Sir.

Mr. GROSS: From an economist's point of view, or from any point of view, would there be any logical reason to have a restriction by law unless there was an opportunity correlative to the restriction?

Mr. KROGH: Sir, as I said before, any economist frowns upon restrictions on the movement of labour because this immediately makes him suspicious about the use of available productive resources, and such restrictions are, of course, a distinguishing characteristic of the underdeveloped world compared with conditions in the economically developed world. That is why economists who come and study conditions in the underdeveloped countries usually frown upon such restrictions. Many of the restrictions do not in fact operate legally but customarily and are in this respect often far more effective. As I have already said that in devising an effective policy of economic development, that is making greater and more productive use of available resources, in the particular set of circumstances in South West Africa, I think you can only ignore the social setting at the expense of your aim. It is therefore logical, Sir, as well as responsible to take into consideration, the peculiar social setting and atmosphere in which you have to devise your particular policy of economic development.

Mr. GROSS: And again, I would ask you, Sir, in your testimony just given, does that reflect a social value judgment, on the basis of which your economic analysis proceeds?

Mr. KROGH: Yes, Sir. It is very important for an economist not to ignore the social setting in which he recommends or, in fact, judges a particular economic policy. This is definitely so, Sir. You cannot do this irrespective of the type of society or economic problems you have to face in a particular set of circumstances.

The PRESIDENT: Is there not a distinction between a case where, for example, as a matter of custom, certain unions exclude certain people from joining their union, and where this is done by legislation of the State?

Mr. KROGH: Yes, Sir.

The PRESIDENT: To what extent is your analogy of the custom relevant to the question which is put to you?

Mr. KROGH: I would say that the limitations that there exist on employment, that is to occupy positions in the area of a particular group would be affected, not because there are legal or Government restrictions on their entry, but that even if these people were equally qualified and skilled they would be jobless people because these social and customary factors would leave them unemployed. You would, in fact, have an educated or skilled unemployed labour force.

The PRESIDENT: I see. What is the purpose then of a government ordinance if the result would be the same whether there was or was not a government ordinance?

Mr. KROGH: The purpose in this particular setting would be to indicate very clearly to the people who have aspirations for these particular jobs that are being created in a particular area by a particular economy, not to aspire for these particular jobs, because this would frustrate them. In fact, it would be like a signpost indicating before you enter the street that this is a cul-de-sac, instead of arriving at the end and then discovering that you have not been warned or clearly indicated that there are other ways of arriving at your particular destination.

Mr. GROSS: Would your response to the honourable President's question, so far as you know or care to testify, correspond to the following quotation of a statement by Prime Minister Verwoerd, which is quoted in the Respondent's Rejoinder, VI, at pages 41-42:

"The Bantu must be guided to serve his own community in all respects. There is no place for him in the European community above the level of certain forms of labour. Within his own community however all doors are open. For that reason it is of no avail for him to receive a training which has as its aim absorption in the European community while he cannot and will not be absorbed there. Up till now he has been subjected to a school system which drew him away from his own community and practically misled him by showing him the green pastures of the European but still did not allow him to graze there."

That is from the Parliamentary Debates of the Union House of Assembly, Volume 83, Column 3577, 1953.

Do you, as an expert or as a witness, or both, care to comment with respect to this statement as being relevant to your statement on intent and social implications?

Mr. KROGH: Sir, those are the words of a Prime Minister who is partly, no doubt primarily, a politician. I would not use the same language but I can see that he is getting at the same thing. He is indicating a way for solving this difficult problem as well as the path along which this is to be achieved, Sir.

Mr. GROSS: Now, would it follow, Sir, that so far as the 49,000 non-Whites, or Natives as they are classified, who live and work in the modern sector, are concerned, that the policy and economic theory you envisage would permanently exclude them from equal participation in the economy in which they live and work?

Mr. KROGH: Sir, to the extent that they have a choice, yes. I would say that to the extent that they prefer to be there for economic reasons and the members of the White group in this area who prefer them to be there, I think to that extent they will, in fact, be there, Sir.

Mr. GROSS: Are you finished, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Would you say as an economist or as a witness or both that a non-White who, let us say, has been born and lives and works in the economic sector in the urban area has a practical option as to whether to stay where he is or go to, let us say, Ovamboland or some other northern territory to finish out his life—does he have a practical economic option?

Mr. KROGH: Well, Sir, not at the same level of living—that is after all why he is there and is working there because it is in his economic interest to be there and it is in the economic interest of the White employers to have him there. It is in the economic interest of both these parties participating in an exchange relationship, Sir.

Mr. GROSS: I am talking now, Sir, about the one party for the moment, if I may, the non-White. He is there on my hypothesis because he is born there and he remains there, I take it from what you have testified, because this represents an economic opportunity to him—that is a correct version of your testimony, is it not, Sir?

Mr. KROGH: Yes.

Mr. GROSS: Now then, is the Court to understand that when you referred to his preference that you are speaking in terms of economic reality? Does he have a preference, a free choice to stay where he is under restriction or to move to a territory he has never seen and knows very little about? Strike out the last part of the qualification, if you will.

Mr. KROGH: Yes please, because that is not of an economic nature.

Mr. GROSS: Yes, Sir. I withdraw it with the President's permission.

Mr. KROGH: Well, the fact that economic opportunities exist here in this particular modern sector, that would not otherwise have existed, I am sure, if the White community had not been there, the economically viable modern economy and White population section had not been there, he would have had no choice whatsoever, not even the one that he is, in fact, enjoying and occupying at the moment, Sir. Definitely not to the extent that a great number of these people are in fact being employed in the sector, Sir.

Mr. GROSS: I am not sure that I understand the import of your answer but rather than seeming to heckle you about it, perhaps I can approach it for clarification a different way.

In the Odendaal Commission report to which I have already referred the specific passage—it is on page 31, paragraph 113, I have read it—is



a sentence, but because of the connection with the preceding sentence, I have to read both again I am afraid, if the President permits:

“With the arrival of the Whites, resulting in increased personal safety and greater development, the Damara were able to evolve a totally new way of life. Large numbers were absorbed in the economy of the southern part of the country and displayed exceptional aptitude as employees.”

Now, ignoring if you will, Sir, the controversial implications of the phrase “absorbed in the economy”, with which you are unhappy, I take it, what is the economic significance or implication in your expert opinion of the reference to “exceptional aptitude as employees”—is that an economic concept that a person may have a special aptitude as an employee but not as a supervisor or would you care to comment on it in any other term?

Mr. KROGH: Yes, Sir. I have little doubt that the words “displayed exceptional aptitude as employees” there refer to a comparison with regard to the members of the other non-White population groups that are also described on the other pages. The reason why I think this to be so is that the Damaras never owned land traditionally or historically in South West Africa, at least not before the White man arrived there. They were enslaved and worked for the Herero and the Nama and being people that could adjust themselves economically easier, they proved to be and were preferred by White employees above . . .

Mr. GROSS: I think you mean White “employers”, do you?

Mr. KROGH: I am terribly sorry . . . White employers to, for instance, Herero employees, who must have shown or displayed less exceptional aptitude in this regard. I think that this comparison is with regard to the members of the other non-White population groups who also offer their labour and occupy employment opportunities in the modern White sectors, Sir.

The PRESIDENT: Is that a comparison for example between the Damaras and the Hereros?

Mr. KROGH: Yes, Sir. I think that refers specifically to that.

Mr. GROSS: Is it your testimony, Sir, that the Hereros as a group are in any sense inferior as employees or with less aptitude than the Damaras as a group—is that the sense or purport of your testimony?

Mr. KROGH: Sir, if you look at the figures of urbanization of the different groups, you will find that the Herero are much less urbanized than the Damara. As a matter of fact, the Damara in the southern sector is the Native group that is the most urbanized because they occupy these employee positions, whereas the Herero have exceptional qualities in a different economic sense, that is in the sense to which they have commercialized and, in fact, are farming on Reserves and selling livestock. They are the more advanced in the southern sector with regard to cattle raising and selling these products in organized markets, whereas the Damara again are more specialized, in view of their traditional and historical circumstances sketched just now, in being urbanized, in offering their employment in urban areas. In other words, this can really be seen as two different exceptional aptitudes being displayed in their economic performance by two different non-White groups in the southern sector, Sir. It is not a matter of inferiority or superiority at all.

Mr. GROSS: I would not think of suggesting that, Sir. I am referring,

however, now to the urban areas of the southern sector and I refer to table 19 on page 41 from which it appears that in the urban areas of the southern sector, there are listed 18,499 Damaras and 9,192 Hereros. Now, you see those figures, Sir, in the report—you accept those figures?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now, with respect to these two, since you have mentioned the Damaras and the Hereros in this relative context, what would be your explanation as an economist, student of the South West African economy in the modern sector and others—for the difference between the aptitude, if any, of the Hereros in the urban section and the Damaras in the same area?

The PRESIDENT: As employees or generally?

Mr. GROSS: As employees. Thank you, Mr. President. Let us refer now, as I intended to, to the aptitude as employees to which reference is made in paragraph 113, on page 31 of the Odendaal report.

Mr. KROGH: Sir, it is general knowledge in the case of South West Africa that the Herero are a very proud people. Their historical background and custom would not make them particularly prefer or like to be employed by or work for White employers. This is generally known, and it is not the result of discriminating among the different employees. They would much prefer to be independent farmers—large livestock farmers.

Mr. GROSS: In the urban areas, Sir?

Mr. KROGH: No. I am so sorry. I was explaining what they would prefer to do rather than be employees in the urban area. Hence, these figures that you have here reflect their particular wish or preferences not to be there, Sir. Proportionally speaking (that is to their own total), they are much less inclined as employees than is the case with the Damara. At the same time the figures also show and the passage you quoted just now substantiates that employers prefer Damara to Herero workers because the former are better workers. They show exceptional aptitude in this regard, they probably show less absenteeism, are probably more co-operative in getting down to and doing the job and probably much more pleasant to work with generally—all factors that the employer no doubt takes into consideration in saying that he prefers a Damara worker as employee compared for instance, to an Herero, Sir.

Mr. GROSS: Would therefore you say that this characterization of displaying exceptional aptitudism as employees does not, as you would analyse the report as an expert, refer in whole or in part to aptitude in the sense of skill, performance and understanding of the job to be done?

Mr. KROGH: Yes, I think they would be better suited to do particular wage-earning jobs, and being suited means not only in respect of skill, but includes your whole approach to work, your regularity of announcing yourself for work and getting the job done in a shorter period, it is more than just a matter of skill, and as to that you must remember that the Damara was traditionally the one that had acquired skill with regard to farming methods and so forth, when they were employed by the Herero in the history preceding 1920, Sir. So, they have particular aptitudes and they like to work—they show all these qualities apart from skill, that one would associate with a better worker, Sir.

Mr. GROSS: Would you agree, Sir, that the catalogue of qualities and virtues which you have just enumerated would be among those qualities which would be looked to, normally speaking, in an economic structure

to mark people for promotion to supervisory positions—would the qualities that you have mentioned be relevant to such a normal promotion element?

Mr. KROGH: Yes, Sir. It is not only a matter of skill when you promote people. It is a matter of whether he is devoted to his work; his whole attitude to his work; whether he can assume responsibility; whether he can do the work better or to the greater satisfaction of the employer and whether, in fact, the employer finds him co-operative.

There are many other factors, apart from having a certificate or having attained a certain qualification, that are taken into account in promoting people or preferring certain people as employees before other people.

Mr. GROSS: Are there in fact, as far as you are aware, Sir, any instances in which a Damara of aptitude, as an employee, exercises a position as foreman in a factory or industrial enterprise in the modern economy?

Mr. KROGH: No, Sir, not in the modern White economy as far as I know.

Mr. GROSS: This fact, this phenomenon, has no economic justification, or explanation: or does it, Sir?

Mr. KROGH: Unless you imply that a Damara could in fact do such a job better than a White man can then it would have economic disadvantages for the Territory as a whole, because then you would have a mis-allocation of your resources. If it can be shown that he can do that better, Sir, than a White manager, if that is the case, then I can say as an economist that this, without taking any other factors into consideration, would be uneconomic. But I do not agree with your implied assumption that he could in fact do this job better than a White man, who is at present occupying such jobs. Even if you were to replace that White man he would be a loss to the economy because he can become a social burden, so you will have to start creating jobs and opportunities for him. As an economist I say this quite clearly and absolutely, Sir.

Mr. GROSS: I am not seeking to imply anything by my question. I have not sought the Court to infer from anything I have said that there should be any automatic replacement. My question was addressed to you as an economist concerning the impact or effect of the restrictions, both social and legal, upon advancement, and if I have understood you correctly, Sir, you said that as an economist you felt that the failure to utilize—I am paraphrasing, and correct me if I am wrong—the skill, which we are assuming for the sake of this discussion—is uneconomic (I think that is the word you used): is that correct, Sir?

Mr. KROGH: If your assumption is correct that the Damara is in fact more skilful and in a position to perform that job better—it all depends on your assumption—and disregarding for the moment all other considerations, such as social friction or the nature of the particular population involved.

Mr. GROSS: I am addressing myself to you as an economist in this context.

Mr. KROGH: Yes, as an economist I must answer that question by saying that I must take into consideration the particular set of circumstances, Sir, before I can make recommendations or express views.

Mr. GROSS: Well, Sir, perhaps we can turn to another industry in which the ordinance prohibits the execution on the part of non-Whites of apprenticeship contracts, I refer to the motor industry. Is there a motor industry in the northern territory?

The PRESIDENT: A motor industry in what sense?

Mr. GROSS: Is there first of all an automobile factory, or assembly plant; and secondly, are there automobile accessory stations?

Mr. KROGH: There are no automobile factories or assembly plants in the whole of South West Africa. It would not be justified economically to start anything like that. As a matter of fact, South Africa is just on the verge of starting one now.

Mr. GROSS: Then let me turn, if I may, to the second part, in response to the suggestion for clarification of my question. What about motor industry in the sense of service stations, or repair stations, or other accessories to the motor age? Do you have any such aspects of the motor industry at the present time, in Ovamboland, for example?

Mr. KROGH: No, Sir, because I do not think that there are more than 150 motor cars in the whole of Ovamboland, but I know for a fact that they are at the moment building (I saw the very construction there) a service station in the territory to encourage non-White garage operators to operate themselves in the area, because the few cars, 150 is, relatively speaking, very few, often have to go out of the territory to obtain their petrol or to have repairs effected. I could not possibly imagine that a repair station or a garage would ever have been justified, say, 10 years ago in Ovamboland, because I take it there would only have been about 10 motor vehicles in the whole of the territory at that stage.

Mr. GROSS: So is it fair to say, Sir, that from the standpoint of the non-Whites who live and work in the economic sector, there are no or very few available employment opportunities in the northern territories in this industry?

Mr. KROGH: At this particular stage, yes, Sir.

Mr. GROSS: Are you aware of any economic or other reasons for the prohibition in the ordinance of the execution of apprenticeship contracts by non-Whites in the motor industry in the economic sector?

Mr. KROGH: Sir, I think my answer here would be similar to that which I gave with regard to a similar question which you put to me previously on the other industry. It is exactly the same situation, that if this limitation in fact operates—and I do not know exactly in which trades they are effective—then I would say that that would be because those who are at present mechanics in the modern sector, qualified motor mechanics as they call them there, might feel that their particular employment position and prospects would in fact be threatened. But I can also add, Sir, that there are service stations operating, for instance, in urban areas such as Katutura, near Windhoek, where White employees are not allowed to compete with non-White employees in the supply of garage services.

The PRESIDENT: Evidence has been given that in the urban areas, in Katutura, is it, there are service stations which are wholly run by non-White people.

Mr. KROGH: That is correct, Sir.

The PRESIDENT: Do they engage in running repairs, or any repairs? Do you know that?

Mr. KROGH: Well, Sir, I would not know that detail, but I take it that they would stock certain accessories. Whether they would undertake major repairs, motor car repairs, I would not be able to state straight away. I would say that until quite recently they probably preferred to have a White mechanic work on non-White cars. This could quite possibly

have happened, that you would market your work in White qualified garages where White mechanics work.

The PRESIDENT: Could you give the Court a picture regarding the urban areas where the non-Whites are housed, in Katutura, of the extent to which there would be cars used by those who live in that area?

Mr. KROGH: Yes, Sir. Katutura is a completely modernly constructed township outside Windhoek. It has asphalt streets leading up to the township. It is occupied by different population groups. A characteristic of this area is that certain blocks of these houses, of modern construction, are used by different groups.

The PRESIDENT: Yes, we heard that, Dr. Krogh; it is only a question of the cars.

Mr. KROGH: I am sorry, Sir. There are cars, and I think even a bus service operating between Windhoek, where you have the urban European residents and where most of these employment opportunities are, and Katutura. I think—I might be wrong on this, but I think I have been told—that the owner of this bus service is also a member of the non-White population group and there are service stations in Katutura, serving the cars owned by non-Whites. I have seen many taxis, for instance, operating between Katutura and conveying non-White passengers, driven by non-White taxi drivers. But to the extent that there are motor mechanic and garage repair works I cannot say offhand, Sir.

The PRESIDENT: I just wanted to get the general picture, Mr. Gross, that is all.

Mr. GROSS: Yes, Sir.

[Public hearing of 24 September 1965]

The PRESIDENT: The hearing is resumed.

Mr. GROSS: Thank you, Sir. Dr. Krogh, I should like to clear up one or two points which were covered in previous testimony given by yourself, Sir. First, I should like to address your attention to your comments in the verbatim record of 23 September, at page 114, *supra*, where you referred, among other things, to the following. Quoting it, I believe, in context correctly you said:

“I think you must, as an economist, say that these regulations would be designed to limit the number of skilled people in the territory, viewed as a homogeneous whole, to qualify for particular trades.”

And, then further, talking about restrictions, you said as follows on the same page:

“Yes, I think such restrictions, in the case of South West Africa, and the economic effects thereof that it may have to the detriment of the development of the Territory, are, in fact, compensated for, and, in fact, circumvented by a policy which creates opportunities for training of the skilled people in a different organization.”

I should like to ask you, first, if you would, please, elucidate the reference to “a different organization”. Would you explain to the Court what you had in mind in that phrase?

Mr. KROGH: Sir, I am glad you refer to that part of my testimony because I might have created the impression that no avenues are, in fact,

available for these people to acquire skills. This is not the case. They have, in fact, an institution which gives them both the theory and practical side of becoming skilled or qualified in certain trades. I am thinking in particular of the Augustineum at Okahandja where these people are trained and are examined, in fact, to obtain certificates of qualification with regard to the specific trade in which they are interested to qualify themselves.

Apart from this, there is nothing that prohibits a member of a non-White group from acquiring the necessary skill, experience and knowledge, Sir, outside the apprenticeship contractual provision. There is nothing that prevents them from becoming skilled and occupying posts after they have acquired these skills in the whole Territory. There are no legal restrictions placed on them, except for those cases that I have mentioned earlier on in my testimony—namely there are certain posts in the mining industry in the White area and in the supply of public transportation services in the southern White economy of the Territory.

Sir, in order to give you a true perspective or sense of proportion in this regard, because I think I might have created the impression that there are no skilled non-White workers in the Territory, or semi-skilled for that matter, I have here figures which I took from the 1960 census giving you the occupational distribution of Natives working in the so-called Police Zone. Now, I will not bore you with any figures, but I only want to give you a sense of proportion in this regard. In this census of 1960 indicating occupational distribution of Natives engaged in economic activity in the southern sector there was, in fact, a total classified as skilled and semi-skilled workers—a total of 21,230. Let us say approximately 20,000—against what has been classified in the census as labourers—that is workers who would not, according to the industrial census classifications, be regarded either as skilled or unskilled—numbering 105,617 (or approximately 100,000). In other words, the ratio of what we can regard as skilled and semi-skilled on the one hand, to the number that we can regard as labourers (that would be non-skilled in any sense of the word) on the other would be 1 to 5. This, I think, clearly gives a better sense of proportion or perspective in respect of the issue of limiting, through the Apprenticeship Act, them from acquiring skills or qualifying for the different trades. Apart from having these qualifications they are also in fact engaged in these economic activities. In other words they are not being prevented from earning a living and practising their skills in the economy of the southern sector, Sir. That is exactly what I tried to say, and I just wanted to correct any misunderstanding. With regard to your specific question, I tried to answer that very specifically there, Sir.

Mr. GROSS: Would it be fair to say, Sir, that in response to my question the phrase "different organization" referred to the Augustineum school to which you referred? Are there any other organizations? This was my question, please, Sir.

Mr. KROGH: Sir, there is this one specifically organized for the non-White population groups at the Augustineum. There are at the moment, no such other institutions—as far as I know, not even for the White section of the community. There are no technical colleges, as far as I know.

There is just this one in the southern sector and I know for a fact that plans are under way for establishing such institutions and training schools

in Ovamboland, for instance, to supply the necessary qualified people to undertake and play a much greater part in the construction works and new developments envisaged by the Odendaal Commission, Sir.

Mr. GROSS: Are there any organizations or institutions, other than the one you have mentioned, in which Natives have an opportunity for being trained?

Mr. KROGH: No, Sir, not in South West Africa, but there is, apart from this opportunity, also the opportunity (just as for White people in the Territory) for people who would like to qualify themselves to do this through institutions that are open to them in the Republic of South Africa. This, after all, is one way of economizing as a result of being economically attached to South Africa, because, as you appreciate, these institutions are expensive and not always economically justified with regard to the number that would, in fact, make use of such opportunities in a small population—smaller, in fact, Sir, than that of The Hague, living in an area 20 times that of the Netherlands, Sir. It would not be an economic proposition to start such large-scale institutions which would have to be subsidized organizations.

The PRESIDENT: How do the Bantu people and the Coloured people avail themselves of the opportunity of going to South Africa for instruction?

Mr. KROGH: Sir, I have not got the exact figures but I imagine that it would not be very impressive if I could give you the particular figures for the simple reason, Sir, that even in the case of the Augustineum in Okahandja—where these people receive completely free residence, are encouraged to go there and even receive pocket-money while they are there—they need not keep themselves—the numbers have been very disappointing. I think the number is not more than 50, for example. I cannot give you the numbers straight away with regard to those that proceed to make use of facilities available and open to them in the Republic—specially set aside for them there. I could not give you this figure but I would imagine it could not be very impressive. It would imply travelling to the Republic which can be an inconvenience, whereas the opportunities available at the Augustineum, for instance, are not even fully made use of, Sir.

Mr. GROSS: Could you tell the Court, please, Sir, whether there are any opportunities for the acquiring of skills in employment, for example, in the furniture industry, or the cement industry? Taking these as examples, what opportunities are available to the employees—doing labour to obtain skills in those industries?

Mr. KROGH: Sir, to begin with, there is no cement industry in South West Africa.

Mr. GROSS: Name any industry you please, Sir. I am trying to save time by suggesting some. Is there a furniture industry in South West Africa?

Mr. KROGH: Sir, there is only one furniture factory in the whole of South West Africa and that is the one that has been established in Ovamboland, Sir.

Mr. GROSS: Are there any industries in South West Africa, Sir?

Mr. KROGH: Yes, Sir, there are some industries.

Mr. GROSS: Would you state to the Court, if you please, in what industries Natives are given the opportunity to acquire skills?

Mr. KROGH: Sir, I have just explained that there is no restriction

whatsoever legally upon non-White labourers acquiring skill and being taught the necessary theory and being given the necessary encouragement, other than the one I have mentioned with regard to the Apprenticeship Act, but this has been circumvented, as it were. This does not mean either that they do not get the opportunity or that they are not encouraged to do so, as these figures have proved to you just now, Sir.

*I cannot go through every particular industry. South West Africa is not an industrialized country, by no means. There are certain individual trades that might resemble something which is called, in Western economic jargon, an industry, but in fact they would be one-man organizations, one-man enterprises or small companies. The only particular industries that are worth mentioning in the Western sense of the word, that is having large capital investment and a hierarchy of management that could represent a type of industry such as you find in a developed country, are the beer brewing industry in South West Africa and the fishing industry which is in Walvis Bay. As I pointed out the other day, the latter has only been developed on a large scale during the last decade or 12 years—so there are in fact two industries. For the rest there are small trades rather than industries in any proper sense of the word, Sir.*

Mr. GROSS: Can you indicate to the Court to what the skills, to which you refer, would relate? If you wish to take any industry or any mineral exploitation or mine, what type of skills would in fact be made available to the non-White employee?

Mr. KROGH: Well, Sir, I think we can answer that question very clearly if you will permit me to give you a breakdown of the figures which I have here and which show what kind of occupations the non-White workers, who are classified as skilled and semi-skilled in the industrial census, in fact occupy. I think this would give you a very good idea of what they do. There are professional and technical people including teachers in the medical service—this is administrative obviously, being professional—then there are clerical, sales and related workers; there are also craftsmen and production workers numbering 107 in the textile and leather trades; metal workers, 98; carpenters and joiners, 124; painters, 121; bricklayers and plasterers, 698; potters, brick and clay workers (these are also all classified under skilled and semi-skilled), 143; food workers, 156—this would include skilled and semi-skilled workers in the fishing industry, because this would be a major food industry. Then there are workers with stationary engines and other equipment operators, ships' crews, drivers of motor vehicles and so forth. I can go on further, Sir, but that gives you an impression of the number of skilled and semi-skilled non-White people and their different occupations. I cannot tell you exactly in which industry they are working.

Mr. GROSS: Thank you, Sir. With respect to these enumerations which you have made in the various industries, do these jobs to which you refer, to which the skills apply, do any of them involve supervisory or managerial functions?

Mr. KROGH: Yes, some of them do, Sir, and I have the figure here for managers, under administrative and managerial. They have a subheading here, managers, 42.

Mr. GROSS: And where are they employed, Sir?

Mr. KROGH: In the southern sector. The figures refer to the Occupational Distribution of Natives in South West Africa, 1960 census, in the southern sector.



Mr. GROSS: 42 non-Whites in managerial capacities in the southern sector, is that the purport of your testimony?

Mr. KROGH: This is according to the industrial census figures, Sir.

Mr. GROSS: We do understand you, Sir, that in the southern sector there are only 42 non-Whites who are in managerial capacity in any industry or mineral exploitation?

Mr. KROGH: According to the census, Sir, yes.

Mr. GROSS: With respect again to the skills to which I referred, I believe you referred yesterday to the purport, in fact I have read your testimony, with respect to the restrictions which are designed to limit the number of skilled people in the territory; the figures you have cited of skilled non-Whites in the several industries you have mentioned have been developed (those skills have been developed, have they) in industries to which these regulations do not apply?

Mr. KROGH: Sir, these skills have been acquired in South West Africa, in the southern modernized economy, outside the apprenticeship law regulation that we discussed yesterday. This clearly indicates that this restriction does not prevent people from acquiring skills, in the Territory.

Mr. GROSS: Do those figures, Sir, I neglected to make a note as you were reading them, in the several industries you referred to, do they include mining? Skilled non-Whites in mining?

Mr. KROGH: Yes, the industrial census, as far as my knowledge goes, would regard mining operations, which are highly technical, as industrial, and I would say that mining would be the main industrial, and the most highly industrialized, activity in the territory. So the figures would include mining too. Unfortunately, I have not got the figures to break this down for you for every industry—how many are in mining and how many in the fishing industry and so forth. I cannot quite see, do you want to have . . .

Mr. GROSS: . . . I would be glad to, with the President's permission. The question, to clarify it for you, Sir—but I think you have answered it, actually—is whether you have information, and if so please give it to the Court, concerning the number of skilled non-Whites listed in the mining industry. I think you have answered that.

Mr. KROGH: I have not got the figures for the mining industry as such here, Sir, but I could supply them for you.

Mr. GROSS: You have no appreciation of the numbers, apart from the statistics, you have no idea as a student of the area?

Mr. KROGH: Well, I cannot give you the number that are in fact employed in the mining industry in the White modernized part of the southern sector of the economy of South West Africa; but I can tell you that a very small percentage, I think it is not more than 11 per cent., of the total economically active non-Whites in the southern sector is, in fact, employed in the mining industry—not more than 11 per cent. And I can tell you, furthermore, that by far the larger part of these emanate as migrant workers from the northern territory, because in the mining industry they can work in teams, whereas they would otherwise be spread all over the country. Their particular labour conditions, housing, feeding, transportation, and so on, can be much better organized, seen to and inspected when they are concentrated in the two main mining areas. This is one of the reasons why a large number of these workers are migrant workers. There are other very good economic reasons, which are in both their interest and the interest of the mining industry.

But the number in question is definitely a small percentage. It is part of 11 per cent. of the total but I cannot say what part of the 11 per cent. are in fact skilled or semi-skilled. I have not got the figures with me here.

The PRESIDENT: Is it 11 per cent. of the total labour force or total population?

Mr. KROGH: Sir, this is of the total economically active, that means of the labour force. The latter times four will give you the approximate total population.

Mr. GROSS: With respect, I take it that the short answer to the question is that you do not know the number of skilled non-Whites, if any, in the mining industry? That is, I take it, the answer?

Mr. KROGH: Yes, Sir.

Mr. GROSS: With respect to the opportunities for training, you have testified, you have expressed your opinion, with respect to the restrictions on apprenticeship contracts. Is it not a fact that in the mining industry, among others, there are restrictions on employment opportunities and promotions to enumerated jobs—is that not correct, Sir?

Mr. KROGH: Sir, I think I have explained this before, namely that there are certain posts that are reserved for skilled Whites and managerial White workers in the mining industry in the White sector of South West Africa. But similar restrictions operate, with regard to mining activity, in the non-White or Native areas where the members of these groups have preference in these particular posts.

Mr. GROSS: Do the restrictions in the listed posts, which are in the record and enumerated, not deprive the non-Whites of opportunities for training and acquiring skills in those forbidden or restricted jobs?

Mr. KROGH: Sir, to that extent, yes . . .

Mr. GROSS: Could you answer that question, yes or no.

Mr. KROGH: It is difficult, Sir, for me to answer yes or no. One cannot be dogmatic about these things. You have to take the alternatives into consideration. This is the basic approach of any economist, to consider alternatives and not to be dogmatic with regard to particular . . .

Mr. GROSS: Mr. President, may I rephrase my question, which appears to have been misunderstood. Does the denial of opportunity to the non-Whites working in these mines curtail or deprive them of the opportunity to acquire skills requisite to those positions?

Mr. KROGH: To the extent that they are people who are interested in occupying these jobs, that are in fact already occupied, then I should say yes, Sir.

Mr. GROSS: Could it possibly be answered in any other way, Sir, or is there some method by which, to use your phraseology in your testimony, the effect of the deprivation of these training opportunities is, as you said, circumvented by a policy creating opportunities for training elsewhere? If so, and specifically in the case of mines, will you indicate how that limitation is circumvented.

Mr. KROGH: That limitation, Sir, is circumvented by encouraging and training people in the mines, especially the tin mine that is in the Damara homelands.

Mr. GROSS: Are you aware, Sir, that the law which restricts opportunity for promotion applies to all mines owned by Europeans, as the phrase goes in the legislation?

Mr. KROGH: Yes, Sir, but Europeans may only own mines in the White areas set aside for them.

Mr. GROSS: You referred yesterday to a tin mine, did you not?

Mr. KROGH: But which tin mine was this?

Mr. GROSS: The Uis Tin Mine.

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now that tin mine is located where, Sir?

Mr. KROGH: It is near the Brandberg, not far from Omaruru and Usakos, Sir.

The PRESIDENT: Where is that?

Mr. KROGH: That is in the southern sector and it forms part of the proposed large Damaraland. It lies in part of the large area set aside by the Odendaal Commission for this particular purpose.

Mr. GROSS: This is in what is called one of the Reserves, isn't it, Sir?

Mr. KROGH: Sir, I might have given the wrong impression here. I should indicate that this falls within the large proposed Damaraland. I could make sure of that particular point . . .

Mr. GROSS: I am asking with regard to the present situation. Is the tin mine, to which you refer, located in a Reserve?

The PRESIDENT: An existing Reserve?

Mr. GROSS: Yes, Sir.

Mr. KROGH: If you will permit me, the Odendaal Commission report is lying next to me, and I could locate the particular mine and answer that question.

The PRESIDENT: The question is, is it within an existing Reserve?

Mr. KROGH: Yes, Sir.

Mr. GROSS: I can save your time, Sir. Page 341 of the Odendaal Commission report refers to the Uis Tin Mine, near the Brandberg in the Omaruru district. Is that the mine to which you referred, Sir?

Mr. KROGH: Most of these Reserves set aside fall within magisterial districts for administrative purposes, Sir. The fact that it is classified as falling in the Omaruru administrative district does not necessarily mean that it does not fall in a Reserve. I just want to make quite sure on that point. I am looking for a map, Sir.

Mr. GROSS: Shall I wait, Mr. President, while the witness consults his map?

The PRESIDENT: Yes, if you really want that information.

Mr. GROSS: As a matter of fact, Sir, I did not want to curtail the witness from answering in any way he thinks. It is really not essential for the purpose of my enquiry. In order to expedite the proceedings, may I turn to the point that I am really getting at, Sir?

The Odendaal Commission report with respect to this mine states that this Company, or this tin mine, is a wholly owned subsidiary of the South African Iron and Steel Industrial Corporation Limited. Is that a European-owned company?

Mr. KROGH: Yes, Sir, but to the extent that the non-Whites of that particular area have not yet reached the stage to undertake, operate and finance mining, this is being done under special permission in these non-White areas by outside capital, technique and management, but with the very clear understanding that this is (to employ a very popular word that is used in the rest of Africa) to be "Africanized" as soon as these people are, in fact, qualified, show an aptitude and interest to undertake mining activity. The alternative, Sir, would have been to not have developed this mine at all.

Mr. GROSS: Sir, I do not wish to engage in controversy with you. My

question said or implied nothing with respect to the justification or otherwise of ownership. I address the question simply to you, Sir, for the sake of the clarity of the record—is the Company referred to in the Odendaal Commission report, to which I have referred, a European-owned Company, or is it not?

Mr. KROGH: It is a European-owned Company—but it is not in fact owned by Whites in South West Africa.

Mr. GROSS: I refer again to the restrictions upon the achievement by non-Whites in the mining industry in South West Africa of certain promotions to listed posts. That is limited, Sir, to European-owned mines, is it not?

Mr. KROGH: Sir, if the Uis Mine is within an existing Native Reserve, these restrictions that I have referred to would not operate against non-White employees. This is the policy and, if it does, then it is in fact an irregularity, because it should not. If this Uis Mine does not, at this moment, fall within a reserved area but would as soon as this large area is proclaimed a Native area, then I can give you the assurance, Sir, that these restrictions that we have referred to would not operate in favour of White mine-workers in that particular territory.

Mr. GROSS: Is there any provision, of which you are aware, in the legislative restrictions with regard to promotion in the mining industry in the case of non-Whites, which makes exceptions in the case of the Uis Tin Mine?

Mr. KROGH: I do not dispose of that detailed information, Sir.

Mr. GROSS: Do you know, Sir, whether or not there are, in fact, non-Whites employed in the Uis Tin Mine in any of the listed categories from which they are excluded by the terms of the regulations?

Mr. KROGH: I do not know, Sir.

Mr. GROSS: Thank you. When you referred yesterday, therefore—to call your attention to the testimony you gave with respect to the tin mine at page 112, *supra*, of the verbatim record—I will read to you the following statement:

“As a matter of fact, now I come to think of it, there is an important tin mine, for instance, in the new and large proposed Damara land, that is in operation and in fact is being exploited, and I take it that this would give an opportunity to train these people, if these mineral resources should become economically feasible to develop in the northern territories.”

Now, when you referred, therefore, to your opinion that this tin mine would give an opportunity to train these people, you did not intend, I take it, to refer to the fact that you knew that they were being actually employed?

Mr. KROGH: No, Sir, that is not, in fact, implied by my statement. I said this would give them an opportunity to do so.

Mr. GROSS: The opportunity would then come about as a result of an exception possibly being made to the mining laws? Is that what you had in mind about opportunity?

Mr. KROGH: Yes, Sir. It would, in fact, give them an opportunity to acquire skills in the mining industry.

Mr. GROSS: If the regulations were amended, or if a special exception were made, they would have that opportunity. That, I take it, is the sense of your testimony on page 112, *supra*?

Mr. KROGH: No, Sir, I want to give the very clear impression there, that it is not a matter, as far as an observer and an economist is concerned, about amending existing laws. I was trying to indicate to you very clearly that the operation of these mining laws relates to particular areas in which White mineworkers have a preference, and that these limitations do not operate in favour of the White miners in areas outside the White area. I also tried to indicate that to the extent that these limitations in the White area would preclude non-Whites from acquiring mining skills, special arrangements would be made to allow the non-White workers to acquire these skills if and when they are required for the development of mining resources in non-White areas where they would then receive preference and priority with regard to the occupation of these jobs. This is the same theme which I tried to pursue yesterday, Sir.

Mr. GROSS: Would you please tell the Court, as shortly as you can, Sir, whether, on the basis of your knowledge, there are any non-Whites employed in any mining enterprise in South West Africa in a prohibited position?

Mr. KROGH: To the extent that non-Whites are employed in the mining industry in the southern White sector of the economy, these restrictions operate with regard to their promotion in this particular industry and I set out very clearly yesterday why I, as an economist, could understand and appreciate, why under the set of circumstances such as those in South West Africa, these restrictions may be regarded as necessary by the responsible authority.

Mr. GROSS: Are there, in your knowledge, any non-Whites in the mining industry in South West Africa (I refer for the moment to the southern sector), who are employed in any of the listed positions? Was your answer intended to say "No" to that question?

Mr. KROGH: Yes, Sir, there are restrictions in this regard.

Mr. GROSS: There are restrictions—that is clear in the record. Are there any non-Whites in the southern sector who, so far as you know, hold any position in the mines which fall within the restricted categories?

The PRESIDENT: Do you understand the question?

Mr. KROGH: Not quite, Sir.

The PRESIDENT: The question seems to be simple enough. In other words, are you, of your own knowledge, aware of any of the reserved posts in the mining industry in the southern sector occupied by non-Whites? That is the question, isn't it, Mr. Gross?

Mr. GROSS: Yes, Sir.

The PRESIDENT: Do you know, or do you not know?

Mr. KROGH: I do not know, Sir.

The PRESIDENT: That is the answer.

Mr. GROSS: Thank you, Sir. Did you not testify yesterday, Sir, that the output of the existing mines in the southern sector was something like 90 per cent. of the total production of the South West Africa Territory?

Mr. KROGH: I said, Sir, that the two . . .

Mr. GROSS: I asked whether you had said that yesterday, Sir, so far as you recall. I just did not want to put words into your mouth, Sir.

Mr. KROGH: No, Sir, I did not say that.

Mr. GROSS: You did not say that. What did you say?

Mr. KROGH: I said that diamond mining and copper mining in South

West Africa were, in fact, responsible (these two) for about 90 per cent. of the total value of mineral production in the Territory, but that the value of output does not reflect, in fact, the degree to which they are in any way important as employers of labour in the Territory. On the contrary, they make a very big contribution with regard to the export value of minerals, but a very small contribution to the creation of employment opportunities.

Sir, mining, except when it is on such a very large scale as in the case of the Republic of South Africa, is generally regarded by economists as a very poor starter of modern economic development and creator of employment opportunities in the underdeveloped world, Sir, unless it is of such a large scope that it in fact could do this, but compared with any other industry, like the development of agriculture or manufacturing industry, it is often quoted as one of the worst starters of modern economic activity in the underdeveloped world. So the value of the mineral exports does not reflect the extent to which employment opportunities are in fact created by the mines. I think it is a false association to bring value of mineral exports or production in connection with the number of employment opportunities in the Territory.

Mr. GROSS: Sir, how many persons are employed in mining industries outside the southern sector of the Territory, do you know?

Mr. KROGH: There would be very few, Sir, outside the White sector in the Territory.

Mr. GROSS: So that in applying the employment ratio standard which you advised the Court you prefer, what roughly would be the percentage, the ratio, of employees in the mining industries in the southern sector as compared to the territory outside that sector?

Mr. KROGH: I will have to make an estimate, Sir, if you don't mind. It would be a very small percentage, I would say definitely less than 5 per cent.

Mr. GROSS: So that on that ratio there is even a larger discrepancy than taking the currency-up ratio, or at least about the same, let us say.

Mr. KROGH: Yes, Sir.

Mr. GROSS: Therefore on either basis the preponderant proportion of the industry is in the southern sector—that is correct, is it not, Sir?

Mr. KROGH: You are comparing two quite different economies.

Mr. GROSS: I am not asking you to describe the economies—if the Court wishes you to do so—I just would like to have in the record, if you will bear with me, Sir, the answer to the question whether, in your expert opinion, one could fairly say that the preponderant output and employment of and in the mining industries is in the southern sector.

Mr. KROGH: Definitely, Sir.

Mr. GROSS: Turning to another matter, are there, if you know, any non-White engineers in the Territory of South West Africa?

Mr. KROGH: As far as I know, no.

Mr. GROSS: Are there, as far as you know, any non-Whites being trained as engineers in South West Africa?

Mr. KROGH: No, Sir, not as far as I know.

The PRESIDENT: When you speak of an engineer, Mr. Gross, may I ask, is that a fully qualified engineer or anybody engaged in the engineering skills?

Mr. GROSS: Engaged with engineering skills, in any employment.

The PRESIDENT: That is another matter.

Mr. KROGH: Sir, there are no universities in South West Africa—and no university degree for non-White engineers, but they use the word engineer, as you appreciate, for all kinds of technical work, too.

Mr. GROSS: How many, if any—perhaps you have answered this, but I do not recall it—non-Whites are being trained as engineers in South West Africa—did you answer that question, Sir? I regret I do not recall.

Mr. KROGH: Yes, I did answer that question.

Mr. GROSS: And the answer was what, Sir?

Mr. KROGH: The answer is, so far as I know, not any at the moment.

Mr. GROSS: So that in your reference in your testimony to skilled people, opportunities for training of skilled people, it does not refer to engineering skills?

Mr. KROGH: It would refer to that. I said that the opportunity would exist there for them to acquire the skills as and when they are in fact required by that particular industry operating in that particular area. There is no point in training and qualifying people if there is no demand for them; you create a greater problem by educating people and then leaving them unemployed than in fact not educating them at all for particular posts.

Mr. GROSS: Is any attention paid to the wish of the individual as to his own accomplishment, his own talent and capacity? Is it entirely determined by the demand to the extent to which he is given opportunity to be trained?

Mr. KROGH: The demand for this particular person must exist; there is no point in qualifying an individual . . .

The PRESIDENT: That is not the question as put to you.

Mr. KROGH: I am sorry, Sir, I could not quite get that.

The PRESIDENT: The question is: regarding an individual, whether there was or was not a demand for a particular skill, is the opportunity open to him to acquire the skill in this method which you have indicated to the Court, by attending these schools of instruction and acquiring a skill? That is the question.

Mr. KROGH: Yes, Sir, there would be opportunity for him in fact to acquire such skills.

Mr. GROSS: If he seized the opportunity, would he be able to utilize his skill once he went through the time, effort and expense of acquiring this skill?

Mr. KROGH: To the extent that there is a demand for his skills, yes.

Mr. GROSS: And is there a demand for his skills in the present situation in the economy?

Mr. KROGH: Not in the mines in the White area.

Mr. GROSS: I am talking about industry and mines, or any other enterprises which require, let us say, engineering skills. Is there any existing demand for such skills on the part of non-Whites in the Territory at the present time?

Mr. KROGH: Yes, I can think of an example—for instance, in this particular furniture factory operating in Ovamboland.

Mr. GROSS: I am talking about the southern sector, Sir.

Mr. KROGH: The southern sector—no, I cannot think of there being any demand for his services at this stage. There are, as far as I know, even very few White engineers in South West Africa—there could not be very many more than two dozen.

Mr. GROSS: Would the same response apply to other professions as to which the apprenticeship restrictions govern?

Mr. KROGH: These people acquire skills, as I pointed out just now, and there is no prohibition on them to occupy jobs in the White sector in so far as there is a demand for their services in the White economy. The people that I have listed here are in fact, with few exceptions, occupying these skilled jobs in the modern White economy in the so-called Police Zone, if that is the point. There is no restriction, as these figures prove to you, and the extent to which such restrictions as those in the mining industry operate, I can assure you they are of marginal and not of fundamental importance from an economic viewpoint for the Territory's development—I made that point yesterday.

Mr. GROSS: I am not sure I understood your answer to my question, but I will not pursue it. In the course of your testimony yesterday, at page 114, *supra*, again in the context of the response to my question concerning the restrictions and the economic effects thereof, you said as follows:

“As a matter of fact, if I am allowed to put it to you that we may look at the Republic of South Africa as an example of things to come, then it is very clear to me that no restrictions would be placed on the training of these people. As we all know, it is in fact a positive and concrete development policy in South Africa to train these people, but not as minor apprentices working alongside White workers, as I would imagine this would be a provision reflecting again, or being an economic cost due to the complex and delicate social situation in such a particular set of circumstances.”

What I want, if I may, to draw your attention to and ask your comment upon is whether, in terms of the restrictions, “no restrictions would be placed on the training of these people” in South Africa as a shape of things to come in the Territory, what people are you referring to and what sort of restrictions? Let me stop there—whom did you mean by “these people”?

Mr. KROGH: When I use the words “these people” I use a collective term to indicate people who are in fact not regarded as members of the White and economically viable group in South Africa. Secondly, there is no restriction . . .

Mr. GROSS: Pardon me, Sir, may I hold you to that point, with the President's permission? I have not understood your answer to my question. “These people”—is this a colloquialism on your part for non-White?

Mr. KROGH: In the context of the question you asked me, I take it that “these” or “they” referred to the people you were referring to in your question, which I have not with me now, Sir.

Mr. GROSS: Well, you used the expression; I do not want to badger you with this; when you said “these people” in that context, were you referring to non-Whites? I just wanted to make it clear.

Mr. KROGH: Yes, Sir, I was referring to non-Whites.

Mr. GROSS: You were about to mention some point that you thought relevant to this question?

Mr. KROGH: Yes, what I had in mind with regard to looking to South Africa as an example of things to come, I think it is very relevant, I put it to you clearly that there is no legal restriction in South Africa operating



in the apprenticeship law with regard to non-Whites, as it does in South West Africa. In other words, the apprenticeship law in South Africa does not discriminate in respect of the member of a particular group. However, restrictions have operated in fact outside the law for reasons of custom and through control of entry into a particular trade, as I explained yesterday. These rules and regulations operate outside the purely legal framework of a country in any trade, and this limited the number of skilled and semi-skilled people that were available in South Africa. In order to circumvent that bottle-neck, as it were, in qualifying members of the non-White population group to acquire skills, special institutions and organizations have in fact been established by the Government to give these members of the non-White population groups both the theory and practice that would make them skilled and semi-skilled workers.

It might be of great interest to you, Sir, to know that the number of people entering and acquiring skills in South Africa, outside the apprenticeship system, and this refers to both Whites and non-Whites, is much greater than the number that qualify through the apprenticeship avenue.

The PRESIDENT: Is this common in the trades of many countries in the world?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now it is true, is it not, Sir, that the acquisition of these skills then is not available on the job—is that correct, Sir?

Mr. KROGH: Sir, you cannot acquire these skills unless, in fact, you do the work—these people do the work, Sir.

Mr. GROSS: And that work is not being done because of no demand—is that correct, Sir?

Mr. KROGH: Sir, to the extent that there is no particular demand for an industry or trade then it does not exist in the country; he could not obtain experience in that particular trade.

Mr. GROSS: So that the training school, to which you refer, would be training persons for jobs for which there would be no demand?

Mr. KROGH: Sir, on the contrary. The policy of industrialization in South Africa, as you may very well know, subsidises and encourages industries along the borders of the White area—there are particular railway subsidies and taxation provisions and so forth. In fact, it discriminates against industries developing in the existing White areas in favour of industries along the border areas in order to encourage the employment of and give employment opportunities to members of the non-White population groups that would otherwise be discriminated against or might be excluded from occupying jobs held at the moment by White workers, Sir.

Mr. GROSS: You would agree I think, Sir, with the logic of the necessity of defining the areas of which we speak.

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now, when we talk about demand and when we talk about trading opportunities, whether on the job or in organizations, in respect of the territory of South West Africa, coming back to that for a moment, I am referring to the modern economy that is to say the southern sector. Have your answers been directed toward that sector in response to my questions concerning demand and training opportunities and on the job training?

Mr. KROGH: Yes, Sir. They have this opportunity. They are not with-

held from occupying and getting this experience and they are in fact being taught the particular trades—there is no restriction legally to do this, Sir.

Mr. GROSS: I understand you have answered my question. Now, with respect to South Africa you began to speak of or you had finished speaking of industries on borders—I would invite your attention, Sir, not to border industries or to present or projected industries outside the White economy, as the phrase is, I am talking about the White economy where there is a labour force largely composed of non-Whites. With respect to that economy, I am talking now about South Africa, Sir, *à propos* of your reference to it as the shape of things to come in South West Africa, is there any demand, or, let me put it to you, is there any training of non-White persons with a view to their employment in that White economy in their skilled positions?

Mr. KROGH: Sir, these people are trained on the job and these jobs are available in the White economy where they are created and, in fact, there is a demand for them. These people acquire these skills, as the figures clearly showed you, and they are employed there. They get the experience and they are being taught there but not through the apprenticeship way of acquiring these skills, Sir.

Mr. GROSS: Let me perhaps give you a specific illustration, again with respect to engineers, and again with reference to your comment concerning South Africa as an example of things to come in the Territory. I should like to quote from the debates of the House of Assembly of South Africa of 25 May 1965 and the citation is No. 17, column 6638, the following exchange:

*“Bantu Engineers*

14. Mr. Kaatman asked the Minister of Bantu Administration and Development: how many qualified Bantu engineers are employed by his department in the (a) Bantu and (b) White areas of the Republic.

Answer: the Minister of Mines: (a) and (b)—none.

15. Mr. Kaatman asked the Minister of Bantu Education: how many Bantu are at present being trained as (a) roads, (b) public works, (c) transportation, (d) telecommunications, (e) town, (f) electrical, (g) water, (h) civil and constructional and (i) other types of engineers.

Answer: the Minister of Economic Affairs: (a), (b), (c), (d), (e), (f), (g), (h) and (i)—none.”

Are you familiar with the matter of training of engineers in South Africa?

Mr. KROGH: Sir, I have not made a special study of that—no.

Mr. GROSS: So you have no basis, expert or otherwise, to comment on this colloquy in the House of Assembly debates?

Mr. KROGH: No, Sir, but I would like to say that probably for every engineer being employed in an industry, there would be at least two to three hundred other skilled people in ratio to the particular engineer, Sir, but I would not like to comment on that. I have not made a study of the training and employment of engineers as such, but I would like to point out that I think those engineers refer to university qualified people—I think so.

Mr. GROSS: Now, Sir, I should like, as briefly as possible, to refer to the railways and harbours in South West Africa which, according to the

record, Counter-Memorial, **III**, page 64, is administered by the Minister of Transport of South Africa. In the Counter-Memorial, **III**, page 67, the Respondent quotes the following statement by the Minister of Transport as applied to South West Africa:

"We only employ Natives to serve their own people where it is practicable, and where it is acceptable to the rest of the staff. But it will not be acceptable to the staff or the public that Natives should be employed, even on Native trains, as firemen, conductors, or guards. That is not my policy, and it will not happen."

Can you advise the Court, Sir, what a Native train is?

Mr. KROGH: No, Sir. I would not know what a Native train is but I would like to point out that railway building as a means of public transportation was, in southern Africa, largely done in the previous century. The modern forms of extending public transportation is by way of motor transportation as a result of the revolution that has occurred in this particular industry. I cannot, however, tell you what a Native train is, that is a concept with which I am not familiar, Sir.

Mr. GROSS: What, Sir, would be your opinion, as an expert, concerning the economic reasons, if any, for the exclusion of non-Whites on a racial basis from positions as firemen, conductors or guards?

Mr. KROGH: Sir, I could very well imagine, and I made this point previously, that such an exclusion may be necessary for the sake of good labour relations and for the sake of social peace. These two factors may not be appreciated as being important for an economist who assumes a type of society where there is social mobility and where the population is relatively homogeneous. Where, in a set of circumstances, as in South West Africa, this is not the case—here, you have different groups, people viewing each other as members of groups with suspicion—it is, for an economist at least, of fundamental importance not to forget in any recommendations he makes or in any views he expresses, that there is here a set of diverse social conditions that may in fact, very well require him to understand and accept these particular limitations in the interest of social peace and, thereby in the interest of economic development. Sir, because without social peace—with continual strife and upheaval—there can be no economic development or reform in any case.

Mr. GROSS: I will come back to this question of social peace shortly, with the Court's permission. I should like, however, now to address a question to you, both as witness and expert, with respect to organization of labour, freedom of association and bargaining in South West Africa. It is undisputed in the record—I refer to the Counter-Memorial, **III**, pages 91-92, as well as to the Memorials, **I**, pages 129-130—that, by terms of the Industrial Conciliation Act of 1952, which came into effect in South West Africa under Proclamation No. 28 of 1953, there is no provision for the registration of Native trade unions and no provision for conciliation of disputes in so far as Native employees are concerned. Are you familiar with that legislation and that policy, Sir?

Mr. KROGH: Sir, I know that . . .

Mr. GROSS: Can you answer that, yes or no, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: You are familiar with it?

Mr. KROGH: Yes, Sir.

Mr. GROSS: May I continue? According to the Counter-Memorial, **III**,

at pages 93-94, Native workers in the Territory are represented at conciliation board meetings on labour disputes by an inspector who is a government official. Are you familiar with that practice and that policy, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: It further appears in the record, in the Rejoinder, V, at page 31, that there are no Native trade unions in the Territory. Are you familiar with that situation, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now, would you explain to the Court, please, what economic factors account for—I address my question to you now as an economic expert—and justify this limitation of labour organization and collective bargaining on a racial basis in the Territory?

Mr. KROGH: Sir, would you allow me just a minute or two to explain to you what the economist's approach is to the trade union movement as such? Economists are increasingly coming to the conclusion that uncontrolled and irresponsible labour union leadership and demands are in fact contrary to the interest of economic development, even in highly developed countries.

In South West Africa, Sir, as far as I can recollect, White labour unions—there are not many, probably two or three, I am not sure, but it is a small number—came to the fore only quite recently; I think at the beginning of 1950. Furthermore, Sir, labour unions in underdeveloped countries, and particularly in Africa, have proved not to have the necessary insight in the limited extent, if any, to which collective bargaining can, in fact, improve the economic positions, wages and working conditions of their members. Neither, Sir, have they displayed any leadership with regard to responsible union management that would recommend them in any underdeveloped country.

Sir, these are not only my views. I would like, Sir, if you would permit me, to quote very briefly from two sources that have recently come to my attention in this regard. These studies, undertaken by independent bodies, state that after the political independence of African States, one of the first steps taken by the new governments that assumed responsibility for the administration and development of their territories was to take away all forms of independent and autonomous leadership among the labour unions operating in the rest of Africa, all in the interest of political peace and in the interest of economic development of their territories.

I would like to substantiate this very briefly by referring to two sources. One is from Eliot J. Berg and Jeffrey Butler in an article entitled "Trade Unions" in a publication with the title *Political Parties and National Integration in Tropical Africa*, edited by J. S. Coleman and C. G. Rosberg, published in Berkeley and Los Angeles, by the University of California Press, 1964. I quote, Sir, from page 366:

"Almost everywhere in the continent [and this refers to tropical Africa] labour organizations were taken over by the governing parties once independence was achieved. The process is already under way in countries that are nearing independence. It differs in degree; the levers of control are manipulated more gently and more discreetly in Senegal and Ivory Coast than in Guinea or Ghana but in most countries the result is the same. The labour movement, if not completely subordinate to the party, is at least pliable and responsive to party pressures.

The process by which the party gains control over the labour movement varies from country to country. Everywhere the party brings to bear a combination of rewards and punishment: Rewards for unions and union leaders who are prepared to accept the role originally designated by the party and punishments and harassments for those who are recalcitrant.

Once in power, the Party has at its command a wide variety of gifts and an abundance of penalties and can quickly bend the most determined trade unions to its will."

Finally, Sir, I quote, also, from page 367 of the same article:

"These rewards are powerful instruments, and frequently suffice to bring understanding between trade unions and governing parties. When they do not, the parties have not hesitated to bring into play all the power of the new state machinery under their control."

In fact, Sir, they soon lost their independent function as an organization for collective bargaining in the interest of their particular members.

If you will permit me, Sir, to read very briefly a much smaller paragraph than the previous one, from another study entitled "Paradoxes of African Trade Unionism, Organizational Chaos and Political Potential" written by W. H. Friedland (assisted by G. E. Lichtblau), in *Africa Report*, June 1965, edited by Helen Kitcher and published by the African/American Institute in Washington. On page 12 it is stated as follows:

"In the process of obtaining political independence, all African leaders—in the tradition of political leadership everywhere—made rash promises to the African people. They argued that their countries were wealthy, but that the people were poor because of the drain of resources to the metropolitan powers. By stopping this drain, it was said, the material standards of life would quickly rise."

That is on page 12 and relevant to this we read further on page 13:

"In the past few years, Africa's political leaders have attempted to control the unions [these are labour unions] because they feared not only their political potential but also their ability to impede economic development. In most cases control has been attempted by the twin mechanism of co-operation and coercion."

That is the end of that quotation, Sir.

The PRESIDENT: Well, I do not think the witness has finished his comment upon your very general invitation to comment, Mr. Gross. I think the Court will adjourn now for 20 minutes.

Mr. GROSS: Thank you, Sir.

The PRESIDENT: Doctor, I gather you had not completed your comment upon the matter put to you by Mr. Gross. Is that correct?

Mr. KROGH: Yes, Sir.

The PRESIDENT: Would you complete it as briefly as you can?

Mr. KROGH: Yes, Sir. Very briefly, I would like to say, that, as an economist, I can very well understand why restrictions could, in fact, be placed on the official recognition of trade unions in a set of circumstances that cannot be described as a highly developed type of economy or labour market, but that the opportunity for organization is nevertheless permitted. There is no restriction on the formation, Sir, in South West Africa of non-White labour unions, but they are not allowed to register

as such. The reason for this (I can very well see) is to give the leaders, or the organized interests an opportunity to acquire experience to manage and govern themselves and to learn the underlying economic principles with regard to the effect of labour unions in negotiating for claims, and that great responsibility rests upon them in this respect since their claims, if granted, have repercussions on other groups and the economy considered as a whole.

Accordingly, I see these restrictions with regard to recognition or registration, Sir, as a transitional stage, as an educative restraint—a concept we economists use for restrictions designed to first educate these people in responsible leadership and management of their unions, which otherwise very often, Sir, operate to the detriment of the members of the particular union. I also know, Sir, that this is not a negative approach. Administrative machinery is, in fact, provided by the responsible authority that expressly lays down and looks after the interests of these particular workers, and so represents their interest in matters where their employment position or welfare may be discussed or negotiated, Sir. I see this as an educational and transitional stage, Sir, in contrast to an irresponsible and revolutionary approach which the authorities might feel, on the basis of experience in similar circumstances elsewhere, they could not subscribe to.

Mr. GROSS: Will you tell the Court, please, to whom you were referring when you used the expression "these people"?

Mr. KROGH: Sir, I am referring to the members of non-White population groups that are, according to my mind as an economist, at a much lower stage of economic development. They face quite different problems of economic development, and, therefore, require quite a different policy approach from the members of the White groups, Sir.

Mr. GROSS: I understand you to say, Sir, if I may extract the nugget from your response, that by "these people" you are referring to the non-White members of groups—you have used both "members" and "groups". Could you answer the question this way, perhaps? By "these people" did you mean non-Whites in South West Africa?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Thank you. Now, when you referred in your testimony to one of the disadvantages of trade union organization and collective bargaining, you referred, if I am correct, to repercussions the claims may have upon others. Would you explain to the Court what you meant by that, Sir?

Mr. KROGH: Sir, the extent to which you can claim a larger share of the cake that is baked every year can be at the expense of the share that goes to other contributors in baking the cake. But, most important of all is, that it might also be at the expense of the size of the cake, Sir, in which case everybody suffers, including those who are represented by this economic group in question.

Mr. GROSS: Is the Court to understand that by the refusal to permit Natives to engage in collective bargaining, or to register trade unions composed of Natives for conciliation purposes, one of the purposes is to reduce their capacity to exert pressure to get an increased share of the cake—to use your expression?

Mr. KROGH: On the contrary, Sir, it is not to decrease the size of the cake.

Mr. GROSS: I am not talking about the size of the cake, Sir. I am

talking about the share of the cake, as distinguished, let us say for the moment, from the size thereof.

Mr. KROGH: No, Sir, I do not think that the purpose of it is in any way related to the idea that these people are, in fact, withheld from obtaining higher living standards or better working conditions. On the contrary, Sir, there is enough evidence to make me quite happy as an economist to say that their employment conditions, and, in fact, their wages have increased considerably over any length of period during which this may reasonably be expected to happen.

There is no doubt, in my mind, that they have shared substantially according to the results, and these indicate to me that the purpose is not, in any way, to withhold any share from the income or product that is generated annually in the Territory, Sir.

Mr. GROSS: In the southern sector, which is what I am addressing my question to at this time—who makes the decision whether or not the non-White is receiving a just share of the cake?

Mr. KROGH: Sir, the type of economy that you have in South West Africa, and also in South Africa for that matter, is an economy that operates through the price mechanism. This means that first and foremost the share of your contribution to what I call the national income, and to which I referred as the cake baked annually, is primarily determined through the price mechanism. But as we know, in all economies, even in highly developed economies, for the sake of social fairness or justice, it is the responsibility of the particular governing body of the territory to interfere in the price mechanism, to lay down minimum wages, to see to it that there are different forms of transfers of income from one group to another, unfortunately—I must say as an economist—often for purely political purposes, Sir. But I have to take this into consideration; I have to accept this in the interest of social welfare and of pursuing other worthy objectives, that is other than just allowing the free working of the price mechanism. Sir, this is also the case in South West Africa, but wages are here first and primarily decided by the price mechanism. To this I want to add, however, and I am sure of this as an economist, that many of the wages received by non-White workers who, as we are discussing now, are not permitted to register their trade unions, are higher than those that would come about normally through the price mechanism. I say this mainly for the very simple reason, Sir, that the supply of this type of worker is available in very large numbers, not only in South West Africa but they come, in fact, to seek work in the Territory from areas beyond South West Africa. The same is true, as you may very well know, in the case of South Africa. If these people were to negotiate a wage purely in a system of free enterprise and where the price mechanism would decide what value is to be placed upon their services, then I am sure, Sir, it would be considerably lower than that which they are enjoying at the moment. I say this as an economist, Sir.

Mr. GROSS: With your permission, Mr. President, I should like to go back now over this last question and break into components and if I misunderstood you, please correct me. My question was—who makes the decision as to the justice of a share?

Mr. KROGH: This is primarily decided by the price mechanism supplemented, Sir, by the authorities responsible for the administration and development of the Territory.

Mr. GROSS: Now, in the event of a dispute between employees and

employer, I am talking about private enterprise in the modern or exchange sector, regarding wages let us say, who makes the decision as to the resolution of that dispute?

Mr. KROGH: In order to resolve a dispute, because I take it the question refers to resolving a labour dispute, employers and a representative from the administration, that is of the governing body of the territory, decide, and he represents, in fact, the interests of the workers, non-White workers in this respect. They try and resolve this particular dispute, taking in consideration such factors as the ability to pay of the particular employers; what the repercussions would be in terms of employment; whether it might put other people out of employment; whether it might force . . .

Mr. GROSS: I was not asking the factors that entered into it, if the President permits me to interrupt to stick to the point.

Mr. KROGH: If they cannot resolve this dispute, it may be taken further to the Minister of Labour who eventually gives a judgment in the interest of the community as a whole, Sir.

Mr. GROSS: So that the decision is made by a Government representative either in the first instance or on appeal, so to speak?

Mr. KROGH: An agent representing the interests of the workers, Sir.

Mr. GROSS: The agent is a government official, is he?

Mr. KROGH: Correct, he is a civil servant.

Mr. GROSS: Now, Sir, when you referred then in your earlier response to my question, to social justice as a responsibility of the governing body, were you intending to refer to the exercise by the government, through the civil service, of the authority to determine wage rates in the event of a dispute?

Mr. KROGH: If wage rates is the essence of the dispute . . .

Mr. GROSS: I still mean the case by hypothesis that this is the dispute—yes.

Mr. KROGH: Yes, Sir. Then of course somebody must determine . . .

Mr. GROSS: Well, Sir, I did not want to suggest otherwise.

Mr. KROGH: Sir, yes, the authority responsible for the administration and development of the Territory is the particular body that would eventually have to decide what is in the interest of social justice in the Territory.

Mr. GROSS: Now, the Government, I take it these words mean that the Government decides the dispute—that is what your words come to, isn't it, Sir?

Mr. KROGH: In the last analysis, yes.

Mr. GROSS: Now, what participation in the Government, if any, do the non-White labourers have?

Mr. KROGH: Sir, they have no participation in the government of the White area where the modern economy operates. In other words, they are in that respect not represented politically in the administration of the White sector of the southern part of South West Africa.

Mr. GROSS: We are talking about the southern sector.

Mr. KROGH: That is correct, Sir.

Mr. GROSS: Now therefore, is it not correct to interpret and that the only interpretation the Court can place on your testimony is that the decision, with respect to a wage dispute, is made by a government, through an official, in which the employees have no participation—is this a correct formulation of your testimony?



Mr. KROGH: This is correct but it does not necessarily follow that their interests are not in fact taken into account or . . .

Mr. GROSS: I am not suggesting what follows, Sir.

Mr. KROGH: But I take it, Sir, that you want me to admit implicitly that this possibility is the one that I, in fact . . .

Mr. GROSS: Mr. President, I have forbore from objection. I would not wish the witness to impute motives to my questions, I would appreciate, Sir, Mr. President, if the witness would answer my questions responsively—if my questions are at fault I apologize.

The PRESIDENT: I think that a witness ought to be more responsive to a question which admits of an answer directly one way or the other, Dr. Krogh. Sometimes the questions themselves rather lead the witness to engage in the long discussion which he does, Mr. Gross. On this occasion I think you could have given a more responsive answer, Doctor.

Mr. KROGH: Yes, Sir. Sorry, Sir.

Mr. GROSS: I have not been impertinent and I wish to assure the Court and the witness I have not before objected because I have felt that my fault was largely involved but, in this case, I hoped, and perhaps I hope in others, a short responsive reply could be generated.

The PRESIDENT: I think possibly the witness did think that it was implicit in your question—although I did not—and that the Court would be asked to draw the inference. The fact is that the evidence has already been established; it is on the record.

Mr. GROSS: Yes, Sir. And now I am going to ask the witness, as an expert, as an economist, whether the existence of this situation gives to the employees a fair or substantial voice in the determination of their own wage levels?

Mr. KROGH: Yes, to the extent that they can form labour unions and communicate their feelings, and represent their dissatisfaction, or objections, and they are in fact allowed to form trade unions in the Territory. Furthermore, there is machinery to communicate with them. It is not that they are shut out, Sir, not having a view or not being allowed to express a view, or their particular demands, or their particular interests in such a negotiation.

The PRESIDENT: Could you tell the Court what kind of an official represents them in the negotiations?

Mr. KROGH: He is called a labour inspector, Sir, who is a government official, specially appointed to represent the Government in these particular negotiations or where labour disputes arise.

Mr. GROSS: Would your answer to my question be different if you are reminded, Sir, that there are no Native trade unions in South West Africa?

Mr. KROGH: There are no such trade unions and this to me as an economist, Sir, reflects the lack of interest . . .

The PRESIDENT: The answer is that there are no trade unions, that is all.

Mr. GROSS: The answer is, Sir, that you would not alter your response to my question on the basis of this fact?

Mr. KROGH: Sir, there are, so far as I know, no non-White trade unions organized and operating in South West Africa.

Mr. GROSS: Are you aware, Sir, whether there have been in, let us say, the last ten years, any labour disputes which have arisen in the Territory?

Mr. KROGH: Sir, I think, as in the case of South Africa, there have

been very peaceful labour relations in South West Africa. I can recollect, that within the last ten years in South West Africa such a dispute leading to a strike did arise in the case of the mines, but I cannot give you the details of the particular set of circumstances, nor how it was resolved. I am sorry but I cannot remember the details.

Mr. GROSS: The Counter-Memorial, III, pages 93-94, lists five disputes. The first is a dispute which occurred at the Lorelei copper mine in the district of Luderitz, where Ovambo labourers went on strike. I am reading from page 93: "An inspector of Labour investigated the matter, found that both employers and employees had been at fault in certain respects, and settled the dispute." Are you familiar with the circumstances of that dispute, Sir?

Mr. KROGH: No, Sir, it must have been a very minor one because the Lorelei mines . . .

Mr. GROSS: Do you know whether it was minor or major, Sir, as a matter of your knowledge?

Mr. KROGH: Yes, I know that the Lorelei Copper Mining Company near Luderitz is, economically speaking, really negligibly small in the mining industry, and in the number they employ.

Mr. GROSS: You do not have any evidence or information which would contradict the statement in the Counter-Memorial, III, on page 93, which I have read, that there was a strike?

Mr. KROGH: No, Sir, I did not study the particular circumstances of this particular dispute.

Mr. GROSS: Another reference, on page 94 of the same volume:

"In 1956 there was one case of a serious labour disturbance amongst Native labourers at the Brandberg West Mine. An inspector of Native Labour enquired and ascertained that there had been some dissatisfaction amongst the labourers as a result of wages and conditions in the compound. Recommendations to overcome the causes of dissatisfaction were made, accepted and implemented, with satisfactory results."

Are you familiar with that "serious labour disturbance amongst Native labourers"?

Mr. KROGH: The number of labourers involved, Sir, would have been considerably and substantially more than those in the Lorelei copper mines, but in fact I am sure that it was resolved in a very short period of time.

The PRESIDENT: The question was, are you familiar with the dispute?

Mr. KROGH: No, I did not study it.

The PRESIDENT: Then the answer is no.

Mr. KROGH: No, Sir.

Mr. GROSS: And one other example to which I will call your attention. I will ask you whether you are familiar with the event; I quote from the same page:

"A dispute involving contracted extra-territorial and northern Native labourers at the Ojisondu Mine in the Okahandja district towards the end of 1956 over the re-introduction of a six-day working week, was also speedily terminated to everybody's satisfaction by an inspector of Native Labour."

Are you familiar with the circumstances of that dispute, Sir?

Mr. KROGH: No, Sir. I did not study the particular circumstances.

Mr. GROSS: From your knowledge of the situation in the mining industry, is a six-day working week the practice?

Mr. KROGH: Sir, I would not know whether that is general practice throughout the Territory.

Mr. GROSS: Do you know, Sir, whether the reference in the Counter-Memorial to an inspector of Native labour would refer to a government representative? Would the inspector be a government official?

Mr. KROGH: Yes, Sir, he would be a government official.

Mr. GROSS: Therefore it would be, would it not, a matter of consideration from the point of view of social justice, the phrase you used as to establishing the share of the cake, that there had been disputes actually taking place in the Territory? That would be relevant to the consideration of the situation, would it not, Sir?

Mr. KROGH: Yes, Sir. My opinion, expressed as an economist, was that these disputes which, as you mentioned, all occurred in relatively small mines that are not important employers, relatively speaking, of non-White labour in the Territory considered as a whole. Furthermore, Sir, these disputes were speedily resolved to the satisfaction of all. I did not regard them as any serious labour disputes in the Territory from an economic viewpoint during the past . . .

The PRESIDENT: How many disputes have there been, Mr. Gross, over the last ten years?

Mr. GROSS: There are five set forth in the Counter-Memorial, Sir, and the, I think, most serious was undoubtedly, was it not, Sir, the one to which I have not referred, the Tsumeb—you referred I believe to the Tsumeb strike or stoppage in your testimony, Sir. Perhaps in response to the President's question, or, if I may, with respect, put it as my own, Sir, would you state, if you have not done so, when that dispute took place and how many employees were involved?

Mr. KROGH: No, Sir, I do not know the exact date but I said that I could recall such a dispute, and that this was for me, as an economist, an incident which I thought worth mentioning as an example of where such a labour dispute had occurred, because the number involved was considerable, in view of the fact that the mining industry in Tsumeb in fact represents a major part from the point of view of production and employment of non-White labourers in the Territory. That is why I mentioned that as an example: I thought the others were rather insignificant, speaking generally.

Mr. GROSS: In the document, which is in the record of these proceedings, which is a document of the United Nations General Assembly, document A/5446, Addendum 2, 26 July 1963, cited at IV, page 605, there is the following brief description of the Tsumeb strike by contract labour. I shall read it to you, Dr. Krogh, and perhaps it may refresh your recollection concerning the matter:

"The largest scale single incident of the arrests and convictions of African labourers in the territory in recent years took place in December 1962, following strike action by Ovambo contract workers at a new copper-smelting plant at Tsumeb. A total of 105 Ovambo workers were convicted of refusing to carry out instructions: 61 were sentenced to a fine of 10 Rand or 30 days' imprisonment, under the Master and Servants Proclamation, and 44, charged with the same offence under other labour legislation, were sentenced to 50 days' imprisonment without option of fine. Their labour contracts

were cancelled and all were to be repatriated to Ovamboland after serving their terms. The service contracts of 24 others who did not appear in Court were also cancelled and they were returned to Ovamboland. It was also reported that a group of new recruits, who had refused to start work, would probably be sent back to Ovamboland."

That is from page 12 of the document which I have cited, which is in the documentation in these proceedings.

Do you evaluate this, if you have not already done so, as a serious incident?

Mr. KROGH: Sir, I mentioned it, yes, as one dispute that had occurred as far as I could recollect during the last ten years. But I must say that I do not know whether that factual situation is completely correct. I cannot, in fact, give evidence to that effect. I am not in any way employed by the Government, nor do I represent any labour organization. I am an independent student of the Territory, but I cannot vouch for those particulars as reported there, outside South Africa, or South West Africa, by other parties.

Mr. MULLER: Mr. President, I think in fairness to the witness my learned friend should leave the particulars of this particular dispute as set forth in the Counter-Memorial. He has referred to other disputes . . .

Mr. GROSS: Mr. President, with respect, Sir, if counsel wishes to bring up testimony and re-direct, I would, with respect, Sir, suggest that we cannot follow that procedure.

The PRESIDENT: Well I must first hear, I think, Mr. Muller, Mr. Gross. You were putting to the witness a statement of a dispute, and if it was not a complete statement of the dispute then perhaps a wrong impression was at the present moment conveyed to the Court. I do not suggest at all that it is not, but I would like to hear what Mr. Muller has got to say.

Mr. MULLER: I would only like to read the short description of this particular dispute as set forth in the Counter-Memorial, which in fact has been admitted by the Applicants:

"Another dispute arose in 1954 at Tsumeb as a result of Police investigations regarding possession by Ovambo workers of illicit liquor . . ."

Mr. GROSS: Mr. President, this is a different dispute that counsel is referring to.

The PRESIDENT: Is it a different dispute?

Mr. GROSS: I am referring to the dispute of 1962. I understood counsel to refer to the dispute of 1954.

The PRESIDENT: Mr. Gross made it quite clear that it was the dispute of 1962, Mr. Muller.

Mr. MULLER: I am afraid that that is the case but this is one of the disputes dealt with amongst the five to which my learned friend referred earlier.

The PRESIDENT: We will deal with one dispute at a time.

Mr. GROSS: Sir, I readily admit that there have been other disputes at Tsumeb, if that is the point learned counsel wishes to inject into the record at this point.

The PRESIDENT: Yes, Mr. Gross, please continue.

Mr. GROSS: Now, I would like to invite your attention, Sir, to the International Labour Organisation resolutions with respect to the practice and policy in South Africa and South West Africa. Are you

familiar, Sir, with the function and structure of the International Labour Organisation?

Mr. KROGH: As an economist, I am, Sir.

Mr. GROSS: Are you aware, Sir, that in 1964 a committee on freedom of association was set up by the governing body of the International Labour Organisation?

Mr. KROGH: No, Sir. I do not know the details about when certain bodies or agencies were in fact formed in the International Labour Organisation.

Mr. GROSS: The undisputed fact that there was such a body set up appears from the Reply of the Applicants, IV, page 423. Turning your attention to page 423 of the Reply, I should like to read a very brief excerpt from the proceedings of that Committee.

“The Committee on Freedom of Association of the Governing Body of the International Labour Organisation has concluded, with the approval of the Governing Body, that provisions of law involving:

‘... discrimination against African workers (with respect to the right to organize) (are) . . . inconsistent with the principles that workers without distinction whatsoever should have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization and that all workers’ organizations should enjoy the right of collective bargaining.’ ”

This was, I may say, Sir, specifically with reference to the policy in South Africa. For the sake of clarity, since you have referred, as have other witnesses, to policies in South Africa, would you very briefly, if possible, explain any essential distinctions there are between the policies applied in South Africa and in South West Africa concerning the rights of non-Whites to engage in collective bargaining?

Mr. KROGH: Sir, I am not an expert on the resolutions or standards of the International Labour Organisation, and to what extent particular countries do in fact adhere to them or to what extent they are obliged to do so.

I do know, however, that most of the standards laid down by the International Labour Organisation are increasingly being admitted by experts in the field.

Mr. GROSS: Mr. President, might I ask the witness to respond to my question?

The PRESIDENT: The question is, witness, whether you know of any circumstances which in relation to South West Africa distinguish the conditions of labour from those appertaining in South Africa. All that you have had put to you is a resolution passed. You are not asked to comment on the value of that resolution or whether there is any substance in the resolution. It is simply a resolution, so if you have that in mind, would you answer the question? Perhaps you would reframe your question, Mr. Gross, so that he will know precisely what it is you are asking him?

Mr. GROSS: Yes, Sir. What policies, if any, with respect to the denial or limitations upon the right of non-Whites to engage in collective bargaining in South West Africa are applied likewise in the Republic of South Africa?

Mr. KROGH: Sir, I know that in the Republic of South Africa non-White labour unions are not in fact registered but, similarly as in South West Africa, they are free to organize. The labour organization machinery in South Africa is much more advanced in this respect than it is in South West Africa. There are regional labour boards organized by the authorities in the particular areas where there are non-White workers and these boards are consulted and advise the particular authority of their labour conditions and grievances in particular trades. These labour boards do not, as far as I know, exist in the case of South West Africa, but for all practical purposes, labour—non-White workers—is represented in the same way. They are not, in fact, registered as official labour unions in South West Africa or in South Africa, Sir.

Mr. GROSS: Is the registration of the union, either in South, or South West, Africa, an essential condition to the right of that union to engage in collective bargaining?

Mr. KROGH: I am not aware of the legal implications, but as an economist, I have always interpreted this to mean that if you strike and you are not a recognized, official union then such a strike would be interpreted as an illegal act, Sir.

Mr. GROSS: Are you aware also, Sir, of the significance of registration with respect to the right to engage in collective bargaining?

Mr. KROGH: I am not quite acquainted with the wording of this legislation but I think, obviously, that if it is illegal to strike, then this means cannot be used by trade unions if the dispute is not resolved or the negotiation cannot proceed any further.

The PRESIDENT: In one case it is legal if registered and in the other case you say it is illegal. Is that the position? In the case of a registered union it is legal to strike if negotiations break down?

Mr. KROGH: Yes, Sir.

The PRESIDENT: In the other case, it is an illegal act. That is your view?

Mr. KROGH: This is how I, as an economist, always understood this, Sir.

Mr. GROSS: Sir, with respect, I was referring to an additional point, which perhaps my question, I am afraid, did not make clear. That is the right of collective bargaining as distinguished from the right of strike. Is a non-registered union recognized by employers for collective bargaining?

Mr. KROGH: Sir, I would say that they do indeed collectively negotiate their wishes and their interests through the labour machinery that I have indicated. They therefore, in so far as there are non-White labour unions, pursue, indicate and formulate their interests collectively and this is negotiated through the administrative machinery that I have mentioned earlier. But I could very well, as an economist, say that if they are not given the weapon to strike, then this would mean that there is a limitation or restriction placed on the extent to which they can, in fact, demand or obtain collectively that which they would have put forward as their collective demands, Sir.

Mr. GROSS: Sir, you referred, in your response, to the phrase—you used the phrase, if I understood you correctly from my notes—"collectively negotiate" through the procedure which you have described. Is that substantially your testimony, Sir?

Mr. KROGH: Yes, trade unions negotiate collectively. The purpose of

forming a union or an organization is to meet the party on the other side of the market collectively instead of doing this individually as workers. This is what I mean by collective bargaining.

Mr. GROSS: Would you please respond to my question if I attempted to restate it or clarify it? Did you, in your testimony, refer, to use the phrase substantially, "collectively negotiate" through the procedures which you have described? Did you use that phrase or some substantially similar phrase, in your testimony, do you recall?

Mr. KROGH: Yes, Sir, to the extent that there are non-White labour unions, Sir.

Mr. GROSS: Now, Sir, when I address this question to you, I do so in your capacity as an economist. Is it not contradictory to refer to collective negotiation on the one hand and adjustment of disputes through the decision of a government authority on the other hand in the absence of a trade union?

Mr. KROGH: Sir, it is the duty of the particular labour inspector to take into consideration on the one hand the wishes and the demands of the workers and to determine, whether they are reasonable, just, or in the economic interests of the particular parties concerned or the country as a whole. Similarly, he must, in order to resolve a dispute, or to communicate the wishes of the other, take into consideration, on the other hand, the position of the employers. To the extent that he in fact, and I take it that it is his duty to do so, does not make himself aware of the wishes of the particular workers and if there is a non-White labour union, obviously they would have a representative that he could consult, or who would consult him or advise him on this. To the extent that there are not any non-White labour unions, obviously you could not say that their wishes are communicated to him collectively, or by a representative because they would not be organized collectively, Sir.

Mr. GROSS: And therefore—to clarify now the realistic situation—would it not be pertinent to place into the record again the undisputed fact that there are no Native trade unions in South West Africa?

Mr. KROGH: Yes, Sir, there are no non-White trade unions in South West Africa and there is no limitation on their being formed.

Mr. GROSS: And there is no what, Sir?

Mr. KROGH: There is no limitation or restriction on non-White trade unions' being formed or coming about.

Mr. GROSS: They do not have any power to negotiate because they are denied the right to register. Is that a correct statement, Sir?

Mr. KROGH: Sir, they are denied the right to use the weapons that are usually used by labour unions, Sir.

Mr. GROSS: Now, with respect then, to the factual situation, that there are no Native trade unions, can it be said, as an economist, that there is no collective negotiation or collective bargaining available to the non-White employees in the Territory? Is that a correct statement of the fact, realistically, from the economic point of view? Can you answer that question yes or no?

Mr. KROGH: Sir, the fact that there are no non-White labour unions in the Territory reflects to me, as an economist, that there is no collective bargaining in this particular case.

Mr. GROSS: As an economist, would you say that the failure of a collective bargaining machinery has any economic consequence upon the welfare in material terms of the individuals, the non-White labourer?

Mr. KROGH: As an economist I must give a value judgment here, and I have done this in my previous testimony. I have given you the opinion that I think that the material welfare of the non-White workers in so far as they earn wages in the modern sector is for all practical purposes at a level, and improving at a rate that could not have been negotiated or attained in fact had there been trade unions of the type or kind, as I have tried to indicate, which operate in the rest of Africa.

Mr. GROSS: Is it your statement to the Court, as an economist whose testimony is directed to the necessity for separate development in the Territory, that had there been trade unions in existence they would have demanded lower wages or more working hours—is that the purport of your testimony, Sir?

Mr. KROGH: The purpose of any labour organization or union is to serve the particular interests of its members first and foremost. But because there are no non-White trade unions in South West Africa it does not necessarily follow that the interests of such workers are not in fact taken into consideration or well looked after.

The PRESIDENT: That is not the question that was put to you, witness. The question put to you is: if there were registered trade unions, able to be organized by the non-White workers, then do you say that they would have made claims less or greater than those arranged under the system which presently operates?

Mr. KROGH: Sir, my answer, based on experience elsewhere under similar conditions, would be yes, I think they would in fact have claimed substantially and considerably larger amounts.

The PRESIDENT: Larger. It would be rather unusual for a trade union to claim less, would it not?

Mr. KROGH: Quite so, Sir.

Mr. GROSS: Thence, in the light of that response, in which I understand you said they would, as normally would be expected, make larger demands rather than smaller demands . . .

Mr. KROGH: Yes, as we all do.

Mr. GROSS: Would you then clarify your response to my question, in which you said, as I understood you, that in your expert view, had trade unions existed with authority and force to bargain, conditions would have been worse rather than better?

Mr. KROGH: I would say yes, I think they would have been worse.

Mr. GROSS: Will you please explain on what basis you form that judgment?

Mr. KROGH: It is not always appreciated to what extent trade unions can in fact operate effectively—improve their workers' share of the cake that is baked annually—not even in highly industrialized economies. Increasing studies, one recently on America covering a period from the previous century to the present, indicate that there has over a long period been no evidence to show that the whole trade union movement has in fact improved the share of the worker in the economy, such as that in America. The idea of forming a labour union is of course to organize first and foremost in the interest of the welfare or income of its particular members, irrespective usually of what the repercussions of their claims would be on other members of the economy or whether these would be in the interest of the economy as a whole. I can very well imagine that certain workers can make unreasonable demands from their side (and I must admit that "reasonable" is an economic term referring to the ability



to pay, or not to put other people out of work)—that they can in fact demand much higher wages and thereby increase their relative share of the total cake, but at the same time reduce their absolute share as a result of the effect their demands may have on the absolute size of the cake. This very brief background explanation gives the main reason for the limited effect, if any, such organizations can in fact have on improving their workers' position. Secondly, there is the fact that the non-White members of the labour force in South West Africa are, to a large extent, not familiar with the economic principles underlying these considerations that I have tried to sketch very briefly in a rather popular way. Their demands might very well be based on the simple idea that there is plenty where this comes from, so I can just keep on asking, or just keep on turning open the tap. This is quite a normal attitude for people who have no or little appreciation of the responsibility that rests upon them in respect of wage claims and the repercussions these may have on other groups or on the economy as a whole. In this way it is quite likely that the very position which they tried to improve in fact deteriorates, and they are left worse off than when they proceeded in this direction.

Mr. GROSS: Are you sufficiently well acquainted as an economist with the general workings of collective bargaining to express an opinion to the honourable Court as to whether or not there is any better method of educating workers in the arts and sciences of collective bargaining than by practising it?

Mr. KROGH: As I explained earlier on this morning, there is the opportunity first to learn how to administer a union before you can use this instrument to negotiate and to use it as an instrument or organization to stake your claim, other than that that is determined by the ordinary market forces. In the very article which I quoted earlier on—if anyone would care to look at that—the main shortcomings and disadvantages were found to be that labour unions existed only in name while corruption in their administration was the rule in tropical Africa—I did not want to quote the many examples given by expert outside observers. The first problem is purely one of administration and management, let alone moving from that position to one of negotiating responsibly in a modern economy. In South West Africa the machinery is there, the opportunity is given first to learn how to administer, organize and consolidate your position as a labour organization, and this opportunity exists in the Territory.

Mr. GROSS: In what form does it exist, Sir, and where?

Mr. KROGH: To the extent that these people are in fact not restricted or prohibited in any way from forming labour organizations in the Territory, they are free to do so; and in so far as the level of education and literacy increases over time—a slow process in any development plan or approach.

The PRESIDENT: Could I just put something to the witness, Mr. Gross, if I may interrupt you? You seem to proceed upon the basis that if workers are entitled under the law of any particular country to form themselves into registered trade unions, the only purpose of so doing is to engage in collective bargaining, that is to say where the trade union deals directly with the employer and is able to extract from it or demand by virtue of the claim they put forward the best bargain they can get, unaffected by any interference, by and large, of a government. But are you

aware of other systems in the world, in modern industrialized countries, where there is no such thing as collective bargaining in that sense, where awards are made by third parties, and they cannot be altered—although the unions negotiate direct with the employer—except under the control of arbitration judges or officials in general community interests, for example, to prevent inflation and having regard to the justice of demands of various sections of the community? Collective bargaining is not the only system. Are you aware of those other systems?

Mr. KROGH: Yes, Sir, but I have not made a study of them—I am aware of them in my general knowledge as an economist.

Mr. GROSS: May I revert to the question of collective bargaining in the modern economic sector in South West Africa, and ask you what functions other than collective bargaining a Native trade union would normally engage in, if it existed?

Mr. KROGH: I am terribly sorry, I did not get the last part of that question.

Mr. GROSS: Would you explain what functions, if any, other than collective bargaining, a Native trade union in the economic sector of the Territory would engage in; what other function would there be for such a union, if it existed? I am just asking for your expert opinion.

Mr. KROGH: I think that the most important aspect from an economist's viewpoint, and I am not an economist in labour unionism as such, would be to look after the employment conditions, the wages paid, the hours of work, the housing conditions, the entry into that particular trade of other members, and to look generally to the welfare of the members of that particular union. I cannot quite see what you are getting at, but I would imagine those would be all factors that can be simply reduced to saying "looking after the material welfare of those particular workers in particular trades".

Mr. GROSS: And by "looking after" I take it you mean exercising collective power to achieve demands?

Mr. KROGH: If they can exercise this in a responsible way, yes.

Mr. GROSS: I did not ask that, Sir; I asked whether the function of a trade union would be to exercise collective power to achieve demands.

Mr. KROGH: This would be its purpose.

Mr. GROSS: That would be its purpose. So that the absence of collective power could affect the standard of wage, hour or working conditions in the enterprise, could it not, Sir?

Mr. KROGH: Theoretically it could affect it.

Mr. GROSS: And is the normal method of looking after the welfare of the members of the organization to present collective demands or grievances to the employer?

Mr. KROGH: Sir, this is a practice that is of recent origin even in the highly industrialized countries and is normal in that sense. I should imagine there could be exceptions—probably for very good reasons—but I do not quite know or cannot recollect these now. But you must remember, Sir, that the labour union movement is something of recent historical origin in the economic development even of highly industrialized countries. Therefore, only in that sense is it normal.

Mr. GROSS: Would there be any alternative other than the presentation of a petition to the governing authority?

Mr. KROGH: Yes, Sir. I would say the type of machinery that is under discussion here is an alternative to look after the material interests of

those particular workers. The administrative and labour machinery that is available, used and, in fact, works satisfactorily from an economist's viewpoint because it seems to resolve the different disputes that do arise while the material positions of these people are improving continually seen from an objective, economic viewpoint. So I would say that there are other ways of arriving at this particular objective. The one mentioned by you and by me is much better described, Sir, I take it, in some of the documents before this Court.

Mr. GROSS: Are the alternatives, if I can penetrate through to your response correctly and please let me know if I am wrong, either the exercise of collective power through collective bargaining on the one hand, or petition to or submission to governmental decisions and resolution of disputes on the other? Is it a fair interpretation of your testimony that those are the two alternatives fundamentally, or are there others?

Mr. KROGH: Sir, I could very well imagine that there are other forms and means where you have neither of the two, but I cannot give you examples at the moment. These are not the only forms—I used them by way of example, Sir, because you were referring to “normal” as that which you find in the highly industrialized countries.

Mr. GROSS: And you think these would be the normal alternatives?

Mr. KROGH: In a highly industrialized country.

Mr. GROSS: In the modern sector of the economy in South West Africa?

Mr. KROGH: Sir, even in the modern White sector in South West Africa trade unions among White workers were only instituted after 1950, so it is absolutely abnormal, even in the modern economy among White workers in the case of South West Africa historically, Sir.

Mr. GROSS: Just for the sake of clarifying this point, is the relative recency of the White trade unions attributable to the rate of economic development in the Territory, or are there factors which account for it of another sort?

Mr. KROGH: No, Sir. I think that the effective and responsible use of the trade union movement bears a correlation, or is associated, generally speaking, with the stage of economic development.

Mr. GROSS: You mean that the White employees were not economically developed sufficiently to have trade unions? Do I understand your response?

Mr. KROGH: I would say, Sir, that you must not think of South West Africa as a territory that is highly industrialized. There are, Sir, not very many jobs outside of agriculture. I think agriculture alone employs, by way of wage earning, about 40 per cent. of all non-White wage-earners. There are few White wage-earners relatively to the rest of the White population in South West Africa. They are mostly independent farmers and business people. These people are not largely a labour force working for wages or salaries, but independent entrepreneurs operating in the Territory. Therefore, I could very well understand, Sir, that the interest of the White workers only assumed proportions worth organizing at this late stage in the economic development of the modern sector of the economy in the southern part of South West Africa, and especially as a result of their urbanization. It must not be forgotten, Sir, that urbanization in South West Africa increased considerably only from before the Second World War to the present day. It was, in fact, a purely rural economy before 1938-1939, but with urbanization more opportunities for employment as wage-earners other than in the rural areas were created.

These are the major explanations of why White unions have come to the fore at such a late stage, Sir.

Mr. GROSS: Could your response perhaps fairly be boiled down to one sentence, Sir, that the reason there have not been White labour organizations until recently is that, until recently, there have not been many White labourers at work in South West Africa? Is that a correct version of your testimony, Sir?

Mr. KROGH: I would say so, yes. Preference has always been given, Sir, to employment of non-White members in South West Africa. This, Sir, is also policy with regard to the economy of South Africa . . .

Mr. GROSS: If you regard this as responsive, subject to the wishes of the honourable President, I would like to ask further questions. If you regard what you were saying as responsive: Mr. President, I thought I had had an answer to my question.

The PRESIDENT: Put another question, then, Mr. Gross.

Mr. GROSS: You have testified, Sir, that supplies of this type of worker are available in very large numbers. This was one of the expressions you used in your testimony—do you recall having made such a statement?

Mr. KROGH: Yes, Sir, and the word "type" has no reflection on . . .

Mr. GROSS: I am not asking you, Sir, to explain it. If you will forgive me, I asked whether I had fairly characterized the statement. I would like, if you permit me, to ask a question or two about that. I was not implying that you were using derogatory language. What, factually, did you mean by your words "this type"?

Mr. KROGH: Sir, very briefly in economic terms, I would say that the supply of unskilled labour in Africa is very elastic—that simply means, Sir, that there are many more people of this particular type of labour than can, in fact, be employed, Sir. That is all I meant.

Mr. GROSS: Sorry. In other words, is it correct, from the economist's point of view, that there is a surplus of non-White labour available? Is that a correct statement, Sir? Did you answer that yesterday?

Mr. KROGH: I would not use that terminology, but that is the case, Sir.

Mr. GROSS: Is it, or is it not, from the economic point of view, therefore, a well-established principle that a great supply of labour tends to depress wages?

Mr. KROGH: Quite so, Sir.

Mr. GROSS: When, therefore, you are dealing (I will ask you to advert to the northern economic sector) would the absence of collective bargaining or machinery for collective negotiations have any relevance to the wage or other working condition levels in the face of a surplus of available labour?

Mr. KROGH: Yes. I would like to explain this very briefly, if the Court permits me, Sir. The position is that the trade union movement would, in fact, restrict the number of people that could, in fact, become employed or offer their services—in this case, excluding other non-Whites—that will not in fact become employed. This principle of excluding others when there are not enough jobs to go round is, in fact, applied indirectly in the Territory in this sense, Sir, that outside workers entering into the Territory are given the lowest priority in the labour market. First and foremost, they start from the non-White workers that are available in the Police Zone. They, in fact, get priority and preference, Sir, during times of unemployment due to depression or to lowering in exports or prices which reflect back on the economy, reduce its employment capacity

and economic development. Then there is a second point, and that is that those labourers who proceed from the northern areas, Sir, get second priority in the sense that, first you employ those nearest to you, then those furthest from you, and then, lastly only, do the authorities in South West Africa permit workers from outside to enter.

The PRESIDENT: What is your conclusion from all that?

Mr. KROGH: The conclusion is that there is protection with regard to the interests of those nearest to the money economy against the supply of this type of labour from the northern territories, which would depress the wages, working conditions and employment opportunities of those nearest to the market. Similarly, those outside the Territory would have a depressive effect on those in the Territory, Sir.

Mr. GROSS: May I put one more question? Your reference (I hope perhaps this could be answered yes or no) to the fact that if labour unions existed they might have the effect of restricting the number of available employees. Did you testify to that effect, or did you not, Sir?

Mr. KROGH: I can see that it would be in their interest.

Mr. GROSS: No, Sir. Did you testify to that effect, or did you not, Sir?

Mr. KROGH: I said that they would, in fact, be inclined . . .

Mr. GROSS: Yes, to restrict?

Mr. KROGH: Whether or not there were enough jobs to go round, yes, Sir.

Mr. GROSS: Then, finally, again with the hope of a yes or no, Sir, then is it an economic effect of the absence of trade unions to keep a surplus labour supply available?

Mr. KROGH: Sir, there is no interest in keeping any labour surplus.

Mr. GROSS: Is this a practical economic effect in terms of your earlier response which you have just confirmed?

The PRESIDENT: Is what a practical economic effect?

Mr. GROSS: I am sorry, I thought the witness understood my question. Is the economic consequence of the absence of trade unions under these circumstances a method, or does it have the effect of making available a surplus labour supply? End of question, Sir. Can you answer that yes or no?

Mr. KROGH: No, not necessarily, Sir.

Mr. GROSS: Not necessarily, Sir. May I pursue this on Monday, Sir, with your permission?

The PRESIDENT: Perhaps on Monday the witness would seek to make his responses as brief as possible. This is not any criticism of you at all, Doctor. Your answers are very important, and many cannot be given in unqualified terms. The Court understands that. But if you are able to make them more briefly than you have, it will be appreciated by the Court. And, if I may say so, Mr. Gross, further time would be saved if the witness is not asked too often, in general terms, what he thinks about a certain matter or to comment upon something in general; since that simply widens the area of disputation and so takes up a great deal of time.

[Public hearing of 27 September 1965]

The PRESIDENT: The hearing is resumed. Mr. Gross.

Mr. GROSS: Mr. President, at the conclusion of the session on 24 September, on this page, *supra*, the witness had I think begun to answer the following question:

"Is the economic consequence of the absence of trade unions under these circumstances a method, or does it have the effect of making available a surplus labour supply?"

"Mr. KROGH: No, not necessarily, Sir",

at which point, Mr. President, you graciously said that we could continue at that point today, and I do so, Sir. Mr. Krogh, have you finished your answer to the question, or do you wish to, if you have not?

Mr. KROGH: Sir, I believe that the answer to that question is that the presence of non-White trade unions operating effectively in the Territory could have an effect of causing conditions of un- or under-employment. I might, if I am allowed to, just very briefly add that it must be clear to me before I answer that question what exactly is understood by the term "surplus labour", because this to my mind would exist whether you have such trade union organizations or not. I must have clarity on what exactly is meant by "surplus labour"; if it is meant that this is labour that becomes unemployed as the result of the presence or absence of such trade unions, then I should like to limit myself to that concept of the term. On the other hand, used in a general way I can assure you that surplus labour would exist irrespective of the presence or absence of such trade unions on a large scale in the Territory.

The PRESIDENT: I think Mr. Gross' question was rather limited, was it not, Mr. Gross, as the witness suggested?

Mr. GROSS: Yes, Mr. President; now, if I may follow your answer up with . . .

The PRESIDENT: Could the witness, Mr. Gross, give his answer to the question as limited by you? Do you understand, witness?

Mr. KROGH: Yes, Sir, in the limited sense of the word.

The PRESIDENT: I think that is the answer sought.

Mr. GROSS: Would you remind repeating that sentence—in the limited sense of what, Sir, with the President's permission?

Mr. KROGH: To the extent that un- or under-employment would be increased or decreased as a result of the presence or absence respectively of non-White labour unions in the Territory.

Mr. GROSS: In your response to a question on the same day, that is at page 156, *supra*, of the verbatim record, you said among other things as follows:

"The position is that the trade union movement would, in fact, restrict the number of people that could, in fact, become employed or offer their services",

etc.—that is the relevant portion of the testimony. Is your answer to my question different from, or intended to bear any sense different from, that which appears from this excerpt I have just quoted?

Mr. KROGH: No, Sir, my answer would not be different. I can see as an economist that it may indeed be in their narrow interest to restrict the supply of labour becoming available for employment. I can understand as an economist that it would be in the interest of a non-White labour union to try and restrict the number that could present themselves for employment, for the simple reason, if you want me to explain that, that for those that are, as it were, employed or inside the fence, if I may use that popular term, their employment conditions and prospects would be adversely affected by the inflow of large numbers of labourers to this labour market.

Mr. GROSS: Those economic factors which you have just mentioned would, would they not, operate to restrict the number of non-Whites that could in fact become employed or offer their services in the White sector?

Mr. KROGH: The position is that competition from this surplus labour, in the general and structural sense of the word, is experienced by non-White workers in the Police Zone. As an economist I can tell you that the White and non-White workers in the southern sector are, for all practical purposes, non-competing members, groups, or economic units. The restriction I referred to, and my answer in that context, was directed towards the effect that such restrictions would have on non-White workers at the moment fully employed in the southern sector.

Mr. GROSS: That is what I am referring to as well. You use the expression "non-competing groups". Would you be more explicit about the groups that you had in mind, and where the competition would lie or does not lie? In the phrase you use, what does the word "groups" mean there?

Mr. KROGH: Groups operating in the labour market. There are, however, different labour markets, there is not only one labour market. I think it may be misleading to think of the whole of the southern territory as one labour market. It is composed of very different labour markets in the sense that the supply conditions—the quality and quantity of the labour available for particular trades or particular jobs are diverse. We generally and popularly speak in a macro-economic sense of the labour market, but in fact as soon as you look at this it is more important to break it down into its various components, because the supply and demand conditions in each of these markets are different; that is after all why you have different wages or emoluments for different people, or for different professions or trades.

Mr. GROSS: Sir, you used the phrase, if I may get back to my question, with the President's permission, "non-competing groups", as I understood you. Were you referring to non-competing non-White groups, that is to say that non-White groups did not compete with each other, or that non-White groups did not compete with Whites—what did you mean by the phrase "non-competing groups"?

Mr. KROGH: I was using the term in the macro-economic sense. I was trying to tell you, Sir, that the members of the different non-White groups are, generally speaking and largely so, with few exceptions, competitive with regard to the members of those particular groups that I have mentioned, whereas they are not for all practical purposes, and speaking generally in a macro-economic sense, competitive with regard to the members of the White population group.

Mr. GROSS: Do you mean—to put it in simple terms, for the Court's complete understanding—that the non-Whites who reside in the southern sector, the economic sector, are in competition with the non-Whites who are recruited from time to time as migrant labour? Is that the meaning of your statement, Sir?

Mr. KROGH: Yes, that is what I am trying to convey—that the degree of competition is much more between members of these groups than it would be between members of these non-White population groups on the one hand and those of the White population group on the other. It is a matter of degree, I must admit, but the difference is so large that I regard it as a structural feature.

Mr. GROSS: The answer to my question, is it, Sir, that there is com-

petition for employment between non-Whites on the one hand who reside in the economic sector, and on the other hand those who are recruited for labour there; are they a competitive set of groupings?

Mr. KROGH: Yes, Sir, I think I have answered that.

Mr. GROSS: Since that is the case, would it not follow that the organization of trade unions on the part of those who reside in the Territory would have an economic consequence in terms of restricting or affecting the availability of migrant labour to employers in this sector?

Mr. KROGH: There are no non-White labour unions, as far as I know, in the southern sector.

Mr. GROSS: Mr. President, I regard this as an evasion of my question, perhaps unwitting.

The PRESIDENT: I do not think it is an evasion, Mr. Gross—you put two questions, really: as to whether it had a certain result, and whether it affected; it is difficult for the witness to answer when a question really contains two parts. I think if you will re-frame the question, then witness should seek to answer the question as put.

Mr. GROSS: I intended to ask, Sir, whether, in view of the competitive position between the two non-White groups, the existence of trade unions would have the practical effect—I stress the word would—from an economic point of view of restricting the availability of non-White migrant labour?

Mr. KROGH: I think it would be in their interest to do so, Sir.

Mr. GROSS: That is not my question. Mr. President, I must protest again.

The PRESIDENT: It would, would it, or would it not?

Mr. GROSS: Would it restrict, or would it not, Sir?

Mr. KROGH: I think it would, Sir.

Mr. GROSS: Is it not the case that disputes have arisen in this sector regarding precisely this competitive situation; do you know of any, of your own knowledge?

Mr. KROGH: Not that I know of, and I know why it has not.

The PRESIDENT: Your answer is that you do not know.

Mr. GROSS: Your answer is that you do not know?

Mr. KROGH: I do not know of any such disputes arising because of that, and I know why, Sir.

Mr. GROSS: You say that there have been no disputes arising out of the competition between non-White groups from the sector and from outside the sector respectively?

Mr. KROGH: Not any major disputes that have come to my notice, or that I would regard as of interest, Sir.

Mr. GROSS: May I call your attention to one which is cited in the Counter-Memorial, III, page 94, which is one of the five disputes there enumerated and which I read as follows:

“Smaller disputes involving strikes occurred at Walvis Bay [parenthetically the number is not specified in this pleading] as a result of the fact that various employers applied different wage rates and that extra-territorial and northern Natives gained the impression that they were regarded as less important and less valuable labourers than local workers from the Police Zone. Officials of the Department of Native Affairs investigated the complaints and approached employers, with the result that an Employers Association was formed and uniform wage scales recommended.”



Do I take it from your answer, Sir, that you are not familiar with those disputes?

Mr. KROGH: I am not familiar with that dispute and I cannot see that it is contradictory to the answer I gave, Sir.

Mr. GROSS: Now, Sir, do you think that the fact, as set forth in the Respondent's pleading, that labour disputes involving strikes occurred as a result of the fact that different wage rates were paid respectively to non-Whites from the sector and non-Whites from outside the sector bears upon the competitive situation between those two groups?

Mr. KROGH: Yes, Sir. I am aware that the different wage rates are the result of differences in the supply conditions of these workers who operate in, as it were, a common market. It could, in fact, be explained very simply in economic terms.

Mr. GROSS: Are you aware, Sir, why an employers' association was formed?

Mr. KROGH: No, Sir. I am not acquainted with this particular organization.

Mr. GROSS: But you are clear, Sir, why an employees' association was not formed, I take it.

Mr. KROGH: Sir, I know that there is no such employee organization.

Mr. GROSS: I presume that it would be fair to say, would it not, that had such an organization been formed it could not have been registered under the laws which are prevailing in the Territory? Is that not correct, Sir?

Mr. KROGH: That is correct, Sir. I testified to that effect the other day, Sir.

Mr. GROSS: I just wanted to have it in the record in this context of this dispute. Now, Sir, in connection with the responses you have given regarding the economic impact in terms of the restriction upon competition of employment which would arise in the event trade unions existed (I am not putting words into your mouth, Sir, I am paraphrasing what I understand you to have said and the record will show what you actually said), I do want, however, to refer to a report of the International Labour Organisation *ad hoc* Committee on Forced Labour, which is excerpted in large part in the Reply, IV, commencing at page 431, where the citation to the document is given (U.N. Doc. E/2431, 1953). The following brief extract from the report is set forth at page 436 of the Reply in the form of a conclusion on the part of the Committee as follows; what I shall read applies to South Africa. I shall, with the President's permission, then indicate that the same conclusion is applied to South West Africa in the same report. Paragraph 372, on page 436, reads as follows:

"With regard to the economic aspects of its terms of reference, the Committee is convinced of the existence in the Union of South Africa of a legislative system applied only to the indigenous population and designed to maintain an insuperable barrier between these people and the inhabitants of European origin. The indirect effect of this legislation is to channel the bulk of the indigenous inhabitants into agricultural and manual work and thus to create a permanent, abundant and cheap labour force."

And then to complete my question, Sir, at the same page, with respect to South West Africa, the Committee reached the following conclusion on page 438 after referring to the allegations made:

“The Committee’s findings on these allegations are the same as those which it reached in the case of the Union of South Africa regarding the compulsory nature of labour contracts for ‘non-Whites’”

and the next conclusion:

“The evidence before the Committee leads it to confirm in the case of South West Africa the conclusions it reached with regard to the Union of South Africa itself” [and in the footnote it appears that this paragraph 372 is one of those conclusions].

Now, Sir, with respect to the I.L.O. finding or conclusion, that the indirect effect of the legislation is “to channel the bulk of the indigenous inhabitants into agricultural and manual work and thus to create a permanent, abundant and cheap labour force”, would you please indicate to the Court in what respects you regard that conclusion to be fallacious or incomplete?

Mr. KROGH: I think it is fallacious and incomplete, Sir.

The PRESIDENT: In what respect, was the question.

Mr. GROSS: In what respect, Sir?

Mr. KROGH: Sir, if you want me to explain . . .

The PRESIDENT: I would like you to explain in full.

Mr. KROGH: The existence of an over supply of labour relatively to limited employment opportunities, Sir, is a major, in fact a distinguishing feature of underdeveloped countries. That is the first statement I would want to make in this respect.

The second, Sir, is that this is particularly so in those parts of Africa where, obviously, the extent of the development of modern economic activity is limited. This is, therefore, to my mind, an indication that the reference to this so-called legal system or restrictions operating in the case of South West Africa as being the cause and the major cause of the existence of so-called surplus labour is what we economists call a case of misplaced concreteness in explaining it, Sir. It is not the reason, nor would I regard it as the major reason, for the existence of so-called surplus labour.

I would like to go just one step further and explain that in 1961, in fact, a Committee of Economic Experts (I do not know who the members of the Committee were, that was responsible for the passages quoted, Sir, and that I am asked to comment on, but I do know who the members are of this Committee that I am referring to now) prepared a document for the I.L.O., which is published under the title *Employment Objectives in Economic Development*, 1961, and incidentally, in which they describe this whole dualistic system of economy—the existence of surplus labour—and, in fact, discuss the whole issue in front of the Court at the moment (if anyone would care to look at that). I quote one of their major conclusions with regard to the policy implication for development in such territories. They make the following statement:

“It is highly important that development policy should discourage excessive horizontal mobility by all the means at its disposal and should provide more satisfactory alternatives for those who would otherwise drift to the towns.”

This is on page 106, Sir.

I see most of these restrictions referred to as being designed to cope

with a labour problem in a territory where you have had economic development over a considerable period of time. Why I make this point, Sir, is that these problems and the necessity, in fact, to employ all the means at your disposal to limit the horizontal movement of labour is a development stage which most of Africa is still to experience in due course, if they come to that stage of development.

My general conclusion, Sir, is that those are the main reasons, put very briefly without further explanation, why I, as an economist, think that that diagnosis is both fallacious and incomplete.

The PRESIDENT: The I.L.O. diagnosis?

Mr. KROGH: The one referred to and in question. Yes, Sir.

Mr. GROSS: Just for the sake of clarity and correction, your reference—if I understood you—to the legislation as being a “major cause” (perhaps you misunderstood the resolution which I read to you) is that the indirect effect of the legislation is to channel the bulk of the indigenuous inhabitants, etc. There is no allegation in the report and no finding in the conclusion that this is a major cause, I just wanted to make this point so as to clarify the precise conclusion reached. However, I should like to ask you, if I may, with respect to a comment which you made in your response—you have, Sir, referred a number of times in your testimony to underdeveloped countries and underdeveloped economies, have you not, Sir?

Mr. KROGH: Yes, Sir, I have.

Mr. GROSS: Including the response you just gave, if I understood you correctly? Is that so?

Mr. KROGH: That it so, Sir, but I must immediately admit that all economists would agree that the term is again an unfortunate one, and that it has been forced upon them by politicians and journalists and other people. There are chapters written just about the concept “underdeveloped”, because it can really be very misleading.

The PRESIDENT: Very well.

Mr. GROSS: Yes, Sir. I was not taxing you with the use of that phrase, I just wanted to be sure that I understood that you had used it. The question that I should like to address to you, however, is whether you consider that the economy in the southern sector of the Territory is an underdeveloped economy in the sense in which you use the term?

Mr. KROGH: Sir, I use the term to indicate that the domestic economy of South West Africa (that is a term that we use to refer to all the economic activities within the national boundaries of the Territory) is, in fact, an underdeveloped economy according to the standard definition used by all United Nations Agencies to indicate whether a country is developed or underdeveloped. I could go further, if you would like me to.

Mr. GROSS: First I would appreciate knowing whether or not you care to answer my question.

Mr. KROGH: I am getting to your question, Sir.

Mr. GROSS: May I re-state it, Mr. President? Do you regard the economy of the southern sector of the Territory as an underdeveloped economy, in the sense that you have used the term?

Mr. KROGH: The term “under-development” is a relative . . .

The PRESIDENT: Do you, in the sense which you have used the term, regard it or do you not regard it as an underdeveloped economy?

Mr. KROGH: I would regard it as a less developed economy—an

underdeveloped economy compared with that of Great Britain or America, yes, Sir, but compared with the rest of Africa I would regard that sector or economy as a developed economy.

Mr. GROSS: You are aware, Sir, are you not, that the Odendaal Commission has described the economy of the southern sector as a modern or exchange economy? Are you familiar with the Odendaal Commission report in that respect, Sir?

Mr. KROGH: Yes, Sir: I am.

Mr. GROSS: Do you disagree with that characterization of the economy of the southern sector, Sir?

Mr. KROGH: Sir, I did give evidence on this the other day . . .

The PRESIDENT: Do you or do you not agree?

Mr. KROGH: I do not agree with it without qualification, Sir.

Mr. GROSS: Sir, at the risk of being facetious, is there anything in the Odendaal Commission report of a basic analytical economic nature with which you can express wholehearted agreement?

The PRESIDENT: I do not think that you can ask that question; there are about 500 pages of it.

Mr. GROSS: I am struggling for a statement in the report which I can hope for, flat out, Sir.

What qualifications would you like the Court to have before it in their consideration of the validity of the Odendaal Commission report in this respect, Sir?

Mr. KROGH: Sir, the terms "modern economy", "diversified economy", "underdeveloped economy" are all relative concepts. They are used rather loosely by people who have to formulate policy and people who have to explain many of these particular features in a very popular way. It all depends in what particular contexts those words were used in that paragraph. I have given evidence to show, Sir, that in a previous quotation out of the report I disagreed with its use and I thought it was an unhappy choice of terminology in that particular context. The same concepts may in fact be used to emphasize or explain something that the Commission had in mind in another respect, and I have to know in which context. I cannot say in general what I think the Commission had in mind when using these terms throughout the report to describe different situations, or to refer to some specific conditions in a modern economy that may be present in the southern sector, but which again also contain other features that would, normally, by no means be associated with a modern economy. So I would like to know specifically how these terms are used in the Commission's report in order to qualify them appropriately for your further enlightenment.

Mr. GROSS: Mr. President, if the witness would ask for clarification, I want to assure the witness and the Court that I shall be only too glad to furnish it. Now in response to the last comment, or question, for clarification, I refer for example to paragraph 1437 on page 429 of the Odendaal Commission's report and should like to read, if I may, the following:

"An analysis of the socio-economic progress made in the Territory in the past leaves no doubt that the first aim has been achieved, namely the development of a modern economy in the Southern Sector by the White group whereby avenues of employment and a new field of experience have been created enabling the non-White groups to transform their traditional socio-cultural background selectively with a view to autogenous progressive development."

I should like, Sir, to ask, in this context, whether or not you agree with the description of the Odendaal Commission of the economy in the southern sector as a "modern economy", "whereby avenues of employment and a new field of experience have been created enabling the non-White groups to transform their traditional", etc. Do you agree with that as a description of a modern economy? Or do you disagree with that formulation in the Odendaal Commission report?

Mr. KROGH: I would agree with that broadly, Sir: yes.

Mr. GROSS: Now, Sir, you are aware also, are you not, that the Odendaal Commission report likewise refers to the modern economy of the sector as an "exchange" or "money" economy? Are you familiar with that, Sir?

Mr. KROGH: I am familiar with that but I explained the other day that that association between "exchange" or "money" economy on the one hand, and "modern" economy on the other, is an unfortunate choice of concepts which is very popularly used in many reports by very qualified United Nations Agencies investigating the problems of underdeveloped economies. You see, Sir, I am not trying to be difficult on this subject. The point is just that the economic insights into development problems and policies, and the whole economics of underdeveloped countries for that matter, are still in an underdeveloped state themselves. As regards these concepts, we first have to agree on what we are talking about before we can start talking in the main. As economists we are in the stage where we are acquiring insight and understanding.

The PRESIDENT: The question is whether in general do you agree? There may be qualifications in your mind, by comparison with some other country, but in general do you agree with the description read by Mr. Gross?

Mr. KROGH: Yes, Sir, I would in general agree with that.

Mr. GROSS: Now, Sir, is it or is it not true that the Odendaal Commission report, for example, in its discussion on page 427, under the heading "Protection of Traditional Groups", with regard to the policy pursued in the Territory, the economic policy pursued in the Territory, that the Odendaal Commission analysis rests heavily upon the distinction there drawn between the so-called modern economy of this sector and the traditional or subsistence economy of the northern territories? Is that not a correct appraisal of the Odendaal Commission report, if you know, Sir?

Mr. KROGH: Sir, yes, and as an economist I think that it is a justified distinction for policy purposes in the Territory. I would think also that it is a wise one from the viewpoint of formulating and administering a policy of development in the Territory of South West Africa. In fact it is more striking in the case of South West Africa than it is in many other African territories.

Mr. GROSS: Is it not correct, Sir, to follow from what I understood to be your acquiescence, your affirmative answer to my question, in essence, that one of the basic reasons asserted in the Odendaal Commission report for differential treatment, on a racial basis, in the economic sector, is focused precisely on the argument that the southern sector is a modern economy, whereas the northern is a traditional subsistence economy? Is not this a principal reason assigned by the Odendaal Commission to explain the differential treatment between White and non-White in the southern sector?

Mr. KROGH: Sir, I am not aware of all the considerations which led the Odendaal Commission to adopt that approach, nor am I fully acquainted with the reasons for choosing those particular concepts.

Mr. GROSS: You testified before the Commission, did you not, Sir?

Mr. KROGH: I did, Sir.

Mr. GROSS: So far as you are aware, Mr. Krogh, did any other economist testify before the Commission?

Mr. KROGH: Sir, I do not know, but it could very easily be established, and this does not mean that there were no other economists. There is a long list of the witnesses at the back . . .

The PRESIDENT: You do not know?

Mr. KROGH: I do not know, Sir.

Mr. GROSS: That was the only question addressed to you. You do not know whether any other economist did testify before the Commission. Now, in the course of your testimony before the Commission, Dr. Krogh, were you asked or did you volunteer testimony concerning the nature of the economy?

Mr. KROGH: I did, Sir.

Mr. GROSS: In the southern sector?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Were you asked also with respect to the use of phraseology, not only in a technical word-game sense but expressing sound economic concepts?

Mr. KROGH: Sir, I cannot recollect precisely, but I can give you an assurance that I must have used terminology that they must have asked me about (for what it was worth), but I cannot specifically remember whether these particular concepts were discussed in the course of my appearance before the Commission.

Mr. GROSS: The record establishes, I believe, subject to correction, that no member of the Odendaal Commission was an economist. Can you confirm or deny the accuracy of that statement?

Mr. KROGH: Sir, there was a very well-known industrialist on the Commission and I know for a fact that he is very well served with qualified economists, in his private capacity. And I also believe that other economists were at his disposal, both in the formulation and in the discussion of the problems that arose in the course of the Commission's work. But I do not think any one of the members of the Odendaal Commission held a degree in economics, but Dr. van Eck was specifically appointed, if I remember correctly, for his economic knowledge and as an industrialist who has in fact served on very many economic commissions for the South African Government.

Mr. GROSS: Now, Sir, I am not seeking to impeach the capacities of members of the Commission. I wish to enable the Court to have the benefit of knowledge, if you had it, Sir, whether there were any economists as members of the Commission. I take it that there were not, Sir?

The PRESIDENT: But the witness's reply is an answer, is it not, Mr. Gross? An economist is not necessarily one who has a degree: he can acquire a great deal of experience but not have a degree, and yet be an economist.

Mr. KROGH: That is right, Sir.

Mr. GROSS: I would like to ask you, Sir, whether there were any economists or industrialists as members of the staff of the Commission, so far as you are aware?

Mr. KROGH: Sir, I do not know what exactly the staff position of the Commission was, but I am quite sure that the whole government service and all the expert departments were at their disposal, if required.

Mr. GROSS: One more question along this line, Sir. Were there any other economists—I shall leave aside industrialists for the moment, if I may—those who have been credited and professed economics as a career or profession, who have been cited by the Commission in its report, so far as you are aware, other than yourself?

Mr. KROGH: No, Sir, but I know that they have consulted economists who enjoy a higher standing than I do and, in fact, are better qualified than I am. Some of them are working at the Economic Commission for the South African Government full time, Sir, and they are highly qualified and eminent economists, Sir.

Mr. GROSS: Now, Sir, I wish to assure the honourable Court, as well as the witness, that these questions were not designed to banter the witness. I wish to make clear, Sir, that the analysis, on the basis of which the Odendaal Commission justifies the policy of apartheid or separate development, is the same as the basis upon which you were testifying, Sir, under the heading of the necessity of applying measures of differentiation between the various population groups in South West Africa. I was seeking to establish whether or not, as far as you are aware, the economic premises and the economic analysis, from which the Odendaal Commission proceeded in arriving at its conclusions, were in any major respect different from those which you have been testifying to before this Court.

Mr. KROGH: Sir, there are so many recommendations. I think it is very unreasonable, Sir, to expect me to answer very briefly. I wish to know to which particular recommendation . . .

The PRESIDENT: Then give a general answer. Take your time and answer it. The question has been put to you in general terms so you are entitled to answer it in general terms.

Mr. KROGH: Yes, Sir.

Mr. GROSS: May I, with the Court's permission, clarify . . . I wish to make clear that the question is understood. Are there any major respects in which the Odendaal Commission premises are different from yours in arriving at the conclusion that separate development or apartheid is a necessary condition of progress in the Territory?

Mr. KROGH: Broadly speaking, Sir, there is no difference in my opinion to those of the Commission on this particular issue, Sir.

Mr. GROSS: Thank you, Sir. Now, I should like to summarize the point with respect to the effect of labour organizations. I just have one more question on this, Mr. President. We have, in your testimony, Sir, to which I have referred on page 156, *supra*, the testimony that "the trade union movement would, in fact, restrict the number of people that could, in fact, become employed or offer their services". We have also, Sir, your statement in the verbatim of 23 September, at page 114, *supra*, in which you said that "these regulations would be designed to limit the number of skilled people in the territory, viewed as a homogeneous whole, to qualify for particular trades".

Now, Sir, I ask you, on the basis of those two statements, which I have cited from your testimony, would it be fair and accurate to say that the economic policy comes down to this, that the availability of labour is kept abundant and the flow regulated to meet needs, whereas the quali-

fication for skills is restricted in order to limit competition? Is that a correct summary of your testimony?

Mr. KROGH: No, Sir.

Mr. GROSS: Now, Sir, have you in your studies encountered or heard of Professor Leo Kuper?

Mr. KROGH: I have come across the name—yes, Sir. I have not met him personally, Sir.

Mr. GROSS: Mr. President, and Members of the honourable Court, he is, at the present time, Professor of Sociology in the University of California, Los Angeles, formerly Professor of Sociology at the University of Natal in South Africa. In an article appearing in a paper given to the African Studies Association in New York in October 1961, Professor Kuper stated as follows, at page 28, with reference to the policy of separate development or apartheid:

“Apartheid is, in fact, a very tightly knit system of integration extending to numerous aspects of the lives of the groups involved, a totalitarian system of integration.”

And, then, with specific reference to certain economic aspects, Professor Kuper states:

“A second illustration relates to the systems of influx and efflux control and of labour bureaux. In theory, these permit the precise integration of African labour into the economy. African labour can be treated as a commodity and fed into industry in the precise quantities and qualities desired, without any redundancies in the urban areas, while the reserves provide a pool to meet new or changing demands. This is a most exact and economical form of integration.”

Would you, Sir, as an economic expert, agree with that formulation or analysis of the economic system and the regulatory controls?

Mr. KROGH: No, Sir, I do not, Sir.

The PRESIDENT: Mr. Gross, if you simply ask a question with respect to what somebody else said and that somebody else is not before the Court, don't you propose to follow it up and ask him in what respects he does not agree?

Mr. GROSS: Well, I had intended to do that, Sir. I just wanted to establish first, with respect Mr. President, whether or not he agreed or disagreed. I wish to follow that up very ardently, Sir.

Mr. KROGH: Yes, first of all, this is a statement of a sociologist, Sir, and I am a qualified economist. Now, it is true, Sir, that we both belong to the social sciences, but it is generally known that economics is the most disciplined of the undisciplined sciences, that is of the social sciences, whereas sociology, Sir, is the most undisciplined of the social sciences. The basis on which the particular statements rest and the principles underlying that particular diagnosis, Sir, is something that I, as an economist, cannot agree with, and I would like to explain that, if it is required, Sir, but then I would like that statement written down so that I could take it step by step. More than a mouthful has been said there, Sir, and economic terms have also been used.

The PRESIDENT: I am sure Mr. Gross will do that. He will take it piece by piece now, I am sure.

Mr. GROSS: The systems of influx and efflux control and of labour



bureaux are the systems to which Professor Kuper addresses himself in this paragraph.

Mr. KROGH: That is clear, Sir. Thank you.

Mr. GROSS: Now, Sir, "in theory" [he says] "these permit the precise integration of African labour into the economy". Now, Sir, do you disagree, as an economist, with the sociologist here that these devices do "permit" of a precise degree of integration?

Mr. KROGH: I disagree, Sir.

Mr. GROSS: They do not permit of it, Sir?

Mr. KROGH: This system, Sir, does not, in fact, from an economic viewpoint, permit of economic integration of the members who are being controlled in coming into this economy, Sir, they do not become economically homogeneous units of the modern economy. I explained that the other day, Sir, and why I make this distinction.

Mr. GROSS: Now, secondly, or consequentially: "African labour can be treated as a commodity and fed into industry in the precise quantities and qualities desired without any redundancies in the urban areas while the Reserves provide a pool to meet new or changing demands." Now, Sir, do you agree that under these procedures and regulations African labour can be treated as such a commodity and fed in, as desired? Do you disagree with that, Sir?

Mr. KROGH: Sir, I disagree with that as an economist, first of all (this might not be the case with a sociologist), because we do not refer to labour as a commodity. Secondly, Sir, the whole intention and design of the control of labour coming in from the Native Reserves (in this particular case I have to have an example in mind to illustrate this very specifically, Sir—entering, say, from the northern territories to the southern modern economy) rest on two very good reasons that are increasingly being appreciated and, in fact, used as a basis for making policy recommendations in countries that are experiencing excessive horizontal movement of labour to areas where there are not enough jobs to go around, Sir.

The first is, Sir, that in order to avoid urban slum areas (this is looking now from the viewpoint, Sir, of the area where these jobs are available)—in order to avoid this open and, in fact, worse state of misery, Sir, it is regarded as necessary to control the influx of labour from areas where there are less jobs available at this stage of development. Furthermore, this labour is also controlled in the interest of the area from where these people come, Sir. In the course of my research I tried to establish what criteria were used from the side of the traditional economy, that is from where these people come, Sir—whether any criteria were applied in fact with regard to the numbers that were allowed to leave their traditional economy, because as an economist I am interested to see to what extent economic conditions could be affected by the absence of these workers from these traditional economies. In other words, Sir, to what extent could one technically regard the labour available there as "surplus" labour that could be removed or, in fact, be allowed to enter the developed areas to seek employment and thereby supplement their income earnings, experience and so forth.

Now I was told not by one but by several of the responsible officers, Sir, that the number they have in mind varies from 7 to 10 per cent. of the total population in, for instance, Ovamboland, which as you know accounts for nearly half the population of the Territory, Sir. The reason

given for this variation is that it all depends on the particular year or season of the year—droughts often last for several years in South West Africa and would obviously make more labour available. They would in fact then try their best from that end, if a similar drought didn't hit the other part of the modern sector as well, to allow more of these workers to acquire jobs in the modern sector in order to supplement their earnings and livelihoods by going out to work. But apart from the seasonal factor of variation, Sir, they also know that as soon as there is available in the traditional economy less than one able-bodied man to two women, a stage is reached that could be regarded as a danger point for all practical purposes. In fact this is a general rule used in other parts of Africa as well, and I can give you the literature on this if you require it, Sir. The reason is, Sir, that in this particular economy which I now have in mind (I am referring to the traditional Ovamboland economy) the women are the agricultural workers, whereas the men are not required to do regular jobs in this type of economy, with the result that they are available, as it were, in surplus form part of the year or time that they are not required to do the particular tasks that are traditionally required of them.

Hence, the extent to which such labour control operates is not, in fact, that indicated by the Professor quoted by Mr. Gross. The extent of control and the restrictions applied are based on dual economic considerations and I should imagine that there are other social considerations as well. They are nevertheless based on economic considerations that apply in fact to both the modern sector, Sir, and to the area from which these migrant workers originate.

Mr. GROSS: Sir, would it be a fair reduction of your response to its essence to say that the African labour through these devices can be treated as a commodity and fed in to industry in the precise quantities and qualities desired?

Mr. KROGH: Sir, I would not use that terminology. But I think that the placing of labour in the sense that you regulate the available labour, see to it that they arrive at and come to areas where there is a shortage of labour—South West Africa is a very vast territory as I pointed out the other day, 20 times the size of the Netherlands and its population half the size of that of The Hague—these mining activities, the farms, the employment opportunities are spread over vast areas, Sir, and in order to regulate and place the workers coming in from the northern territories as quickly, speedily and conveniently as possible—by convenient I mean with regard to the workers—Sir, I can very well understand that this may in fact be part of the reason why control is exercised in taking into employment these labour units entering into the modern economy of the Territory.

Mr. GROSS: Now, Sir, the last point in the paragraph I have cited is “this is a most exact and economical form of integration”. Now I think you have already commented on that use of the term . . .

Mr. KROGH: I disagree with that completely, Sir.

Mr. GROSS: Yes, Sir. Do you wish to comment further?

Mr. KROGH: No, Sir, I am quite happy about my reply, Sir, in my previous testimony.

Mr. GROSS: Now, with the President's permission, I would like to turn back to the Odendaal Commission report and refer to page 315. I am now referring, Sir, to the southern sector as the report does in the

context which I shall refer to. At page 315, in paragraph 1284 (a) under the heading of "The Exchange Sector", the following statement is made in the Commission report among others:

"The members of this developed sector are White and their standard of living is, etc." [for the purpose of my discussion it is not necessary to complete this sentence, although I will be glad to do so].

The PRESIDENT: Where precisely is that paragraph? Is it the long paragraph?

Mr. GROSS: Yes, Sir, it is the second sentence. Did I say 1284?

The PRESIDENT: Yes, but I realize it is 1285.

Mr. GROSS: It is 1285, I am sorry, Sir. "The members of this developed sector are White." In the first place have you commented to the fullest extent you wish with respect to the phrase "developed sector" in this context?

Mr. KROGH: Yes, Sir. I would not like to cover all that ground again, Sir.

Mr. GROSS: Now, with respect to the use of the phrase "the members", what, if you know, do you understand the intent or purport of that phrase to be in this context?

Mr. KROGH: Just exactly what it says, Sir.

Mr. GROSS: How do you distinguish between a member of the sector and a non-member; as between, let us say, a non-White who has been born, lives and works throughout his life in the sector, and a person who does the same thing but with a different colour, for instance White? How do you determine the basis on which one is a member of that sector and the other is not?

Mr. KROGH: The easiest way for me, as an independent economist, Sir, would be to apply a rule of thumb in this regard and look at the colour of the skin of the particular person, Sir, because I know that the historical background, economic qualities, aptitudes and so forth of the members of the White group are quite different from the rest for all practical purposes of my analysis, but not necessarily for purposes of administering laws or anything like that. I will be observing this as an economist, Sir, describing a thing as I see it but I do admit that I may be wrong with particularly small exceptions. Generally speaking, however, I would, in fact, be quite happy that I will be describing quite satisfactorily for purposes of economic analysis, the different types of economy that you have there.

I do not for a moment suggest, Sir, that there is necessarily any direct association . . . between the colour of your skin, Sir, and your economic performance—I do not know, Sir. But I do in fact say that in practice I observe this without enquiring further, Sir, in my particular field of study. Whether there is any association between the colour of your skin and your economic performance might be quite incidental. I, as an economist, if you want to know this, am inclined to think it is a difference in the stage of development of different groups of people, Sir.

Mr. GROSS: Now, Sir, is a White child, let us say five years old, a member of the White sector in the sense in which you use the term?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now, that would be because of his ethnic parentage—would it, Sir?

Mr. KROGH: No, Sir. I tried to point out the other day, Sir, that economists have borrowed two concepts to describe different kinds of economic societies. We have borrowed these from sociologists and anthropologists. We are not happy about these concepts being used in every context because they often convey wrong ideas that may be emotion-inspired, Sir. Nevertheless, we distinguish between on the one hand what we call "tradition-bound societies"—this does not mean that it is a permanent state at all, as a matter of fact, Europe was inhabited by tradition-bound societies several centuries ago, Sir—and on the other hand, you have economic societies like those that went to the so-called New World—New Zealand, Australia, Canada and the United States of America, Sir—that had quite a different social, cultural and economic background to the people who have traditionally lived in Africa, Sir. As economists we say that the economic problems of development, the absorptive capacities of these different societies with regard to the investment of capital, or the extent to which public support or aid should be given to these two different types of societies are quite different for policy purposes, Sir. I can go into detail to explain why we regard this so, but I do not think it will be necessary as I did in fact make this point in the course of my evidence, Sir. As an economist interested in these problems I wish to say that the fact that the one society's members are largely of a different colour than those of another society would, according to my mind, Sir, be completely incidental. But it is a rule which I must admit one applies, it is only human to do so, Sir, and I am quite happy economically speaking that here I arrive at a diagnosis which is for all practical purposes, Sir, approximately correct.

Mr. GROSS: Now, Sir, you referred to the absorptive capacity of the group as a group—is that what you had in mind, Sir?

Mr. KROGH: That is correct, Sir.

Mr. GROSS: Those individuals who have relatively poor absorptive capacity come under the umbrella of the group, do they, for the purpose of your analysis?

Mr. KROGH: That is correct, Sir.

Mr. GROSS: In this respect a one-year old child has more or less absorptive capacity than let us say a five-year old?

Mr. KROGH: He has more absorptive capacity because he is my child and he is born and brought up in quite a different social, cultural and economic environment than would be a child in the other example that you were, in fact, trying to refer to, Sir.

Mr. GROSS: Now with respect, Sir, to Coloured, as the classification in the census—do you regard the Coloureds as having absorptive capacity similar to the so-called Natives or the so-called Whites?

Mr. KROGH: Sir, I regard the people of mixed colour in South Africa referred to as Coloureds to have a greater absorptive capacity from an economic viewpoint—by that I simply mean that they can make more productive use of capital, aid, technical assistance under exactly similar conditions than would be the case of a population group of the same size composed of members of the Native population, Sir. Yes, I would say that, Sir, as an economist.

Mr. GROSS: That they have the same absorptive capacity . . . ?

Mr. KROGH: No, Sir.

Mr. GROSS: I misunderstood you.

Mr. KROGH: So sorry, I am terribly sorry, Sir.

Mr. GROSS: No, it is my fault. Clarify it, if you will, if the Court permits.

Mr. KROGH: No, it is not necessary—what I had in mind was to tell you that I, as an economist, observe and would state, Sir, that as a group they have a different absorptive capacity—that is the concept we use to indicate different productiveness. The Coloured group would, I think no doubt be more productive in the sense that I have used that word, Sir.

Mr. GROSS: Is the question then of productivity irrespective of race, did I understand you correctly, the criterion?

Mr. KROGH: Irrespective of race, Sir, because I am absolutely convinced, especially after I had visited the United States of America, Sir, that the cultural, social and productivity levels between, for instance, the so-called "Negro"—which refers to the non-White population members or people of a dark colour there—are very close indeed, Sir, if not virtually identical, to that of the large majority of White Americans. I am quite sure there must be many Negroes who are in fact economically more productive or have a greater absorptive capacity than a large number of, for instance, the White group. This proves to me as an economist that it is not a matter of race at all, Sir. To me it is a matter of differences in stages of general development, Sir.

Mr. GROSS: Now, Sir, in the Odendaal Commission report at paragraph 121, page 33, the Commission describes the Coloureds numbering 12,708, as follows as having—

"... strong Caucasian strain and for the most part maintain a Western culture and way of life. Their language is chiefly Afrikaans. A considerable number hail from the Cape Province. The Coloureds are found mainly in the larger towns, such as Windhoek, Walvis Bay, Luderitz and Keetmanshoop, where they are employed or have their own businesses in industry. Many are artisans in the building trade. A small proportion make a livelihood as stock-farmers."

Would you say, Sir, that they are not included as members of the White sector for any reason other than their race?

Mr. KROGH: To my mind, Sir, I will answer that question by saying simply that if you want to split hairs, I would like to go further on that. I can make these distinctions even clearer, Sir, but I would use those terms to typify, Sir, a type of society and to contrast that which is important for economic development policy purposes with another type of economy or group of people you have referred to, Sir.

Mr. GROSS: The Coloureds, Sir?

Mr. KROGH: Yes, Sir. I was referring to this type of society you were describing. You were explaining their typical economic activities and this, in fact, substantiates what I tried to tell you just now, namely Sir, that that description indicates to me as an economist that they are economically more viable than the Native population groups but less viable, Sir, I would say, than the White population group.

Mr. GROSS: Sir, may I have time for one or two more questions?

The PRESIDENT: Well, try them out anyhow, Mr. Gross.

Mr. GROSS: Dr. Krogh, with respect to the classification of the population in this census on the basis of Native, Coloured and White, is it or is it not a fact that restrictions upon freedom and limitations upon advancement attend the classification, and are a consequence of the classification? Is that not correct, Sir?

Mr. KROGH: I did not quite get that last question, Sir.

Mr. GROSS: Is it or is it not a fact, Sir, that the classification of inhabitants of the Territory as White, Native or Coloured determines to a large extent the limitations which are imposed upon certain freedoms and the ceiling set upon their advancement economically? Is that a fact, Sir?

Mr. KROGH: Sir, I cannot see any ceilings of economic advancement upon these people. As a matter of fact it is a main characteristic, Sir, of economic policy in these territories that all efforts are being employed, and it is part of declared and practised policy, Sir, to uplift the members of those groups that are at an earlier stage of economic development. And this, Sir, cannot always be done by integrating them socially, politically and economically into one society. As an economist I can hardly see how you can integrate the underdeveloped majority into a developed minority—I can understand that this problem is the opposite and difficult enough in America, but I cannot in the case of Africa—but that is apart. I am telling you in fact, Sir, that there are no such things as economic ceilings. New opportunities are being created at a rate that impresses me as an economist, Sir, who has studied the problems of expanding the economic freedoms of people, by that I mean the problem of economic development in the rest of Africa, and other parts of the world.

The PRESIDENT: I do not think there is time for another question now, Mr. Gross, but your last question did involve two separate questions really.

Mr. GROSS: Yes, Sir. I am still at the ceiling, Sir.

The PRESIDENT: I do not think you have got beyond the first floor.

Mr. GROSS: I think the ball was in my court, was it not, Sir? With respect to the question which I addressed to you, I had the impression from your response that you may have used the term "ceiling" in a different sense from that which I had intended. I should like to call to your attention, and ask whether you agree or disagree with, the following testimony, brief excerpts of which I should like to read into the record at this point, previously given in these proceedings. The first is testimony given by Dr. Bruwer, former member of the Odendaal Commission; I refer particularly to the verbatim of 6 July proceedings at X, p. 308, at which, in response to my question to Dr. Bruwer—I asked:

"Is it the opinion of the Odendaal Commission that, so long as a non-White is in the White territory, he must be subject to limitations upon his freedoms?"

Mr. BRUWER: That, Mr. President, was certainly the consideration of the Odendaal Commission on the basis of the broad approach of the problem that I have tried to indicate."

And then I asked:

"Therefore, it would seem to follow that if the non-White, who might spend his entire working life, or longer—beyond his retirement—in the White area, would be subject to imposed limitations on his freedoms so long as he was physically present in the White area. Is that correct?"

Mr. BRUWER: That is correct, Mr. President."

Now I should like to read a colloquy between Mr. Cillie and myself; this

is from the verbatim record of 13 July at X, page 538. In that colloquy on that page the following exchange took place:

"Mr. GROSS: And the answer is 'yes' to the question that there are ceilings placed upon non-Whites, solely because they are non-Whites? Is that correct?"

Mr. CILLIE: No, I would say no. If you put it like that, I would say placed upon them because they do not belong to the White group."

And then finally witness Professor Logan, testifying on 9 July, at X, pages 410-420 of the verbatim record—the following exchange:

"Mr. GROSS: Now do those restrictions [this referred to restrictions upon achieving higher employment status], on the basis of your study and analysis, have any relationship to the individual's innate capacity or personal potential and ability?"

Mr. LOGAN: They have no relation to this, no.

Mr. GROSS: They are based entirely, are they, on his classification under the census?"

Mr. LOGAN: That is correct."

Do you agree with me, Sir, that the quotations I have read from Dr. Bruwer, Mr. Cillie and Professor Logan all come to the same point: that ceilings are imposed upon individuals in the White sector because they are not members of the White group. Do you have any question about the purport of the testimony I have read in that respect?"

Mr. KROGH: No, Sir, I have . . .

Mr. GROSS: Do you agree with that, and if you do not, will you please explain to the Court why you do not?"

Mr. KROGH: Agree, Sir—I must say now whether I agree or disagree? This is completely a value judgment; the word "agree" implies that I say that that must or should or should not or must not be done. I want to make clear that when I say that I agree with that, then I say so in the sense that as an economist I agree that the problems of economic development and hence the most appropriate policies for the development of these different population groups are basically different; therefore the policies appropriate to these particular problems of development are different. I will go further, and I will say that even if these people were at the same stage of economic development I can still, as an economist—it is not a matter of whether I agree or not—very well understand how members of one group at the same stage of development as that of members of another group may prefer to retain their identity as a group. This may be for economic reasons only, but it may also be for non-economic reasons.

As a matter of fact, Sir, in the rest of Africa—I am referring largely to tropical Africa—you find that the inhabitants are organized socially into different socio-economic units or groups. They are more or less, generally speaking, at the same stage of economic development, but they nevertheless want to retain their identity. They may not prefer to be governed or ruled by members of another group, and to that extent they may very well lay restrictions or impose limitations on the entry of other group members to the extent that members of other groups would want in fact to govern them or administer them. I can understand that—but whether I have to agree to that or not is, I feel as an economist, a question that

can only be answered with a policy implication, and that is a personal matter. As a South African, I am also a member of a group, and my answer would be my personal views. I do not think that is worth anything to the Court, that is my personal views as a member of a group, as distinguished from my views as an economist.

Mr. GROSS: Mr. President, Sir, in the interests of expedition and clarity I am attempting my best to keep my questions clear and to request answers which do not involve extended comment. Mr. President, I had asked the witness whether he agreed with the statements made, which I have read from the testimony. The witness it seems to me, with respect, Sir, has explained his views concerning the validity of the policy. I would like to have the record clear on this point, Dr. Krogh, with the President's permission, whether you can give an unqualified statement concerning whether or not you agree with the accuracy or validity of the testimony which I have read.

The PRESIDENT: The difficulty I think arises between yourself and the witness, Mr. Gross. You ask him whether he agrees with three statements. It is a little difficult, you know, for the witness; there is the position of the witness to be considered. I do not think it was fully responsive to your question, but it would be easier if you put separate issues to him. Does he agree with this, does he agree with that? To ask him if he agrees with three statements leads him apparently into the position where he does not know precisely what he is to answer.

Mr. GROSS: I accept that of course, needless to say, Sir. I had attempted to circumvent that by asking whether he regarded the three statements as having the same purport. I would not press the witness, Sir, if I did recollect and understand the response. The question is do you agree, Sir, with the validity or accuracy of the statement by Mr. Cillie, that ceilings are placed upon non-Whites because they do not belong to the White group? Is that an accurate statement so far as your economic analysis, expertise is concerned, or knowledge of the fact, is that a correct statement or is it not, Sir?

Mr. KROGH: Sir, to the extent that the members of the White group prefer to impose these restrictions on members of other groups, I, as an economist, would observe this . . .

The PRESIDENT: But that is not the question you are asked, Dr. Krogh, the question is whether in fact there is a ceiling placed upon them? That is the question. The reasons for the placing of the ceiling is another matter and either you give your reasons at some later stage in answer to counsel for the Respondent or you do not give them at all, but that is the question.

Mr. KROGH: There are restrictions operating on members of non-White population groups that are in fact employed in the White economy. Yes, that is the case, Sir.

Mr. GROSS: Now, I am asking this question, Sir, so that you may consider your response in terms of the reason for my putting it to you. Would you please advise the Court, without reservation if you can, whether or not restrictions or ceilings are placed upon non-Whites because they are not members of the White group?

Mr. KROGH: Yes, Sir, there are restrictions placed on them because they are not regarded as members of the White group.

Mr. GROSS: Now, Sir, would you tell the Court whether in your analysis of the economics of the Territory, I am referring now to the southern



sector, whether non-White labour is essential to the viability of the economy?

Mr. KROGH: Sir, I must ask exactly what is meant by viability, Sir. I do not think we understand each other on the use of the term.

The PRESIDENT: Is it essential for the functioning of the economy, I suppose?

Mr. GROSS: I would be glad to rephrase the question. I was trying vainly to use a phrase that I erroneously attributed to the economics profession.

Is the use of non-White labour necessary to enable the economy in the southern sector to survive?

Mr. KROGH: Definitely not to survive, Sir, but to operate at the level at which it is operating at the moment. It is, in fact, an economic part of it. That is my reply, Sir.

Mr. GROSS: In other words, Sir, your qualification, if I understood you correctly, was that it could not survive as a modern economy? Is that a correct interpretation?

Mr. KROGH: I think it can survive as a modern economy without any non-White labour, Sir. I use the term "survive" to mean what that term means literally.

Mr. GROSS: Now, would you be prepared to say that the economy would be able to thrive without non-White labour or do you accept that as a fair description of a condition of the economy?

Mr. KROGH: Sir, I think that the economy operates at a higher level because of the use of the non-White labour compared with the situation that would obtain if non-White labour had not been used. And I also think that it is in the interest of both Parties economically speaking . . .

The PRESIDENT: That is not the question you were asked.

Mr. GROSS: May I rephrase it, Sir?

The PRESIDENT: Certainly.

Mr. GROSS: Would you accept the thriving of an economy as a description of its quality? Would you prefer to use another word to describe its operation at a satisfactory level?

Mr. KROGH: It depends what you have in mind, Sir. A satisfactory level is a completely relative term.

Mr. GROSS: I would like to ask you, Sir, in order to avoid a seeming debate or argument between us, which I am sure would be out of place, whether or not therefore, as an economist, you would agree or disagree with the testimony of Dr. Bruwer in the verbatim record to which I have referred, on 6 July, X, page 303, in which Dr. Bruwer agreed that he could not, as a member of the Odendaal Commission foresee, "the practical possibility of the White economy surviving and/or thriving without the use of non-White labour". Do you, as an economist, wish to take issue with Dr. Bruwer, as a member of the Odendaal Commission or otherwise?

Mr. KROGH: I know Dr. Bruwer personally, Sir, and I am sure that he spoke there as a non-economist, also using words that if I explained to him exactly what those terms meant to an economist, I am inclined to think that he would agree—but he has his own opinion on this of course—that that statement is not correct, Sir.

Mr. GROSS: What statement is that, Sir?

Mr. KROGH: The last statement you read to me, Sir.

Mr. GROSS: Is not correct, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: The record will have to speak for itself. Now, Sir, in the testimony relating to this same matter, in the same verbatim record, on page 304, Dr. Bruwer was asked questions with respect to the time span envisaged, if any, with respect to the ultimate objective, as he described it, when the White economy could operate without non-White labour at any acceptable level. The question was as follows—I am simply identifying the problem so that you can focus on it as I read now the exchange—page 304 of the same verbatim record which I have just cited:

“The Odendaal Commission based its recommendations, if I understand you correctly, on the assumption that at some time in the future, the White economy would operate without non-White labour. Is this a correct version of your testimony?”

Mr. BRUWER: That is a correct interpretation.

Mr. GROSS: And what time span did this conclusion cover?

Mr. BRUWER: Mr. President, the Commission certainly did not consider a span of time.

Mr. GROSS: Is this an important factor in the life of an individual living today?

Mr. BRUWER: It may well be, Mr. President.

Mr. GROSS: Could such a span extend, let us say, for 300 years possibly?

Mr. BRUWER: That is also possible, Mr. President.”

I should like to ask you as an economist, Sir, whether or not the operation of the White economy without non-White labour is, so far as you are aware, a policy or objective of the Government?

Mr. KROGH: Sir, I am aware that politicians have in fact made that statement.

Mr. GROSS: Did you say politicians, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: I did not understand: I am sorry.

Now, would you answer the question in your own terms, Sir: do you know whether or not this is an objective of the Government?

Mr. KROGH: Sir, I think it is the objective of the Government to create as many economic opportunities in the areas now set aside, which will in fact be expanded as and when required, outside the White sector, with the particular purpose that the members of the different population groups need not come into direct personal contact in view of the need of their economic interdependence. Whether they envisage a White economy, in the sense that there would not be a single member of the non-White population group, either on business, on vacation, to acquire skills, to attend institutions of learning or at all, I cannot say. I do not exactly know what they have in mind ultimately.

But I know that it is part of the policy, and I have evidence to show, and I am quite content, that they are trying to spread the modern economic activities to areas where the different population groups, or the members of these different population groups, can live and work, be born and die, without necessarily having to come into contact with the members of other population groups.

Mr. GROSS: Dr. Krogh, does the policy of separate development, about which you are testifying, as a witness and expert, contemplate, or does

it not contemplate, that there will for an indefinite period be non-White labour available and at work in the economic sector of the Territory?

Mr. KROGH: That I do not know, Sir.

Mr. GROSS: You do not know the answer to that, Sir. You testified before the Odendaal Commission with respect to the policy of separate development, did you, Sir, in any respect?

Mr. KROGH: Sir, I cannot exactly remember the details of the questions that were put to me at this occasion. It is quite possible . . .

Mr. GROSS: I do not want to press you for details or tax your recollection, that undoubtedly would be unfair. Did you testify before the Odendaal Commission in respect to the question of separate development in any of its aspects?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now would you please indicate to the Court whether, in your testimony, the subject of the ultimate objective of the programme was involved?

Mr. KROGH: Sir, the only objective that was in fact discussed, at the occasion of my appearing before the Odendaal Commission as an economic expert, was the immediate objective of developing the areas that had thus far not been developed economically to the same extent as those that I have described to you as the modern sector in the southern part of the Territory. And, in this connection, we discussed matters—I can remember now, Sir—with regard to whether one has to approach these development problems differently from those in the modern White sector of the economy. As a witness there I told them that I believed that the problems were basically different, for several reasons, which I need not go into now.

The PRESIDENT: You need not give the reasons at this stage, Doctor.

Mr. GROSS: May I begin, for the sake of clarity and expedition, to say that I am referring to the modern sector and I would like to ask you now, Sir, whether the mining industry, for example—are you familiar with the employment figures in the mining industry, by the way?

Mr. KROGH: More or less, Sir.

Mr. GROSS: Perhaps I could save you taxing your own recollection if I could find them myself. According to the Odendaal Commission report, page 343, the employment in mining in 1962 was as follows: White, 2,003, and non-White, 8,734. Do you have any reason to question those figures?

Mr. KROGH: No, Sir, but I want to make quite sure that they refer to South West Africa. Yes, Sir, of course that is right.

Mr. GROSS: I am referring to South West Africa only, Sir. With respect to the question of the operation of those mines I address this question to you. Both as a witness and as an economist, or either, what would be the source of White labour in these mines if non-White labour were no longer to be employed at a given point?

Mr. KROGH: Sir, I shall gladly answer that question. The most highly mechanized industry in the whole of the United States, I am told by United States economists, is the mining industry and I look at the United States because this indicates to one what technical means of producing things . . .

Mr. GROSS: Sir, may I interrupt a moment to ask a clarifying question?

The PRESIDENT: I think he is answering your question, and I think

you should give him a little longer. I think he is going to refer to automation.

Mr. KROGH: Yes, Sir.

Mr. GROSS: Yes, Sir, but I thought we might telescope it.

The PRESIDENT: You should make your answer as short as you can, Doctor.

Mr. KROGH: I will try, Sir.

Mr. GROSS: Well, in other words, Sir, would your answer be, if the President permits, that there would not be White labour employed in the mines under those circumstances: they would be fully automated? Is that the purport of your intended answer?

Mr. KROGH: I was trying to show you, Sir, that I think it could be quite economical to operate the mines in South West Africa largely without non-White labour, which is mostly not of a highly skilled and managerial nature.

The PRESIDENT: You mean at the present moment that could be done?

Mr. KROGH: Well, at the present moment I could not possibly see why it would be in anyone's economic interests to do that, but it is a hypothetical question. Nobody wants to remove these people instantly.

The PRESIDENT: Technically is it possible today?

Mr. KROGH: Yes, but it would not be economical.

The PRESIDENT: I understand that.

Mr. GROSS: Sir, without wishing to quarrel with you, would you seriously regard it as a hypothetical question to enquire as an economist into the effects in the mining industry if the non-White labour was eliminated in the light of the Odendaal Commission assumption that there would be no non-White labour in South West Africa at some future time? Is this not a question for an economist?

Do you wish to continue with your answer, Sir, on the basis of whether or not there would be non-White labour employed in the mines under any foreseeable circumstances, so far as you are aware, if the mines are to continue to operate?

Mr. KROGH: The rising price, or wages of these non-White labourers could in fact be such, after a certain stage, that it would justify the introduction of mechanical means or automation, as has in fact been done in the United States of America, with the shortage of labour that has developed over the time there. Under such conditions I can see that the mines would, if the labour was the same quality at that stage, find it economical to operate without this labour. I can visualize that, depending on the economic conditions that are assumed to apply in due course. I must know what the economic conditions are otherwise I cannot answer yes or no to that type of question.

Mr. GROSS: Dr. Krogh, based upon the answer you have just given, as an expert, would there be White employees if the mines are to continue to operate?

Mr. KROGH: Within the framework of the policy of separate development, it is clear to me that there would be members of the White group employed and working in the mines in the White areas.

Mr. GROSS: The mines, in other words, could not operate unless there were either White or non-White labour or both: that is clear, Sir? They could not be 100 per cent. automatic, could they, Sir?

Mr. KROGH: I was not suggesting that for a moment . . .

Mr. GROSS: I was just asking you a question.

Mr. KROGH: Yes.

Mr. GROSS: Now, under the circumstances we are discussing, and I refer now specifically to the fact that you are testifying both as a witness and an expert, with regard to the necessity for separate development in the Territory, would it be the case necessarily that under those circumstances, that is the elimination of non-White labour in the mine, no jobs would be available at a higher level of labour for non-Whites under the policy of separate development?

Mr. KROGH: Sir, the point is not "necessarily", and I would like to explain that if you would give me an opportunity to do so.

Mr. GROSS: Sir, I would like you to answer the question, yes, if we understand each other on what the question is.

Mr. KROGH: Sir, it is quite possible that in due course, in 10, 20 or 30 years' time, the whole mining industry might in fact be operated by non-White labour from the bottom right up to the top.

I can give you an example where this specialization of the different population groups is now, in fact, developing in South Africa on an industrial basis. This means that the whole industry is virtually being operated, as it were, by non-Whites in White areas. So it is quite possible, Sir, that the Whites that are in fact at the moment employed in the mining industry may very well in 20, 30 or 40 years' time not prefer themselves to work in mines in their own White areas. This is quite possible, it depends upon the economic situation and conditions and opportunities at that time, Sir.

The PRESIDENT: It does not require even an economist to come to that conclusion, does it Dr. Krogh?

Mr. GROSS: Under the policy of separate development to which you are addressing your testimony, Sir, would Whites and non-Whites be permitted under any circumstances in the sector to work alongside each other in a situation in which a White takes orders from, or operates under the supervision of a non-White?

Mr. KROGH: I do not know, Sir.

Mr. GROSS: You do not know whether that is a characteristic of the separate development or apartheid policy? You do not know, Sir, whether this is a characteristic of the apartheid or separate development policy?

Mr. KROGH: It is not its main characteristic, that I know. Whether it is a characteristic or not, I do not know. I know it is not one of its main characteristics.

Mr. GROSS: Sir, may I call to your attention the Counter-Memorial, III, at page 55, in which it is stated as follows—this is following the listing of the prohibited posts in mining, that is those from which non-Whites are barred, the explanation for which is given as follows:

"These factors [that is the tracing of the factors purporting to explain this restriction] are accentuated by the fact that the members of the European group have traditionally occupied a position of guardianship in respect of the indigenous groups, and that in the economic field the relationship between Europeans and Natives has generally been limited to that of employers and employees. In this factual situation, most Europeans would refuse to serve in positions where Natives might be placed in authority over them. Although very few, if any, Natives in the Territory would at present be able to hold any of the posts mentioned in the foregoing paragraph, Respondent was nevertheless obliged to take cognisance of the

factual situation, and, for the considerations aforesaid, to adopt measures which would prevent Natives employed in European owned mining enterprises from being appointed to technical and responsible posts in which they would exercise authority over European co-employees."

I call your attention specifically and particularly to the last sentence, that Respondent was forced for the reasons mentioned—this was the explanation supplied, "to adopt measures which would prevent Natives employed in European-owned mining enterprises from being appointed to technical and responsible posts in which they would exercise authority over European co-employees". Now, Sir, would you please state whether this policy is or is not a factor, an aspect of the policy of apartheid or separate development.

Mr. KROGH: It is, Sir.

Mr. GROSS: Therefore, would it be correct to conclude that in the development, the evolution or transition from the present situation to one in which supervisory non-White employees would be placed over White employees, that this would require an alteration in one of the fundamental premises and tenets of the policy of apartheid? Is this not correct, Sir?

Mr. KROGH: Sir, I do not think that is correct, for the very simple reason that most of the Whites, that work in mines outside South Africa and South West Africa, Sir, and they are members of White groups, apparently do not object at this stage against working under, let us say a member of a non-White group. I can quite understand that, Sir, but I cannot say as an economist whether in 10, 20, 30 or 40 years' time, the members of the White group would be quite happy to work under a non-White manager. I can also say, Sir, that in mines now, as the policy stands at the moment, where mines are in fact in non-White areas, I can very well understand that there you could possibly find members of the White group working under, being employed if they so wish, by members of the non-White group. If this will be changed in due course, I do not know; but I respect, Sir, the wishes of the members of different groups. If they do not in fact want to employ members of another group or do not want their members to work under members of another group, I can very well appreciate that if you forced them to do this, you would be inviting social strife, Sir.

Mr. GROSS: Social what, Sir?

Mr. KROGH: Social strife.

Mr. GROSS: Now, Sir, just as a final question in this line and I will endeavour, Mr. President, to bring this to a conclusion rapidly, the honourable President addressed a question to you in the verbatim of 23 September 1965 at page 119, *supra*, *à propos*, I may say, for the clarification of your response, of the question of limitations imposed on employment. I take the liberty of quoting:

"The PRESIDENT: I see. What is the purpose then of a government ordinance if the result would be the same whether there was or was not a government ordinance?"

And you responded in the same verbatim as follows:

"The purpose in this particular setting would be to indicate very clearly to the people who have aspirations for these particular jobs that are being created in a particular area by a particular economy,

not to aspire for these particular jobs, because this would frustrate them. In fact, it would be like a signpost indicating before you enter the street that this is a cul-de-sac, instead of arriving at the end and then discovering that you have not been warned or clearly indicated that there are other ways of arriving at your particular destination."

Now, I should like to ask you, Sir, in the light particularly of the questions and answers which have just been placed into the record, whether it would be fair to characterize your response to the question addressed to you by the honourable President as indicating a permanent exclusion of non-Whites from equal participation with Whites in the modern sector of the economy?

Mr. KROGH: Sir, to the extent that the members of a particular White group do not want members of another White group to compete with them or, in fact, the members of the White population group being economically more resourceful or skilled, take jobs of the economically weaker—I can see that there can be social strife and reaction and I must appreciate this as an economist.

Secondly, I can also appreciate as an economist that members of different groups who have, in fact, equal skill but there is, let us assume, only one job and this job is in an area that is clearly demarcated as an area in which members of a particular group enjoy preference or can in fact lay down preferences—that although these different individuals may have the same qualification, I can very well understand and do respect, Sir, the wishes of a group excluding the member of another group or discriminating against him, unless of course, Sir, there is no other way of giving or creating or providing employment opportunities for the member who is excluded in this way. If he were excluded without such an alternative I can imagine a responsible Government, must weigh up all the consequences of such a particular set of circumstances, Sir.

Mr. GROSS: When you referred to one group and another group in the reply you have just given, for the sake of complete precision do you mean Whites and non-Whites in the modern sector of the economy?

Mr. KROGH: Or the different non-White groups, Sir. I can very well imagine this too, Sir.

Mr. GROSS: Does one non-White group impose restrictions upon the freedoms or advancement of other non-White groups in the modern economy?

Mr. KROGH: No, Sir. Because the modern economy is not . . .

Mr. GROSS: Therefore, in the modern economy your question would relate would it by the use of your terms "group" and "another group"—Whites vis-à-vis non-Whites, would it not, Sir?

Mr. KROGH: With respect to the modern economy.

Mr. GROSS: To the imposition of ceilings or limitations upon freedom of movement, referring to that.

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now, you testified, Sir, with respect to the relationship of the groups, White and non-White, in the following terms. In the record of 23 September, at page 107, *supra*, you testified, Sir, in response to a question—"most of the members of one group would view the members of another group as foreigners very often". This describes, *inter alia*, the attitude between the Whites and the non-Whites, does it, Sir?

Mr. KROGH: On the contrary, Sir, I think there is some misunderstanding here, if you would just permit me very briefly, I will not cover

this matter very fully, but it is obviously a very important matter and I would want to clear this up once and for all, Sir. If you will permit me, Sir, to give you just very briefly the views of one of the most distinguished economists of this century on the problem of economic development, Sir Arthur Lewis, who has been economic adviser to President Nkrumah of Ghana, and furthermore, also I believe to part of Nigeria. He is at present Professor in Princeton University, after he had held similar posts in Great Britain. Now, he has very recently, Sir, in the *Encounter* of 2 August 1965, page 5, made this point, and in being a distinguished economist, he puts it very much better. He makes the point, in fact, Sir, with reference not to White and non-White groups, but with reference to West Africa in an article with the title *Beyond African Dictatorship—The Crisis of the One Party State*. I admit that this is largely with regard to political administration and development in the West African territories, but it also states the problem with reference to economic development. It may be of direct interest here and I think it explains the viewpoint I am trying to convey.

Professor Lewis states here on page 5:

"Each country [and he refers to West Africa, Sir] contains several tribes living at different economic levels [and I am not, in the case of South West Africa referring to tribes, Sir, but groups of people composed of different tribes. Sir Arthur Lewis refers to West Africa]. And tribal consciousness and economic difference combine to produce mutual antagonisms which menace the unity of the State. The result of these mutual antagonisms is that every political party has a geographical base. Some tribes support it; others are hostile to it, or, at best, indifferent. [He goes on to say, Sir:] A single party supported equally by all the tribes is an impossible dream. [I am skipping some of the rest and continue.] The tribe is the basis of its organization. So, even in Ibadan, the capital, where live men from every tribe, the party is organized not by street or by district, but by tribe—family, village and tribe are West Africa's primary social units."

I stop here, Sir, and, if you would allow me, just very briefly on page 8 in this particular article, it is said . . .

Mr. GROSS: May I interject, Sir? I fear that the question may have been lost sight of.

The PRESIDENT: Well, I think we had better finish the quotation. Then we can put the question again. You had better finish this quotation now you have started upon it, witness.

Mr. KROGH: Sir, very briefly (I would like to quote more from this article but I will end with the following), Sir Arthur Lewis contrasts the situation, for instance, with Britain and France, he says:

"Britain and France are class societies and their institutions and conventions are designed to cope with this fact. West Africa is not a class society; its problem is that it is a plural society. What is good for a class society is bad for a plural society. Hence, to create good political institutions in West Africa one has to think their problems through from the foundations up."

I will leave it at that, Sir, because this to me explains . . .

The PRESIDENT: Do you remember the question which was put to you?

Mr. KROGH: Yes, Sir, the question which was put to me, if I remember



correctly, was whether I refer, when I say for the sake of social peace . . .

Mr. GROSS: No, Sir. Forgive me, Sir.

The PRESIDENT: Put the question again.

Mr. GROSS: I am sure, Sir, this is a good question you have in mind but the one I asked was: In your testimony you said that most of the members of one group would view the members of another group as foreigners very often. I was asking you, Sir, whether you were referring to the attitude between White and non-White groups in the context of that sentence.

Mr. KROGH: I replied to that "not necessarily between White and non-White groups".

Mr. GROSS: Does that mean not necessarily, Sir—just for the sake of clarity and not by way of argument—you mean that it applies to the relationship between Whites and non-Whites, and that it also applies to the relationship between certain non-White groups? Is that what you mean, Sir?

Mr. KROGH: That is what I would like to say, Sir.

Mr. GROSS: May I, then, ask, Sir, with respect to a similar statement which you made in the verbatim at page 139, *supra*, where in response to a similar question you said "here, you have different groups, people viewing each other as members of groups with suspicion", in this sentence were you referring to the relationship between White and non-White groups, among others?

Mr. KROGH: Among others, yes, Sir.

Mr. GROSS: Now, Sir, when you responded to the question just a moment ago you referred, in respect of other territories, if I understood you correctly, you used the expression, "mutual antagonism". Did I understand you to use that phrase?

Mr. KROGH: Sir, I think that is the phrase that was used by . . .

Mr. GROSS: That you were citing?

Mr. KROGH: Yes.

Mr. GROSS: Were citing that . . .

Mr. KROGH: Yes, I was citing that out of the article I had in front of me, Sir.

Mr. GROSS: Were you citing that with approval, Sir—with concurrence?

Mr. KROGH: With approval. To me as an economist, Sir, the matter is clear if you look at South West Africa, at its history before and after the White man arrived on the scene, as I described in my particular testimony. There are these various groups that, in fact, regard each other with mutual suspicion, Sir. Moreover, if you look at various commissions that have, in fact, reported on South West Africa, long before the Oendaal Commission, Sir—as a matter of fact I can think of a particular commission of the 1930s which was headed by Dr. Holloway, the very well-known and distinguished economist—it is clear to me that mutual antagonisms do, in fact, exist, among these groups, Sir.

The PRESIDENT: The question was whether you agree with the statement of Sir Arthur Lewis.

Mr. KROGH: Yes, I agree with this statement.

The PRESIDENT: Well, if you agree with it, that was the answer to Mr. Gross' question.

Mr. GROSS: Would you then characterize the relationship between the Whites and the non-Whites in South West Africa, taking these two sets

of groupings alone for the moment for the purpose of my question, as characterized not only by "suspicion" (the word you used) and as "foreigners" (another word you used) and also fairly characterized by the description of "mutual antagonism", Sir?

Mr. KROGH: Yes, Sir, I think it has the same . . .

Mr. GROSS: Now, Sir, with respect to the frequent references you have made to the importance of the maintenance of social peace—I think you have used that phrase several times, have you not, Sir, as an important objective of the system in South West Africa?

Mr. KROGH: I have said that that is a factor you have to take into consideration in formulating or advising on policies as an economist, Sir.

Mr. GROSS: And you have referred, have you not, Sir, in several contexts with regard to the question of restrictions imposed by Whites upon non-Whites, that such restrictions are to some extent necessary or required in order to ensure social peace?

Mr. KROGH: Yes, Sir.

Mr. GROSS: You have testified to that effect, have you not?

Mr. KROGH: I have, Sir.

Mr. GROSS: I have referred, for the convenience of the Court, to the verbatim at pages 105 and 106, *supra*.

You are familiar, are you Sir, with the statement quoted by the Respondent in the Rejoinder, V, pages 252-253, which I shall read to you—the statement by Prime Minister Verwoerd in which he is quoted as saying:

"The only possible way out . . . is . . . that both, i.e., the White man and the Bantu, accept a development separate from each other. The present Government believes in the domination (*baasskap*) of the White man in his own area, but it equally believes in the domination (*baasskap*) of the Bantu in his area."

Are you familiar with the statement, Sir? Have you read the pleadings, including this section of the Rejoinder?

Mr. KROGH: I have never come across that statement but I can see that is quite in line with the policy envisaged and described as that of separate development, Sir.

Mr. GROSS: Now, Sir, would you agree with the description of Dr. Verwoerd in respect of the economic modern economy of the Territory—the White economy, as it is called in the Odendaal Commission report—as an area in which White domination is exercised, in Prime Minister Verwoerd's words?

Mr. KROGH: I should say the Whites dominate the economy—yes, Sir.

Mr. GROSS: You would say that the White man dominates and the non-White is dominated?

Mr. KROGH: No, I will not say "is dominated". I will say the dominating feature of the modern economy is that the White man, in fact, undertakes, runs, organizes, finances this particular economy. I do not imply by that . . .

Mr. GROSS: Now, Sir, is "domination of the White man in his area"—to use the phrase used by Prime Minister Verwoerd—does that have any relevance to the imposition of restrictions upon advancement, or the right to enter into apprenticeship agreements, for instance?

Mr. KROGH: Sir, I do not know what the Prime Minister of South Africa had in mind when he said that and on what occasion he said it but,

as an economist, the word "dominate" there means to me that it is the dominating feature of that economy, Sir.

The PRESIDENT: It has an objective meaning?

Mr. KROGH: Yes, Sir. That is the interpretation I put on that term, Sir. I do not know what he meant by the use of that term, Sir.

Mr. GROSS: Now, Sir, the imposition by the dominant group of restrictions upon advancement, or promotion, or movement of the non-dominant group—would that fairly characterize the situation prevailing in the economic sector of the Territory?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Pardon me, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: I did not hear you. I am sorry, Sir.

Mr. KROGH: I have testified to that effect, Sir.

Mr. GROSS: Now, with regard to the maintenance of social peace, was it the intent or purport of your references to the importance of maintaining social peace that the White dominant group should be satisfied, assured, of the protection of its own interests, as a price of social peace—was that the intention?

Mr. KROGH: Sir, I can assure you that, as far as social peace is concerned, an economist has to take that into consideration. But the problem in South West Africa is that the Whites may very well look too well after themselves individually—too well that is at the expense of other groups—and that the main consideration for the imposition of measures of protection for the sake of social peace, Sir, operates not in the first direction indicated, but the second is the most important one in the case of South West Africa. It is the factor of production land that I am sure, for instance, must be protected against the economically stronger and more resourceful group in the Territory, Sir.

Mr. GROSS: Sir, when you referred in your testimony in the verbatim at page 106, *supra*, to what you described as the "marginal effect" from an economic viewpoint of the restrictions imposed upon freedom of movement or advancement, you said Sir, that "restrictive measures may very well be required in the interest of social peace".

Mr. KROGH: Yes, Sir.

Mr. GROSS: Now, Sir, my question to you is whether or not the phrase "social peace", to which you refer there, means the economic or other interest of the White group upon which they insist and for which the restrictions are imposed—is that what you meant by "social peace"?

Mr. KROGH: In that context, yes, Sir.

Mr. GROSS: In this context?

Mr. KROGH: Yes, Sir.

Mr. GROSS: But would it not follow inevitably, Sir, that, under those circumstances, social peace would have to be bought, in many cases, at the price of social justice? Would you agree with that, Sir?

Mr. KROGH: It is a social cost, Sir, under those particular circumstances.

Mr. GROSS: And is the social cost not heavily visited upon individuals who may have an innate quality or capacity to improve their lot and their life?

Mr. KROGH: Sir, I think I have given you that reply in the very paragraph that you have quoted from my testimony. I think as an economist, that it is of marginal significance, Sir.

Mr. GROSS: It is of what, Sir?

Mr. KROGH: Marginal significance—this means it is not of fundamental significance.

Mr. GROSS: To the individual who is affected by it?

The PRESIDENT: This has been gone into many times, Mr. Gross.

Mr. GROSS: Mr. President, with all respect, the Applicants consider it of the greatest importance to have a frank, unequivocal answer to this question. If it has been made I will apologize, and would then ask that it be repeated; if it has not been made I urge it, if I may and with your permission, upon the witness.

The PRESIDENT: By all means.

Mr. GROSS: Would you please answer the question, Sir?

Mr. KROGH: Yes, Sir, I have already answered the question before, and I will repeat it to you now again: that looking at a particular individual I can very well understand that this would in fact mean an economic sacrifice for this particular individual. Yes, Sir, but we are not dealing with a Robinson Crusoe economy where there is one person only; we are dealing with a social economy that is in fact specially complicated in view of the plural nature of the society, which I mentioned right in the beginning of my evidence as one of the structural problems of economic development in South West Africa that any government or responsible authority will have to take into consideration in developing the country economically. I would go further, and I would say that even for the particular group of which he is a member—I am taking this now from the individual to the group to the inhabitants of the Territory as a whole—I can also see that it might be of some significance to the welfare of that particular group. But, I can assure you that from the viewpoint of the economic development of South West Africa seen as a whole it is of marginal significance. And, I can very well appreciate as an economist who has also studied the principles of welfare economics and of economic inter-relationships that any responsible authority will very well have to decide many issues against the background of the total social situation, namely how it could very well compensate for the economic loss of an individual or of the members of a particular group by making concessions or creating other economic opportunities where such persons are in fact excluded by the wishes of another group. My answer refers there to the economy of South West Africa in particular, and you asked me to what extent does it refer to the individual? I can very well understand that there are certain individuals who may, in fact, be affected detrimentally, economically speaking by such restrictions as you are referring to in the mining industry, and the supply of public transportation, and the other examples that you mentioned, but I can assure you as an economist that this is of marginal significance considering the economy as a whole.

Mr. GROSS: With respect to the effect of the restrictions imposed by the dominant White group, is it of any economic significance or relevance that the White dominant group has the responsibility to promote to the utmost the welfare of the inhabitants of the Territory without their participation in his decisions?

Mr. KROGH: I have always interpreted that particular objective to apply to the inhabitants of the Territory as a whole.

Mr. GROSS: So that it is intended to be understood by your answer that the White dominant group, as the decision-making group, then must make constant determinations as to the extent to which individuals will

suffer in the interest of their interpretation of the economy as a whole—is this a correct statement?

Mr. KROGH: No, I have always interpreted that statement to refer to the obligations of the Mandatory, and in this particular case it would be an outside party, being the Government of the Republic of South Africa; and I have also always interpreted the particular provisions you refer to as relating to the inhabitants of South West Africa as in fact the population was composed in 1920, in which case there was a White population group. I deduce from this that it is the obligation of the responsible authority for the administration and development of the Territory to take the total social situation of the Territory into consideration, and I would say that any economist could very well see that the policy pursued with regard to the development of the economy of South West Africa was one in which members of the White population group were relied upon first to discover, initiate and introduce modern forms of economic activity in South West Africa.

Mr. GROSS: Would it be a fair summation of your testimony to say that the White dominant group as trustee not only determines and allocates the share of the cake, to use your earlier expression, but also the degree and the condition of individual sacrifice or hardship which is to be visited upon individuals in the Territory?

Mr. KROGH: They do this as ordinary economic units operating in the Territory. Yes, they do this by employing certain people and not employing other people; they do this by purchasing from a certain person and not from another; to that extent they do in fact, because the economy that we are referring to is one which they have created, which they run and in fact maintain and develop.

Mr. GROSS: Mr. President, there is one point which I would have raised at the outset but for the fact that the witness was in mid-flight on a question left over from the previous session. It is, if I may say so, Sir, a clean-up type of question of a specific nature, and I should like to conclude with it, but it is out of context of the matters we have just been discussing.

The PRESIDENT: By all means; if you feel it is necessary to put a question, you put it, Mr. Gross.

Mr. GROSS: I wanted to explain, Sir, that it is out of context.

The PRESIDENT: That's all right—the Court will be able to follow it.

Mr. GROSS: Thank you, Sir. The question is this: in your testimony on 24 September, at page 128, *supra*, you made references to the industrial census and the classifications therein, which you read out, of skilled and semi-skilled non-White workers, and on that page of the same verbatim record you referred to "Occupational Distribution of Natives in South West Africa, 1960 census". The Applicants have sought over the weekend to obtain a copy of that document, and have been advised that it does not exist as a document. Would you please, Sir, clarify this matter, and also explain what the actual source is of the figures you cite?

Mr. KROGH: I will gladly do so, because I have something personal to do with this. I spent most of the weekend in Amsterdam, having been a student there, and I was not readily available. When I returned they asked me about these figures. The figures are not in fact published, as are many census figures. I extracted these figures from the Bureau of Census Statistics in Pretoria as notes for my own research purposes, and I will gladly supply these notes to Mr. Gross if he so requires. Unfortunately,

I might have given the impression in my evidence that they were taken from a published document. What I was referring to is that these figures were taken from the 1960 census data, which research workers very often try to get even before they are published, or which are often not published at all.

The PRESIDENT: Yes, Mr. Gross?

Mr. GROSS: Mr. President, I would respectfully request that the source material be made available, reserving the right to comment thereon in due course, but I should like, if I may, in view of the fact that it has not been possible to prepare for cross-examination on the basis of these figures, to ask the witness, Sir, whether the basis of the classifications in your sources break down the positions as between skilled and semi-skilled—my first point—would you answer that?

Mr. KROGH: I can give you the details for every class and type of occupation that is in fact included under the category of skilled and semi-skilled persons. In other words, by way of definition it gives you a breakdown of the various and different workers that fall under Category A, which refers to workers other than labourers, the last item of which reads "Other skilled or semi-skilled worker"—Item 7; Group B refers to labourers including unspecified (those are workers that the census authorities could not without doubt classify either as labourers or semi-skilled or skilled—they were put under "Labourers"); and these two together would give you the total number of economically employed other than farmers or farm managers which, if they are added to that total, would give you the total economically active Native population in the Territory.

The PRESIDENT: I see it is just on 6 o'clock, Mr. Gross, and your position is that not having had the source document before you, you are obviously not in a position to cross-examine in relation to the details which were given, and you desire to have whatever source document the witness prepared for the purpose of reaching the conclusions expressed in his evidence?

Mr. GROSS: Yes, Sir, I would appreciate the document, but I would also appreciate a direct response to my question, which was whether or not the figures show the distinction between skilled and semi-skilled; I understand that the answer is that they do not break down between skilled and semi-skilled—is that correct?

Mr. KROGH: No, they don't, Sir—that is correct, but I can give you some details to show which jobs are skilled . . .

Mr. GROSS: Which jobs are skilled and which are semi-skilled?

Mr. KROGH: Yes, from the particular description of the various breakdowns . . .

Mr. GROSS: The second question, just to complete the record at this point, and then I am through, Sir, if I may: does it likewise show breakdown between Coloured and Native?

Mr. KROGH: I have only the data for that year for the Native population.

Mr. GROSS: So when you used the phrase "non-White" in your testimony, you were referring to "Native" alone—is that correct?

Mr. KROGH: Yes, but I can assure you that in the case of the Coloured population there would even be more skilled and semi-skilled than there are in the distribution I have given you for the Native population.

Mr. GROSS: Mr. President, I appreciate this patience that has been

shown to this lengthy cross-examination; I have no further questions of this witness, Sir.

The PRESIDENT: You do not desire to go into any detail on any source material at all?

Mr. GROSS: Well, Sir, I would like to reserve the right to comment upon that, but I understood from the witness, perhaps erroneously, that it would take some time—perhaps I did misunderstand, Mr. President; could I enquire through you, Sir, when the document will be made available?

The PRESIDENT: Doctor, could you say when the document which contains your source material from which you derived these figures is able to be made available to Mr. Gross?

Mr. KROGH: Sir, I can have the typist make a copy this evening of my notes that I have here, and I can try to have it delivered at Mr. Gross's convenience before, say, 9 o'clock to night?

The PRESIDENT: I think that should be convenient, because I think that one should aim at concluding the cross-examination of this witness if it is possible, Mr. Gross.

Mr. GROSS: I have concluded, subject only to this.

The PRESIDENT: Subject to that then; the document containing the source material will be delivered this evening to you, and if you desire to continue any cross-examination tomorrow, you will be prepared to do so at 10 o'clock, I assume?

Mr. GROSS: Subject, Mr. President, to a self-imposed, self-denying ordinance.

The PRESIDENT: Well, I think we all have self-denying ordinances, Mr. Gross.

*[Public hearing of 28 September 1965]*

The PRESIDENT: The hearing is resumed. Mr. Gross, do you desire to ask any further questions of the witness?

Mr. GROSS: By your leave, Mr. President.

The PRESIDENT: Certainly.

Mr. GROSS: At the close of the session yesterday, Mr. President, Respondent was good enough to agree to supply the source of material from which Dr. Krogh quoted, and has been good enough to do so. I have it before me in the form of a two-page document which is headed "South West Africa: Occupational Distribution of Natives 1960", and which, I presume, Sir, will be added to the documentation.

The PRESIDENT: Not necessarily at all, Mr. Gross: you are cross-examining, you know, and the question of whether it is put in evidence is a matter for the Respondent. You can ask the witness anything you wish about the document itself, but it does not become part of the documentation.

Mr. GROSS: Yes, Sir. I wish to clarify the point because I note that in the pleadings, the Rejoinder, VI, page 176, there is a listing, with nine sub-headings, which contains the same numbers, although somewhat differently arranged, as in these notes; and the citation in the Rejoinder, at page 176, is to "Departmental information".

The PRESIDENT: Page 176 of the Rejoinder?

Mr. GROSS: Page 176 of the Rejoinder, Sir. I should like to ask the witness whether he is familiar with the list on that page of the Rejoinder.

It is introduced by the following paragraph:

"In further elucidation thereof, the following list has been compiled of occupations held by Natives in the Territory not employed as labourers or engaged in farming activities:"

And then follows a list of nine categories. Are you familiar, Sir, with that listing?

Mr. KROGH: Yes, I think I have seen that listing, Sir.

Mr. GROSS: The total number of employees, of persons employed in the listed occupations, is 21,230. That, Dr. Krogh, is the same number to which you referred in your testimony in the verbatim record on 24 September, at page 126, *supra*, in which you stated, among other things:

"In this census of 1960 indicating occupational distribution of Natives engaged in economic activity in the southern sector there was, in fact, a total classified as skilled and semi-skilled workers—a total of 21,230."

Do the figures in the material which you have supplied to the Applicants, the title of which I have read into the record, apply, Sir, to employees in these occupations in the Territory as a whole or in the southern sector?

Mr. KROGH: Sir, I think they refer to employees in the southern sector. I could check that to be absolutely certain, but I am nearly sure that they refer to workers in the southern sector.

Mr. GROSS: The figure of 21,230, in the Rejoinder, VI, page 176, follows an introductory paragraph in which, as I have said, reference is to occupations held by Natives in the Territory. Do you, Sir, know of your own knowledge whether this is an error and means to refer only to the southern sector; or whether, on the contrary, your reference in your testimony to the southern sector only was an error, and that the figures actually refer to the Territory as a whole? Can you straighten the matter out for the Court?

Mr. KROGH: Sir, it is clear to me that there is an inconsistency there, namely my reference to the southern sector, and this other document referring to the Territory as a whole. But since we are concerned here with the total number of skilled and semi-skilled, I know that if it should also cover the area falling outside the Police Zone, then it would not affect the number of semi-skilled and skilled to any considerable extent. As a matter of fact, in my evidence you will see (I have not got the document in front of me, unfortunately), but I think that the number of labourers was something like 105,000, on the one hand . . .

Mr. GROSS: May I read it for the witness, Mr. President?

The PRESIDENT: Yes, I think the witness also should have a copy of his document.

Mr. MULLER: I have a copy here, if I may hand it to the witness. It is the same as Mr. Gross has.

The PRESIDENT: Thank you, Mr. Muller. We may as well get the evidence accurately.

Mr. KROGH: Yes, Sir, I rounded off those figures when I tried to arrive at a ratio of the skilled and semi-skilled on the one hand, and the total, other than agriculturalists and other than labourers, on the other, and I am quite convinced, knowing the Territory and knowing these figures—I have worked with these figures in calculating the national income for the Territory—that it would not affect the picture materially.



I want to tell you, Sir, that the number involved, even if it is 1,000 or 2,000, would not affect so large a number to any considerable extent. But I am not quite sure now whether the figures refer to the southern sector only, or to the Territory as a whole. I would like to check that. But I can assure you that for all practical purposes it would be correct to say that they refer, by and large, to the employment conditions in the southern sector. In fact I know that all the migrant workers, who come from the northern parts of the Territory, the 28,000 mentioned earlier on in the evidence, are included in these figures because they work in the southern sector. They would be classified as "labourers" under the last category.

I am just trying to make this point to indicate that it would not, to my mind, affect the picture to any major extent, Sir.

Mr. GROSS: Well, Sir, just to refer for a moment to the figure which you rounded out to 105,000. That figure is a sub-total, in the sheets that you have supplied to the Applicants, which includes the categories of labourers. That is correct, is it not, Sir?

Mr. KROGH: That is correct, Sir. It refers to Classification B.

Mr. GROSS: Yes, Sir. Now, I was referring to the figure of 21,230, of skilled and semi-skilled, that is, those other than labourers, and do I understand your answer to my question with respect to that figure, 21,230, to be that this figure refers to persons employed in the southern sector or in the Territory as a whole?

Mr. KROGH: Sir, I am not quite sure now whether they refer to the southern sector alone or to the Territory as a whole, but I can give you the assurance—it is my impression—that the number involved in the 21,230, who would be engaged as skilled and semi-skilled in the areas falling outside the Police Zone, would not affect that total figure materially.

Mr. GROSS: Do you mean, Sir, to shorten the matter for purposes of elucidation, that the figures of employment in the territory outside the southern sector, in the skilled or semi-skilled categories, is a negligible figure? Is that what you mean?

Mr. KROGH: It is negligibly small compared with the total, Sir.

Mr. GROSS: What ratio, roughly then, would you indicate, please, to the Court?

Mr. KROGH: I shall have to estimate this roughly, Sir. I think one can reasonably say that (of the 21,000) it would be round about 2,000 to 3,000, but this is of course not a modern economy, as I explained earlier on.

Mr. GROSS: The 2,000 to 3,000 of this 21,000, approximately, are employed in these skilled or semi-skilled occupations in the territory outside the southern sector? Is that what you have said, Sir?

Mr. KROGH: That is my rough estimate, Sir.

Mr. GROSS: With respect to those 2,000 to 3,000, approximately, do you have any figures or approximations with respect to how many of those 2,000 or 3,000 are in skilled and how many are in semi-skilled work?

Mr. KROGH: Sir, I have not got those figures, no.

Mr. GROSS: Do you have an approximation based on your knowledge of the economics of the Territory?

Mr. KROGH: Sir, I have to make another rough estimate. May we break this down?

Sir, I would say that the number will be, say, between 500 to 1,000

skilled and the rest I would imagine could very well be what is classified as semi-skilled, Sir.

Mr. GROSS: Now, of the number you have approximated for skilled in the area of the territory outside the southern sector, could you indicate to the Court, please, the industries or enterprises in which such skills are at work?

Mr. KROGH: Well, Sir, to begin with, there is the sphere of public administration, apart from the private sector, and I am sure there are agricultural officers, translators, clerks and administrative personnel. There is also a great number of teachers, Sir, that would be included under the public service. I can include there people serving in the field of medical services, Sir. Further there is a number of craftsmen and operators. I can see them working on the tractors, Sir, making bricks, building these new townships. There is the furniture factory which I visited—I can see them working there, Sir. I am out of the public sector now and have already moved into the private sector, Sir. There must be some others that I cannot visualize at the moment, but they are there, Sir.

Mr. GROSS: Thank you. Could you give a rough approximation of the distribution between the public sector and industrial or agricultural?

Mr. KROGH: I think that about more than half would be in the public sector, which includes the development works as well, Sir. Yes, more than half, Sir, say, about two-thirds, or 60 per cent.

Mr. GROSS: So that you would say, Sir, that approximately 250 to 300 persons are employed in skills in industry or non-public enterprise in the northern sector?

Mr. KROGH: Yes, on the basis of my previous estimates; I think they are reasonably reliable, Sir.

Mr. GROSS: And what, Sir, is the population of the northern sector?

Mr. KROGH: The population of the northern sector, Sir? I cannot give you the exact figure but I think it is approximately half, or just slightly more than half, Sir.

Mr. GROSS: About 250,000, approximately?

Mr. KROGH: Approximately, yes, Sir.

Mr. GROSS: Now, with respect to the breakdown in the sheets which Respondent has made available to the Applicants, there is listed in the categories making up the total of 21,230 the following item in paragraph 6 (d): Domestic service and laundry-women: number 13,219. Do you regard these categories as skilled or semi-skilled, Sir?

Mr. KROGH: As semi-skilled, Sir.

Mr. GROSS: So that, referring to the southern sector, reducing the number of 21,230 by approximately 2,000 to 3,000 representing those estimated for the northern territory, leaving a total of approximately 19,000, of that number 13,200 are in domestic service and laundry-women, that is correct, Sir, according to these figures?

Mr. KROGH: I will say, yes.

Mr. GROSS: Leaving a total of non-domestic service and non-laundry-women of approximately 6,000 (roughly), is that correct, Sir?

Mr. KROGH: About 7,000, yes, Sir.

Mr. GROSS: Between 6,000 and 7,000. Would you say, Sir, then, excluding domestic service and laundry-women and concentrating on industry, industrial and mining enterprises, that the total number of skilled and semi-skilled—according to these figures you have supplied—in the southern sector is approximately 6,000?

Mr. KROGH: 6,000 to 7,000.

Mr. GROSS: Yes, 6,000 to 7,000.

Mr. KROGH: Yes, Sir.

Mr. GROSS: And of that total of 6,000 to 7,000, would you indicate again approximately (because these figures do not break them down) how many of those 6,000 to 7,000 are engaged in skilled, as distinct from semi-skilled occupations in the southern sector?

Mr. KROGH: I would say, Sir, that now that you have excluded the main component of those who are regarded as semi-skilled, it would not leave many semi-skilled in the remaining figure, Sir.

I will have to make another rough estimate, Sir, of the 7,000, having excluded the main component of semi-skilled workers, numerically speaking. I would say about 80 to 90 per cent. of those of the remaining 7,000 could be regarded as skilled, Sir.

Mr. GROSS: Now, Sir, in the same category in which is set forth the domestic service and laundry-women (the total of which I have read into the record) there is listed under item (c) caretaker and cleaner, number 576. Do you regard those as skilled employees, Sir?

Mr. KROGH: No, Sir, I would regard them as semi-skilled.

Mr. GROSS: So these are additional semi-skilled to the domestic service, are they not, Sir?

Mr. KROGH: Yes, Sir, but the number is only 576. We are talking about percentages, Sir.

Mr. GROSS: Yes, I do not mean to engage in a debate with you, Sir. I am just trying to establish the figures in the record.

Mr. KROGH: Yes, there are quite a number of listed items that are semi-skilled, Sir, and I have never given evidence to indicate that these only referred to skilled people, Sir. I cannot very well see how you can take these items out, or not put them in this category. Where else would you put them? Under labourers? I do not think they come under labourers, Sir. They are definitely semi-skilled, Sir.

Mr. GROSS: Would you bear with me, Sir, for another question to which I invite your answer. In the same categorization there is the item (e) under the heading Other Personal Service, 287. Do you regard that category as skilled or semi-skilled?

Mr. KROGH: Sir, that is a heterogeneous category. I cannot quite typify this. I can think of all sorts of people supplying personal services that can, in fact, be skilled, Sir. The number, by the way, is 287. It is small and I would say they include some semi-skilled, Sir, but I cannot say . . .

Mr. GROSS: But you cannot break that down, Sir, as I understand it?

Mr. KROGH: 287? No, I cannot break that down.

Mr. GROSS: Yes, Sir. Now, with respect to category 5—Worker in transport and communication, sub-paragraph (c) Messenger, number 437—would you regard that as a skilled or semi-skilled occupation?

Mr. KROGH: Sir, I would regard that as semi-skilled, Sir. The number again, and if you add these all up, would be small, Sir.

Mr. GROSS: Well, Sir, that "small" is a relative term.

Mr. KROGH: Absolutely. I indicated that when I started out, Sir.

Mr. GROSS: Yes, Sir. Now, the messengers, 437, plus the caretakers and cleaners, 576, plus other personal service, 287 (I wanted to fix those figures in your mind)—now, Sir, with respect to the breakdown of craftsmen and production worker, still in the general area of which the 21,230

figure is composed, that is, paragraph 4, it is headed, Sir, "Craftsmen, Production Worker"—that is correct, Sir, is it not, that characterization of the document?

Mr. KROGH: That is correct, Sir.

Mr. GROSS: Now, Sir, can the total there—2,040—that is correct, is it not?

Mr. KROGH: Yes, Sir, according to my notes, Sir.

Mr. GROSS: Now, according to this document, Sir (I am referring to the document—that is a correct reflection of the document which you have given to the Applicants, Sir) . . . 2,040?

Mr. KROGH: That is correct, Sir. This document is based on notes that I extracted from the Bureau of Census and Statistics in Pretoria, Sir.

Mr. GROSS: Yes, Sir. Now, can you explain to the Court what the phrase "production worker" signifies, as distinguished from "craftsman"?

Mr. KROGH: Sir, this is a term used in industrial censuses, Sir, to indicate people who have to acquire skill in order to operate machinery, Sir. This is not quite an economic term but it indicates that these people operate machines—they are also called "machine operators"—workers that have to acquire skill. You cannot very well let a labourer, as used here in this sense, Sir, operate a modern piece of machinery. I can give you an example here—textile and leather workers would be people who would be tailors, for instance, in the textile case, and in the leather case they would be boot-makers, and so forth. This obviously implies, to my mind, people with skills. You can go on—carpenters, joiners, metal workers (this would include blacksmiths and workers like that). The carpenters, joiners, etc., I think are quite obviously skilled, and there are also painters, bricklayers, plasterers, potters and brick workers, Sir. There are food workers—they would be operating machines in, say, the fishing industry or in some similar place where machinery is used, Sir. There are also packers—I should image that their number is small and I shall not comment on that—and then, also, there are people working with stationary engines and other equipment operators. The word I was looking for is "equipment operators", Sir.

This classification is used, by the way, internationally, as a standard system to classify the occupational distribution of workers. It is not, in any way, a purely South African way of classifying people working in different occupations.

Mr. GROSS: Now, Dr. Krogh, just to clarify your opinion as an expert, you stated, I believe, the opinion that the figure totals approximately 1,300 composed of messengers, personal service, caretakers and cleaners?

Mr. KROGH: Yes, Sir.

Mr. GROSS: Did you not use the word "negligible"?

Mr. KROGH: No, Sir, I did not say that the number of domestic servants were negligible. I did not say that.

Mr. GROSS: Sir, you have not understood my question properly. I am not referring to 1,300 domestic servants, I referred to three specific categories . . .

Mr. KROGH: They do not give you 1,300 if you add them, Sir. Never.

Mr. GROSS: Will you bear with me, Sir? I tried to fix in your mind before, just to help to save time when I came back to it, messengers 437, other personal service 287 . . .

Mr. KROGH: No, Sir. I did not say that other personal service . . .

Mr. GROSS: I have not finished my question. Other personal service 287, and caretaker-cleaner, 576. Did you, or did you not, Sir, describe those figures as negligible or did I misunderstand you, Sir?

Mr. KROGH: Sir, I did not describe those figures as negligibly small. I said that the number which I would regard as semi-skilled workers and which are included in these numbers after the domestic service and laundry women have been excluded—which is by far the greater number of the semi-skilled—would approximately be 20 to 15 per cent. of the remainder. That is the difference between 100 and the 80 and 90 per cent. that I mentioned earlier on, Sir. Now, if you add that up, you will find that you get about roughly 1,200, and of those under the category “other personal services” I am convinced there are included a considerable number of workers whom I would regard as skilled persons. It does not follow that the people in that category are in fact semi-skilled just because I do not know how to break it down for you, Sir. It would be, let us say, roughly a thousand persons compared with the remaining number which we had just now, and it would come to about one-eighth or one-seventh and that would give you approximately, as I said, 12 per cent. or 15 per cent. of the remaining total.

Mr. GROSS: And what would be the percentage on a comparable basis of the craftsmen and production workers to the total?

Mr. KROGH: The craftsmen and production workers, Sir, are 2,000 and I would regard most of them as skilled workers.

Mr. GROSS: My question to you, Sir: what percentage of the total?

Mr. KROGH: Of what total, Sir? We have been working with three different totals here. I must know which total you refer to.

Mr. GROSS: You had no difficulty, Sir, arriving at a judgment and a statement with respect to the former category, a negligible proportion, and you gave a ratio. Now, I am asking you, Sir, to state in similar terms the proportion represented to the total by the figure under craftsmen and production workers.

Mr. KROGH: It would be double the percentage that I gave you for this other category, for the simple reason that I see the number is 2,040, while the other number that I worked out as a proportion was about 1,000, so this particular category 4 (2,000) will be double.

The PRESIDENT: But the percentage remains the same?

Mr. GROSS: The percentage remains the same. Would you care to say, Sir, whether you regard this percentage as more or less negligible than the percentage of the semi-skilled?

Mr. KROGH: The percentage does not remain the same, Sir. It is true we are working with the same total, Sir, but the number added up just now came to about 1,000 which I worked that out as a percentage giving me about 12 to 15 per cent. Now the present number, I see, is 2,000, so the percentage would be double that, Sir.

Mr. GROSS: I will bring this to a head, Sir, and conclude, if I may. What, Sir, if you know, is the distribution by proportion between the Reserves and the area of the southern sector outside the Reserves, the distribution of employment in the categories of craftsmen and production workers?

Mr. KROGH: Sir, these figures include the non-White Reserves in the Police Zone, of course, Sir.

Mr. GROSS: We are talking about the southern sector?

Mr. KROGH: Yes, Sir. It is difficult to give you an exact figure. I have

a certain ratio in mind but I have to look at the total number of non-Whites economically active in these areas in order to apply the ratio that I have in mind.

Mr. GROSS: Would you approximate the ratio for the benefit of the Court, on the basis of your knowledge?

Mr. KROGH: I think I will also use the same ratio very roughly, Sir, with regard to the estimate that I made for you in the northern territories. I think there would be, let us say, more than half, that is 60 per cent. would be semi-skilled, of the total which I cannot give you now, while the rest, 40 per cent., would be skilled.

The PRESIDENT: Would you say that again?

Mr. KROGH: Of the number of non-White workers that are, in fact, and could be classified as skilled and semi-skilled and who are working in the Native Reserves in the Police Zone, I would say that about 60 per cent. of them could be regarded as semi-skilled and the remaining 40 per cent. as skilled. I could, if you wish, Sir, estimate with a margin of error of, say, 10 to 15 per cent. on both sides, what the total number itself is, from my knowledge of the Territory.

Mr. GROSS: Are you finished, Sir? Now, I am afraid that that was not my question. Perhaps I misunderstood your response. I am referring, for the moment, to 2,040 craftsmen, production workers, listed in documents you have supplied to the Applicants. Will you state, if you please, Sir, the approximate ratio, if you do not have the exact numbers, of the 2,040 who are employed in the Native Reserves of the southern sector?

Mr. KROGH: Sir, I must warn you that I am not an encyclopaedia. I have not got these figures in my mind. I have a sense of proportion, Sir, and can break these down for you, but my estimates are becoming very rough.

The PRESIDENT: Well, I suppose we will be able to follow it in the end.

Mr. KROGH: I would say that of the figure of 2,000 the number would roughly be about 15 to 20 per cent.

Mr. GROSS: Employed in the Native Reserve?

Mr. KROGH: Yes, Sir, and I can tell you how I arrive at that figure too, if you would like to have my estimate.

Mr. GROSS: It is not necessary unless the Court wishes to hear it. I just wanted to have the proportion.

Mr. KROGH: Yes, Sir.

Mr. GROSS: Approximately 20 per cent. of these . . .

Mr. KROGH: 15 to 20. I said 15 to 20 per cent. and I was giving you a range, Sir, to cover my estimate.

Mr. GROSS: 15 to 20 per cent. of these craftsmen, production workers are employed in the Native areas. Is that what I understand you to mean?

Mr. KROGH: No, Sir, in the Native areas in the Police Zone.

Mr. GROSS: In the Police Zone.

Mr. KROGH: That is a rough estimate, Sir.

Mr. GROSS: Now, just one more question on this line. The craftsman, production worker category, lists, as you have pointed out to the Court, such trades, such occupations among others as carpenters and joiners, painters, bricklayers, plasterers and so forth. That is correct, is it not, Sir?

Mr. KROGH: Yes, Sir.

Mr. GROSS: These occupations—are they among the occupations to which the apprenticeship restrictions apply on a racial basis in the southern sector?

Mr. KROGH: Yes, Sir, that would relate to some of these trades.

Mr. GROSS: As to those I have mentioned, Sir, all without exception?

Mr. KROGH: Sir, I will have to recall now to which particular trades the apprenticeship regulation has in fact been proclaimed. I will have to recall, Sir, then I can tell you. It is on record and you have it in front of you.

Mr. GROSS: Well, Sir, I can call your attention and the Court's attention to the Reply, IV, page 419, the footnote of which (and it is undisputed in the records) states as follows, under the heading "Racial Discrimination in Respect of Admission to Employment and Access to Vocational Training", that with regard to the building industry the following trades, for the purposes of the Ordinance, have been specified: "bricklaying, plastering, carpentry, joinery, painting, decorating, plumbing, sheet metal working, sign-writing and wood-machining." Also, to complete your information on this subject, in footnote 8 on the same page, in the mining industry the occupations for which restrictions have been made effective for the purposes of the Ordinance are "blacksmithing, boilermaking, masonry, carpentry and joinery, electrician, fitting and turning, motor mechanic, plumbing and sheet metal working, radio-electrician, rigging, welding, diesel fitter and upholstering".

Now, Sir, with that information in mind as to the occupations for which apprenticeship agreements and arrangements are not open to non-Whites by reason of law, can you say, Sir, coming back to the figures you have supplied, what industries would provide employment for carpenters and joiners, let us say, in the southern sector?

Mr. KROGH: Well, Sir, you use carpenters and joiners for other than the building industry as well, and the figures are not given on an industrial basis. They appear according to broad types of occupations. One can also break down into hundreds the type of work done or the type of occupations under these headings. There is no doubt a number of people who do not, in fact, work in the building industry in the southern zone, but I can go further and tell you that exceptions can be and are granted all the time with regard to the employment of people who would otherwise, strictly speaking, not be allowed to occupy these reserved jobs. These exceptions are made all along by way of permit or permission, so it does not mean that if job reservation should operate legally against say, for instance, the building industry, there would not be any non-White carpenters or joiners working in the building industry in the White sector. This would not follow, Sir, and in fact I know that there are some working in these occupations.

Mr. GROSS: One final question, Sir. With respect to the distribution of the craftsman, production worker category, can you advise the Court what proportion are employed in the Native townships such as Katutura in the southern sector, as distinguished from the so-called White area?

Mr. KROGH: That is a bit difficult for me, it is breaking it down very, very small.

Mr. GROSS: Do you have any information with respect to the subject?

Mr. KROGH: No, I have not with me, Sir, but I could supply you with the information. I could imagine that in these places where buildings have been erected—houses and so on—preference is given, in fact, to

non-White workers to construct and to build these houses; and, jobs, as I have explained earlier, are reserved, as it were Sir, for non-White workers in the non-White townships.

Mr. GROSS: Would it be accurate to say, without reference to figures, I do not want to tax your recollection about this, that whatever the reason the larger proportion, the preponderant majority of the occupations listed under this category, craftsmen and production workers, are actually in the townships or other Native areas in the southern sector outside the Reserves?

Mr. KROGH: I have to make another estimate, Sir. I would say the proportion would be approximately . . .

Mr. GROSS: The total as a whole if you please, Sir.

Mr. KROGH: Of the 2,000, Sir?

Mr. GROSS: Yes.

Mr. KROGH: I would say roughly, Sir, 40 per cent. in the Native townships and say 60 per cent. outside the Native townships. I must point out, Sir, that this is item 4 of seven items of category A of an occupational distribution which covers categories A, B and C. It refers to one of four times seven—that is at least about 30 different sub-groups. Accordingly, Sir, my estimate would be rather rough. I can think of a lot of other of these categories where people work in the Native townships, Sir, that are not mentioned here at the moment. Sir, you have not got this document or my notes in front of you, and I just wanted to point out that we are talking about a sub-section of a section of a category in the occupational distribution.

Mr. GROSS: Mr. President, that concludes the cross-examination. May the Applicants submit this document?

The PRESIDENT: No, Mr. Gross, your case is closed. You were entitled to cross-examine upon the document, which you have done. I will ask Mr. Muller—do you propose to produce the document?

Mr. MULLER: I have no objection to it being produced, Mr. President. As a matter of fact, I think it would be advisable.

The PRESIDENT: Then you should produce it in your case.

Mr. MULLER: I would in the examination.

The PRESIDENT: It will be produced in the case for the Respondent, Mr. Gross.

Mr. GROSS: That finishes the questions, Mr. President.

The PRESIDENT: One or two Members of the Court would like to ask questions—Judge Forster.

Judge FORSTER: Monsieur l'expert, mes questions vous paraîtront sans doute être une réédition de celles qui vous ont déjà été posées à l'audience. Cela tient au fait que mon esprit n'arrive pas encore à saisir, je ne suis sûrement pas encore à la bonne longueur d'ondes. Il vous faudra, Monsieur, vous armer de patience.

Voici ma première question: si je vous ai bien compris, votre déposition tend à démontrer l'impérieuse nécessité de l'*apartheid* dans le Sud-Ouest africain, eu égard aux conditions très spéciales qui y règnent, eu égard notamment à la situation économique, à l'immense étendue géographique, à la multiplicité et à la diversité des groupes ethniques, à la stérile apathie de l'indigène contrastant avec le dynamique esprit d'entreprise de l'homme blanc.

Et parmi les bienfaits de l'*apartheid*, vous citez, par exemple, le régime foncier qui protège dans les réserves la terre de l'indigène économique-



ment faible contre la convoitise et l'accaparement du Blanc économiquement puissant. Est-ce bien cela?

The PRESIDENT: Is what correct, Judge Forster. I do not understand the question.

Judge FORSTER: Je vous demande si j'ai bien compris le sens de votre déposition.

The PRESIDENT: I do not think that a witness can be asked, having summed up evidence which has taken a considerable period of time, is that the burden of his evidence—there is a great deal of descriptive language in the question which is put. I hope the question will be put in a more direct form to the witness.

Judge FORSTER: La question directement posée est celle-ci: est-ce que je comprends votre déposition en disant qu'elle tend à démontrer l'impérieuse nécessité de l'*apartheid* dans le Sud-Ouest africain? Est-ce bien ce que vous avez voulu démontrer?

Mr. KROGH: Sir, I intended to show that taking into consideration this set of conditions you have mentioned that I would think in the interest of the economic development and welfare of the population, Sir, it would be in that interest to apply and in fact, to recognize the need for differential protective and promotional measures, Sir. That is the essence I think, put popularly, of my evidence as an economist acquainted with the conditions in South West Africa, Sir.

Judge FORSTER: Je vous remercie. Voici ma seconde question: Pouvez-vous me dire en tant qu'expert-économiste si les lois et règlements en vigueur dans le Sud-Ouest africain s'inspirent toujours de ce souci de protection de l'indigène?

Mr. KROGH: Sir, I think largely yes, but there are certain trades, as I have pointed out in the course of my evidence, that would also operate protectively with regard to the labour market in the southern sector, Sir.

But this would operate over a much larger range of jobs and occupations with regard to the non-White areas than it operates in fact in respect of the occupations and jobs in the White sector, Sir. The largest single other differential or prohibitive measure operates with regard to the other important production factor, namely land, Sir, and in this respect I have no doubt in telling you, Sir, that it operates virtually completely and for practical purposes in the interest of protecting the economically weaker non-White population groups against the acquisition of this important production factor, namely land, by the economically more productive and resourceful members of the White sector, Sir. Yes, Sir.

Judge FORSTER: Je vous remercie. Voici ma troisième question: vous est-il possible, toujours en votre qualité d'expert-économiste, de m'aider à déceler une trace de souci de protection de l'indigène dans le fait, par exemple, d'interdire à un indigène parfaitement doué, l'exercice de la profession d'ingénieur dans telle zone de son propre pays ou bien dans le fait d'interdire à un Bantou de bonne éducation et de mise correcte de s'installer dans tel quartier ou de descendre dans tel hôtel de son choix, quartier et hôtel situés dans son propre pays, placé simplement sous Mandat et nullement annexé?

Mr. KROGH: Sir, with regard to the particular examples you have given, I would say that there are no qualified non-White engineers, Sir. I have pointed out in my evidence that even the number of White qualified engineers would be a handful—they are small in number. I should

say that in the non-White areas, Sir, no doubt preference would be given to non-White engineers in the way of employment. I would say, Sir, the same applies to the other examples you have stated. Sir, with regard to the last part of your question, referring to such terms as annexation, mandate, and so on—these are legal terms, I take it, Sir, and I cannot, as an economist, give an interpretation to whether this or that is to be allowed or not allowed. I take it, Sir, you obviously have in mind or attach a certain meaning or definite meaning to a term such as a colony, a mandated territory, or independent territory. Now I, as an economist, do not know, Sir, exactly what is to be understood by these different terms. They are not economic terms, they are legal-political, I do not know what exactly you have in mind, Sir.

Judge FORSTER: Je voulais simplement situer les exemples. Je voulais dire que, ces exemples, je les situais non pas en Afrique du Sud, mais dans le Sud-Ouest africain, territoire sous Mandat.

Mr. KROGH: Yes, Sir.

Judge FORSTER: Je vous remercie. Voici ma quatrième et dernière question: il m'a semblé vous avoir entendu plus d'une fois qualifier de marginale l'incidence des restrictions imposées aux indigènes dans le domaine de l'emploi et de la protection sociale. Ne pensez-vous pas que ce qui semble marginal à l'économiste peut, en réalité, être capital pour l'indigène qui tient pour précieux le mérite et la valeur personnels?

Quand il est avéré que dans le Sud-Ouest africain, le nombre des sujets d'élite est très restreint, ne pensez-vous pas que le fait de briser l'élan d'un autochtone exceptionnellement doué est quelque chose de plus grave qu'un phénomène marginal? Je ne me place plus au niveau de l'individu, négligeable à votre gré, mais à celui du groupe ethnique auquel cet individu appartient. Avez-vous enfin mesuré l'effet terriblement démoralisant pour l'Africain (fût-il Bantou) d'entendre le Mandataire blanc, chargé précisément d'accroître le progrès social des habitants du Territoire, dire à l'élite noire qui tente par ses capacités de crever le bas-plafond qui lui pèse: "Tout effort dans cette ascension est inutile. Ici, dans ce secteur blanc, laissez toute espérance. Sinon, vous engageriez dans un cul-de-sac." C'est à votre déposition de l'autre jour que j'emprunte cette dernière expression. Ces secteurs ne sont-ils donc pas situés en territoire sous Mandat?

The PRESIDENT: What is the question—are these situated in a mandated territory?

Mr. KROGH: Yes, Sir, they are situated . . .

The PRESIDENT: Well, there is no dispute about that. What else is in the question?

Mr. KROGH: Whether I understood as an economist, and have measured the social-moral welfare aspects other than what we economists understand as purely economic aspects? We economists cannot measure these things and nobody else can measure them numerically, Sir.

Economists regard general welfare as consisting partly of social welfare, and part of social welfare is economic welfare, and I was speaking in terms of economic welfare. I must admit that we measure economic welfare rather roughly, but we try to measure this by what we call the national income. This is a very, very rough approximation of what we have in mind, but I must admit that this does not cover all we would understand under economic welfare. There is more to economic welfare than just the national income—this is a very rough indicator—but apart

from that I, as an economist, appreciate, and I think any economist should appreciate, that economic welfare is not in fact the only and sole consideration. I think this would distort completely the views or values of any person if you did not have any other welfare considerations.

I think I must explain to you, Sir, that this whole approach, which I should like to call the differential approach, is in fact a solution designed to serve these very uneconomic values—to give these non-economic values an opportunity to be exercised and in fact to be enjoyed as part of total welfare under this particular set of circumstances. The approach is not only from an economic viewpoint, and I am very sorry if I have given the impression that economic welfare is the sole and only consideration. These other aspects of general welfare that are not measurable, and in fact shade off into non-economic welfare considerations are also of basic consideration. It is the very purpose, intent and design of this policy, given the great parts of South West Africa that have not been modernized economically yet, to develop the opportunities and appropriate institutions in these areas where the élite and the leaders could in fact not only play a primary role in the pioneering stage, but also in fact receive all the aid, assistance, encouragement that I think anybody could possibly supply to make people, to use a very ordinary term, happy in the general sense of the word, and not only in the purely economic sense of the word.

Judge FORSTER: Je vous remercie. Je n'ai pas d'autres questions.

The PRESIDENT: Does any other Member of the Court desire to put any questions? Sir Louis.

Judge Sir Louis MBANEFO: Dr. Krogh, I want to refer to your evidence yesterday, and I am referring to page 178, *supra*, of the verbatim record of yesterday's proceedings. You said in answer to a question, and I now read what you said:

"But I know that it is part of the policy, and I have evidence to show, and I am quite content, that they are trying to spread the modern economic activities to areas where the different population groups, of the members of these different population groups, can live and work, be born and die, without necessarily having to come into contact with the members of other population groups."

Would you clarify that statement—does it apply, for instance, to the southern sector, where you have groups living within the same limit or the same area?

Mr. KROGH: Yes, Sir, this is clearly illustrated in the proposed new homelands of the Odendaal Commission. Yes, I would apply this to the southern sector as well. As you very well know, Sir, an enlargement of particular homelands, if I recollect correctly, has in fact been proposed. And, when I was in the Territory I think a large number of White farms have in fact been bought by public money and given gratuitously to the extension of a particular non-White homeland. The areas would of course no doubt have to be consolidated in due course and enlarged, townships are in the blueprint stage and being established and developed in these areas. Yes, Sir, the idea is, very briefly, to give the different population groups as many economic opportunities as they could possibly occupy, administer, organize and develop, and in this way make them less economically interdependent. It is important to remember that in the case of South West Africa the greatest dependence is on exports, not on

the market in the Territory. The latter, I think it is very misleading—many people think of South West Africa as a highly integrated domestic economy. The modern economy of South West Africa is more integrated with foreign economies by way of export, technical assistance and so on than it is to my mind integrated with what I have called, very loosely, the traditional economy.

Judge Sir Louis MBANEFO: What I want to find out is, is it the intention that each group should be economically self-sufficient?

Mr. KROGH: No, Sir, on the contrary, but it will be largely dependent not on the other group but on the outside world.

Judge Sir Louis MBANEFO: What I am trying to get clear in my mind is what would be the relationship between the different groups. You talk in terms of separate economies . . .

Mr. KROGH: Yes, but the fact that I say separate economies does not mean that these economies are self-sufficient. I mean, for example, Great Britain is not self-sufficient . . .

Judge Sir Louis MBANEFO: What would be the relationship of the two in terms of labour and market?

Mr. KROGH: In terms of the market, I think that the major part of the production, as in the southern sector at the moment, if you look at the national income figures, 80-90 per cent. of it is in fact produced for export, not for local consumption, so that the percentage that is destined for the local market is negligibly small. With regard to the labour situation, I think that you could very well see that White workers, skilled and possibly managers too, would be allowed by a particular non-White group to enter its territory to do jobs there on a temporary basis, if they so prefer. There would no doubt be some of these people, just as in other African territories. In tropical Africa today, most of the formulation of economic development plans—and I can very well imagine the execution of these plans as well, requires highly technical and skilled people who originate, as it were, from outside tropical Africa, and I know that if many of these plans that are in the blueprint stage are to be executed, very many more will have to be imported from outside. So I can very well imagine that there would be White skilled people working in these areas, but this would be subject to the wishes or approval of this particular group—if it does not want White workers there, then it decides, in fact, for me as an economist, that it places priority on other values than purely economic development values. Whereas, another group might quite well choose to have these foreign people working there, helping them, being employed by them, in occupations that cannot, at that stage, be manned by members of its own group.

In that case, it would indicate to me as an economist, that these people prefer, compared to the other group I have mentioned earlier, Sir, economic development before, for instance, the factor of Africanization or having its people do that work even if they were not fully qualified to the same extent. This would be the wish of the people.

Judge Sir Louis MBANEFO: So if you use that phrase without necessarily having to come into contact with the members of other population groups you visualize a situation where there could be no interchange of labour between the two groups.

Mr. KROGH: No, Sir. I said, not necessarily. I do not visualize a situation where there cannot be any interchange of labour. On the contrary, to the extent that you say you have a receiving group and to the extent

that this group prefers to receive these foreign workers to have them work there just as they would in tropical Africa, that would, in fact, be allowed, as it is in the case of Ovamboland at this very moment, Sir.

Judge Sir Louis MBANEFO: But they do not want to receive them?

Mr. KROGH: If they do not want to receive them then it is their choice to do either with or without them and therefore prefer, for instance, a lower level of living, or to sacrifice development efforts for the preference of not having these foreign people there. Or, they can decide to Africanize—that means putting people into these jobs of their own group in this particular case. It could very well happen, Sir, that they could put in people who are less qualified but of their own group to hold a job that could be better done, economically speaking, more productively by say a member of another group. To me this would indicate that they prefer, in their set of values, rather to have this situation than to have the more productive situation, let us say in this particular example. This to me would mean that they do not regard the occupation of a particular job by the most efficient worker . . .

Judge Sir Louis MBANEFO: I am thinking in terms of groups that you have spoken about. You have these two, or several groups, and the aim is that each should be able to live, work and die without necessarily having to come into contact with the members of other population groups?

Mr. KROGH: Yes, Sir.

Judge Sir Louis MBANEFO: Now that assumes complete separation in the economic field?

Mr. KROGH: No, Sir. It means "not necessarily". It means to the extent that these jobs cannot, at this stage, be done by members of this particular group.

Judge Sir Louis MBANEFO: But then it would operate both ways?

Mr. KROGH: Yes, Sir, of course. I am just taking the one example for you on the one side. Yes, it would operate both ways. This does not mean that you will now be allowed to work in the other sector if this other group would, in fact, let you come and work there, or if they would feel that this would be to their own economic advantage to have you to work there, because they, at this stage, have not got somebody qualified to man the job, or if they have somebody qualified he does not do the job as productively as the one from the other group. They can decide this, as this is, in fact, decided internationally among national States, but the idea is that they must not think in terms of national States, this is an African problem. If you think in terms of national States you think of Great Britain, France or the Netherlands, and so forth. But this is a problem peculiar to Africa and, I should say, taking into consideration this particular set of circumstances as in South West Africa, an "international" solution on a miniature scale. That does not mean that the members of one group may not work in the jobs of another group. And, I can tell you, Sir, that there are, as I have tried to explain, many non-Whites working at the moment in the White sector, but more jobs are being created and the whole modern economy is being expanded at both points. Urban areas and so forth are being established and developed in these areas outside what we have called the White area (thus far, I think we understand each other there) to create opportunities there and to encourage the occupation of these opportunities by members of the non-White groups.

Judge Sir Louis MBANEFO: Finally, then, could you say that, as far as

one can foresee in the future, both groups would still have need of each other in the economic field?

Mr. KROGH: Yes, Sir. I would think that, from a purely economic viewpoint (but this excludes social considerations) it would be in the economic interest of one group to, in fact, employ members of the other group if the members of the other group want to be employed by the members of this other group.

The PRESIDENT: Does any other Member of the Court desire to put a question to the witness? If not, Mr. Muller.

Mr. MULLER: Thank you, Mr. President. I have no questions to put to the witness, all I should like to do is to ask that he identifies the copy of his notes, which he has before him and upon which he has been cross-examined by my learned friend, Mr. Gross, so that that can become part of the record.

The PRESIDENT: There is no objection, Mr. Gross?

Mr. GROSS: No, Sir.

The PRESIDENT: Very well, that may be done. I think the Court will now recess for 20 minutes and then, upon the resumption of the hearing, you will call your next witness, Mr. Muller. Is that correct, Sir?

Mr. MULLER: Yes, I shall, Mr. President. May I ask that Professor Krogh be excused from attendance if there are no further questions to be put?

The PRESIDENT: Mr. Gross, Sir, have you any objection to the witness being released from further attendance?

Mr. GROSS: No, Sir.

The PRESIDENT: Unless it is indicated by mid-day that there is any further need for the witness to remain, he will be excused from further attendance.

Mr. MULLER: I thank you, Mr. President.

The PRESIDENT: Mr. Muller.

Mr. MULLER: Mr. President, the next witness will be Mr. Pepler and his evidence will also concern the issues raised under the Applicants' Submissions Nos. 3 and 4. We have indicated to the Applicants that his evidence will be directed to the following points, and I quote from the letter of 22 September 1965 addressed to the Agent for the Applicants:

- "(1) The different agro-economic regions of South West Africa.
- (2) Schemes and methods applied in the promotion of economic development of the said regions particularly in the field of agriculture.
- (3) The reasons for differential treatment (in the economic development), of the areas occupied by the different population groups<sup>1</sup>."

May I explain, Mr. President, although I have indicated that his evidence will be directed, *inter alia*, to the different agro-economic regions of South West Africa, that we have had evidence on that point by Professor Logan. It is not my intention that that evidence be repeated and Mr. Pepler will deal very shortly only with the agricultural activities amongst the different population groups in the Territory.

May I ask that Mr. Pepler come forward and make both the declarations as witness and as expert.

<sup>1</sup> See XII, Part IV.

The PRESIDENT: Let the declarations be made.

Mr. PEPLER: In my capacity as witness I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth. In my capacity as expert I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

Mr. MULLER: Mr. Pepler, your full names are Louis Andreas Pepler, is that correct?

Mr. PEPLER: Yes, Sir.

Mr. MULLER: You hold the Bachelor of Science degree in Agriculture of the University of Pretoria?

Mr. PEPLER: Yes, Sir.

Mr. MULLER: What is your present position?

Mr. PEPLER: Director of Bantu Development, Sir.

Mr. MULLER: Have you held any other positions in government service?

Mr. PEPLER: Yes, Sir. I was in the Department of Agricultural Technical Services up until 1941; and from 1941 I was appointed Superintendent of the Orange River Irrigation Schemes and the Loskop Irrigation Schemes until 1949. At the end of 1949 I was Chief Professional Officer in the Department of Bantu Administration and Development, where I ultimately became Director of Agriculture and in 1961 I was appointed Director of Bantu Development.

Mr. MULLER: Would you tell the Court what your functions are as Director of Bantu Development?

Mr. PEPLER: Yes, Sir. My main function is to draw up development plans for the different Bantu authorities in respect of their physical development as well as their socio-economic development, particularly in their different home areas.

I also have to budget for these development plans.

Secondly, one of my functions also is to co-ordinate with the different Departments which also deal with development work, for instance, the Department of Water Affairs for the development of water schemes, irrigation schemes, etc., and also the Department of Commerce, Trade and Industry, for trade and industrial development in the homelands.

Thirdly, I have to determine the priorities of these different tasks that have been designed.

Fourthly, I have to do the co-ordination in my Department, in order to see that the works are carried out and implemented in the way that they were designed.

And fifthly, I have to see to the proper implementation of those plans.

Mr. MULLER: Do the functions which you have just mentioned also extend to the Territory of South West Africa?

Mr. PEPLER: Yes, Sir.

Mr. MULLER: Do you, in addition, serve in other advisory capacities and representative capacities?

Mr. PEPLER: Yes, Sir. I am also a Director of the Bantu Investment Corporation; I am a member of the Natural Resources Development Council in the Republic of South Africa; I am Chairman of an Inter-Departmental Committee for the Planning and Development of the Bantu Homelands; I am a member of the Permanent Committee for the Development of Border Industries; I am Vice-Chairman of an Inter-

Departmental Committee for Mining Development in the Homelands; and I also serve on various interdepartmental *ad hoc* committees.

Mr. MULLER: Have you represented South Africa at international conferences relating to agricultural matters?

Mr. PEPLER: Yes, Sir. I represented South Africa in Madagascar in 1957. I also represented South Africa in Guinea, in Morocco, in Ethiopia, Mozambique and also in Tunisia. These were conferences on agricultural matters as well as for the economic conferences for Africa.

Mr. MULLER: Am I right in saying that you have an intimate knowledge of the practical methods of development of the Bantu peoples, particularly in the agricultural field?

Mr. PEPLER: Yes, Sir.

Mr. MULLER: That is both in South Africa and South West Africa?

Mr. PEPLER: Yes, Sir.

Mr. MULLER: Can you give the Court a very brief description of the agricultural activities of the different population groups in South West Africa?

Mr. PEPLER: Mr. President, as has been indicated, a fairly extensive description has already been given in the Counter-Memorials of the geographical features of South West Africa. I therefore propose to deal mainly with the agricultural features in South West Africa.

As is commonly known, South West Africa is divided into the northern sector and the southern sector, commonly known as the Police Zone. With your permission, Mr. President, I shall start with the northern sector.

In the west of the northern sector we find first of all a portion of the Namib Desert, and adjoining that is the Kaokoveld. Now the rainfall in the Kaokoveld is not very high and the agricultural activities there are mainly confined to pastoral farming. In the first instance the Kaokoveld is inhabited by the Herero people—they are divided into three tribes—who mainly practise stock farming. The live-stock there consists of cattle, sheep and goats. These cattle are very well-framed animals and are of a superior type to the cattle that one finds, for instance, in Ovamboland. The grazing is of a good type; it is sweet veldt grazing, and the carrying capacity is not very high. There are stock diseases in the area, mainly lung sickness, and anthrax is also found in the area. Those are the main diseases found.

Then, as far as agriculture itself is concerned, it is not practised in the Kaokoveld—not dry land agriculture. There are quite a number of permanent springs to be found in the Kaokoveld, where people practise irrigation farming on small holdings. They mostly produce tobacco and vegetables.

Now, to the east of the Kaokoveld, one finds Ovamboland. Ovamboland is known for its flatness; the rainfall increases again from west to east. I would say the average rainfall in Ovamboland is around about 16 inches. The Ovambo people are divided again into approximately eight tribes. They practise mixed farming. They are domiciled mostly in the central part of Ovamboland, not so much in the south-eastern part and the eastern part of Ovamboland. As I have indicated, they practise mixed farming; they keep cattle, goats and sheep. These cattle are much smaller and smaller-framed than the cattle found in Kaokoveld. This must be ascribed to the fact that one finds not only lung sickness there, other than tick-borne diseases, but also internal parasites and liver fluke,



and I ascribe the smaller size of those cattle to the fact that they have adapted themselves to the climatic conditions.

As far as crop farming is concerned, they grow different varieties of crops in a very peculiar way. They apply the mound system, that is they work up the sand in mounds and they plant the seed in those mounds. In other words, they more or less practise a hydroponic form of agriculture. They grow mainly kaffircorn, muhango and maize—those are the three main crops that they are growing. Near the residential sites, and within the boundaries of the residential sites, they also grow tobacco and vegetables, and things of that nature. There is no irrigation practised except experimental irrigation—plots that have been laid out.

Next, we come to the Kaokoveld—that lies again to the east of Ovamboland.

Mr. MULLER: I am sorry, you have mentioned that the Kaokoveld is lying to the east . . .

Mr. PEPLER: I am sorry, Mr. President. The Okavangoland lies to the east of Ovamboland. There one finds the general vegetal cover is different from Ovamboland, in this respect, that it has more indigenous trees and one finds savannah country. It is inhabited by the Okavango people, who are also divided into approximately five different tribes. They farm mainly with cattle and goats. It is peculiar that they do not farm with sheep at all. Now, these cattle are also better framed and they can be compared with the type of cattle that one finds in the Kaokoveld, although one can see that exotic breeds have been introduced in the past and one finds quite a variety of types of breeds in Okavangoland.

The predominant diseases to be found there amongst the cattle are also lung sickness, tick-borne diseases and parasitic diseases. They grow crops fairly extensively, namely maize, kaffircorn, and other crops along the banks of the Okavango River. They practise this form of agriculture mainly along the banks of the river and not towards the south. They have also started practising irrigation farming on a small scale and on that irrigation scheme—the Vungu-Vungu irrigation scheme particularly—they are growing a variety of crops now. This is, I must state specifically, still in the experimental stage.

Now from Okavangoland we are going towards the east. Crossing the Okavango river, one finds Western Caprivi, which is a smaller area. It is approximately 600,000 hectares in extent. It is savannah, mainly bushveld country, and it is inhabited by a comparatively small number of bushmen.

Further on to the east, across the Linyanti River, one finds Eastern Caprivi, which is inhabited by two different tribes. They practise mainly cattle farming and small stock farming in a very small way. Their cattle are also of a better-framed type and they also have different diseases amongst their cattle, the main and predominant disease being nagana or sleeping sickness. Foot-and-mouth disease also occurs there, which normally has to be combated in Caprivi.

They also grow crops. Their crops are grown mainly along the Kwando River which lies towards the south of Eastern Caprivi. They grow maize, kaffircorn and muhango, and then one finds that they also grow some vegetables, but mainly tobacco. They do not practise irrigation farming at all in that area.

Now, Mr. President, I have indicated what I call the northern sector, that is, the sector exclusively reserved for the Native peoples of South

West Africa. Those people (that is in all the different areas which I have described now) own approximately two-thirds of the total cattle population belonging to the Native peoples in South West Africa and they constitute about 54.5 per cent. of the total Native peoples of South West Africa.

Now, Mr. President, if we come to the southern sector that is inhabited by both Whites and non-Whites. If I can confine myself to the non-Whites again—in the case of the non-Whites, they are scattered right from the south of South West Africa both towards the east and the west and right up to almost the northern boundary of the Police Zone in 18 different Reserves that have especially been reserved for them. Now, if you will permit me, I will start in the south. Again, the southern areas have a very low rainfall, the rainfall increasing gradually from the south towards the south-east. The lowest rainfall is right in the southern areas, along the Orange River, and at one Reserve called Bondels it is approximately 2 inches per year. It increases very gradually up to a line, more or less to Mariental, where the rainfall is approximately 10-12 inches a year.

Now, these people confine themselves to small stock farming only. They keep mainly goats, sheep (non-wool sheep), as well as a small percentage of wool-, and karakul sheep. They also keep mules, donkeys and horses, mostly for conveyance purposes.

Now, these people in this particular sector that I am talking about have already entered a certain form of . . . if I may revert back to the northern sector, in that sector those people mostly practise the traditional subsistence form of farming and here in the lower portion they have already entered to a certain extent or let me put it this way, some of them, have already entered into the exchange or money economy, that is a market economy.

In the central part, that is if one takes a line from Mariental up towards the north of Windhoek, towards Epukiro and Okahandja, then one finds that mixed farming is practised there. It is also a pastoral area, but there it also becomes savannah country and one finds cattle as well as small-stock farming. There they also go in for goats, non-wooled sheep, cattle and, to a certain extent, a few karakul sheep. They also keep donkeys, horses and mules but, as I stated, mostly for conveyance purposes.

Then one comes to the northern part, that is up towards the Police Zone boundary. There the rainfall does increase and particularly in the east of Okarara, i.e., in Otjituuo and those parts, mixed farming can be practised, but on account of the irregularity of the rainfall and so on, crop farming is only practised on a very small scale, the predominant farming being cattle farming. Towards the west, that is Sesfontein and Fransfontein and those parts, one finds small stock mostly, but they also go in for cattle farming. The stock diseases found there are most commonly diseases like anthrax—just the common diseases which normally have to be combated—but there is no lung sickness or foot-and-mouth disease found there, except again in the east, where one finds that foot-and-mouth disease sometimes occurs; it mainly comes from across the borders of Bechuanaland on that side.

Now, if we revert to the European sector, the White sector, one finds the same pattern of farming from the south again. These people farm mainly with karakul sheep. They also keep goats and they have an

improved goat type there. The karakul farming is a specialized form of farming which is practised by the White farmers and they, on account of the fact that they have done a lot of fencing and paddocking and so on, do keep cattle too. The cattle are of really good quality.

Towards the centre again cattle dominate in the farming system although one does find karakul sheep, goats, wool and non-wool sheep there. Towards the northern sector, particularly towards the north-east, that is in the Grootfontein and Tsumeb areas, mixed farming is practised. The main crops being grown there are maize and kaffircorn. Cattle farming is also practised there. Now, in the White sector they are definitely practising an exchange economy, that is a money economy, already very extensively.

Mr. MULLER: Having described the agricultural activities of the various population groups, can you tell the Court whether, in promoting agricultural development, differential methods are applied as between the various population groups?

Mr. PEPLER: Yes, indeed, Mr. President. Various methods are practised, or differential methods are applied, not only between the White people and the non-White people, but also as amongst the non-Whites themselves.

Mr. MULLER: What are the reasons for such differential methods?

Mr. PEPLER: Mr. President, the main reasons I would say are that they have reached different stages of development. As I have already indicated, the Whites are practising an exchange economy, that is, a money economy, whereas the non-Whites are mainly, and I emphasize the word "mainly", practising the traditional subsistence economy. Secondly, they differ in their traditions, their cultures and their ways of life. And thirdly, they have different conceptions of property and land rights. I would describe those to be the main reasons, Sir.

Mr. MULLER: Now, will you very briefly describe to the Court the different methods employed in developing the country agriculturally, that is, the different methods that are applied amongst the different population groups?

Mr. PEPLER: Yes, Mr. President. In dealing with this question I would put it this way. With your permission I shall first deal with the White sector and then with the non-White sector, but in prefacing these remarks I first of all want to indicate that the European farmers are practising, are definitely practising, an exchange economy. They have to pay for their land, either in cash or they can obtain loans for this. In the case of the non-Whites, they still have the traditional system of land tenure, i.e., land is provided for the different groups and in their own interests they may not dispose of that land, whereas the White man can dispose of his farm if he wants to.

In respect of the methods and the assistance given, the White farmers, once they have acquired a farm, must take the initiative themselves in planning and developing that farm. They must provide the funds for all improvements. If they want to build a house they must provide the funds for it. If they want to establish water points and provide water for the stock as well as for domestic purposes, they must finance those things. If they want to put up fences or roads or whatever has to be done on a farm it must be done by themselves. If they want any extension services, that is, agricultural advice in connection with the development of the farms, they can get it free of charge from the Administration, but

they must also take the initiative in asking for advice which is then given to them in consultation and after proper examination of the land, etc. If they want to go in for crop farming, for instance, they must provide the seed, they must get advice about what varieties of seed they must get, what improved varieties they must get, fertilizers that must be purchased and these must be acquired by themselves. They must also accept full responsibility for the marketing of their products. In cases of drought, when relief is brought to these people they must definitely pay for whatever relief was brought to them and it is repayable with interest. Furthermore, Mr. President, they have to pay taxes towards the general advancement of South West Africa.

In the case of the non-Whites, Sir, both in the northern and southern sector, the approach is exactly the same and the methods applied are exactly the same except that I must indicate that whatever improvements are brought about, or whatever development projects are brought to them, are brought in the closest collaboration and consultation with the leaders of the different national groups. That is very important, Mr. President, and I wish to stress it. The officials are specially trained to deal with them. If the Native people want any advice these officials are at their disposal, but, as I have indicated in the case of the Whites, they naturally have to ask for assistance if they want it. I am now talking about extension services. In the case of the non-Whites the extension officers visit them, they consult with them, they advise them, they guide them but they will not attempt to undertake any improvements without having induced the leaders of the people to accept the development proposals that they do put to them. Now, all improvements, Mr. President, that are then brought about are given by the Administration or the Mandatory to them. For instance, fencing: if they agree to fences being put up, the fencing material is provided; they provide the labour for putting up those fences but they are paid for the work done. All improvements, Mr. President, particularly water—as is commonly known, in South West Africa water is very scarce and expensive to obtain—these water points are brought here in the form of either dams or bore-holes and the Reserves are developed that way at no expense to them. For the sale of stock, when they are induced to sell stock, sale pens are erected for them and whatever other improvements are necessary are provided for. They are advised about agriculture when mixed farming is practised. Good or improved seed varieties are brought to them; they are given those free of charge. In the case of stock diseases—I have indicated already stock diseases are prevalent in almost every territory—these are combated by officials from the Mandatory or the Administration and all inoculations are done for them.

Then, in the case of drought relief, they are given this mainly in the form of food brought to them. If there is a shortage of food for the stock this is also provided for. They are, however, expected to do some work in order to get foodstuffs. It is not given to them absolutely free of charge or handed out so that they can just call for it and get it.

That approach, Mr. President, I take it that everybody will appreciate it, is a psychological one to assist these people in developing themselves. Now, as far as taxes are concerned, they do not pay any taxes except for tribal levies which are imposed by their own leaders for their own funds, but they do not pay other taxes.

Sir, with this background I would like to explain, with your permis-

sion, that it is for these specific reasons that I am an official today of the Department, of what we call in the Republic, Department of Administration and Development. We have the Department of Agricultural Technical Services for the White sector and originally, that is, many years ago, this Department of Agricultural Technical Services served both Whites and non-Whites as far as agricultural services are concerned. But it was found that it was so important for the development of the non-White groups that a special Department should be created, with a very strong division of agriculture in this Department to serve the non-White people exclusively as far as the promotion of agriculture in their areas is concerned. This Department is staffed with a strong professional, as well as technical staff.

Now, if I may just add, as far as improvements are concerned, which I have already referred to, these are effected through them exclusively for their exclusive use; the Whites are not allowed to use whatever improvements have been made in their sector or in their different reserved areas. For instance, I have been talking about the irrigation scheme in Okavangoland. More irrigation schemes will be established which will be for their exclusive benefit. Whatever cattle improvement schemes are undertaken are for their exclusive benefit.

If you will permit me, Mr. President, to mention this in the case of the Republic, where we have advanced further already, there are quite a number of exotic plantations. A few hundred thousands of acres of such plantations are already established in the homelands for the exclusive use and benefit of the people themselves. There are quite a number of irrigation schemes which have been established for their exclusive use. Other schemes have been established in a similar manner, e.g., large fibre schemes, such as New Zealand hemp and sisal schemes, and I am just thinking at this moment of a jute project which has been started in Okavangoland, which will also, again, be for the exclusive use and benefit of those people.

MR. MULLER: Mr. Pepler, you stated that different methods are applied for the promotion of agriculture also as between the Native population groups. Would you briefly indicate to the Court how these different methods are applied and the reasons?

MR. PEPLER: Yes, Mr. President. In the case of these different groups that we are dealing with now, within the non-White people, one must again indicate that different methods are applied because they, amongst themselves, have reached different stages of development and for that specific reason the approach must also be different.

If you will permit me, Mr. President, there again I want to indicate, as I have already indicated, that a special agricultural division was created in the Department I am representing, but in this particular instance the professional and technical people who deal with the agricultural aspects are not only agriculturalists in the sense that they are dealing exclusively with the agricultural aspect, they are also specially trained to know and take account of the traditional customs of the people themselves. In other words, they must understand the people; they must know their ways of life, before they approach them.

If you will further permit me, I must illustrate what I really mean by that. Different peoples have different customs. There are, for instance, Bapedi tribes which have cattle kraals where their beasts are commonly kept. They have a common custom that if the head of that family dies

the head is buried in the kraal and they have a sacred belief that by burying the head of that family in the kraal, then the kraal will be blessed, the animals will be prolific and they will progress in that respect. Now, if one is not aware of that belief which we respect, which we can see is really sacred to them, if one does not appreciate that or one does not know about it, one would be inclined to go walking into a cattle kraal of this nature and have a look at the animals as an agriculturalist, which will really be against their traditions, because as the kraal is sacred to them they are opposed to any strangers entering their kraals when their beasts are there. Strangers can only come there on invitation and only once they have been invited and allowed to enter that kraal can they go in. If matters of that type are not known and not respected, then one can so easily go wrong in one's extension services and methods in attempting to apply approved agricultural methods with these people.

Another factor which is very important in the promotion of agriculture, as far as the officials are concerned, is that we must accept that they have reached these different stages of development and development must therefore not be revolutionary, it must be evolutionary, because then it will be more acceptable to them. Now, if I may quote a few examples just to illustrate what I am trying to explain, Mr. President. If we take in South West Africa the case of the Bushmen. We know that the Bushman is nomadic, we know that he is a hunter, he is a gatherer of food; he is not accustomed to living a settled life. What would the approach be in a case like that? It is no good trying to find them, wherever they are, and saying we are offering you a few cows, we bring you some cattle or we want to tell you how to cultivate or till the soil. The first step would be to create a few water points because of the scarcity of water in the areas in which they normally roam, induce them to come to these water points and live a more settled life. Once one has reached that stage where they begin to get confidence in the officials and see that they have brought the water for them and they are not harming them, and so on, they begin to gather there and the next step will be to bring stock such as goats, to show them the goats, to show them the benefit of the goats and to show them that they can use the milk of the goats, and so on. Then the next step will be to bring a few cattle—a few cows—and to assist them in the milking of the cows and that sort of thing and show them that they can utilize that milk. The next step will be to use some water from the bore-holes, or water points, which have been provided, and to plant some vegetables and show them the advantages of the growing of vegetables and how they can live a more settled life. Now that would be the technique of approach in the case of the Bushmen.

In the case, again, of the Ovambo, where he is already practising a more advanced stage of agriculture, although it is still an elementary form of agriculture but a more advanced stage than the group I have just been describing the approach will be different in this sense, that one will not know that they are both cattle farmers and practising crop-farming. So, one can approach them on the thing which one knows will be acceptable to them. Now what will be the most acceptable to them? Will it be stock farming or will it be crop-farming? In the case of Ovambo one would say that it would definitely be stock farming, that is, to try and improve, or persuade and induce them to improve, the type of stock that they have.

By studying the agro-ecological conditions, Mr. President, one realizes

that these animals have adapted themselves to prevailing conditions and that it might be very harmful to introduce exotic breeds, but one can start off by explaining to them that they can combat diseases, because some diseases are prevalent in Ovamboland one has to teach them and try to induce them to save their cattle by combating the disease, by the application of prophylactic treatment. In this they might be interested. Actually we have succeeded in that respect. We have explained those things to them and they have accepted it. They have reached the stage where they are interested, but they have not yet reached the stage where they are prepared to dispose of their stock, to sell it and to enter a market economy as far as stock is concerned.

The next step would be, again, as far as the crops that they grow are concerned, to indicate to them the low fertility of the sand that they are working up in mounds and that it could be fertilized by the addition of kraal manure, and also that yields could be increased by the use of improved seed varieties. This they have already accepted, but it was on account of the approach. The approach was not that of telling them that they must sell all their stock because if droughts come and so on the stock will die, it was to try to induce them to combat the diseases and to try to induce them to use better seed varieties and to use kraal manure.

In the case of the Herero people again, who are mainly cattle farmers, they have already reached the stage where they have entered into the market economy. They are already selling cattle. Now that is not a difficult task. One's approach should be to induce them to use improved stock, use improved sires, so as to improve the quality of their stock. This they are readily accepting. They are already using these improved sires. Not all of them, but some of them are already doing it, and the approach there would be from the stock angle. You see, they are pastoralists and cattle farmers—the approach was from that aspect and they have accepted it, but one must also take into account in introducing these improved animals that they are also still superstitious about certain things. For instance, they are superstitious about the polled animal, so it is no good bringing an Aberdeen Angus to them because it will just not be acceptable to them. The same as far as certain colours of cattle are concerned, they are prejudiced against certain colours, or superstitious, if I may use that word, so if a specific breed of colour not acceptable to them, although it may be of an improved breed, is brought to them, they will not accept it. Now, Sir, I think I have cited a few examples . . .

Mr. MULLER: I think that is sufficient, Mr. Pepler. Can you say from your experience whether the policy which you have just explained, that is, differential treatment, methods of development, has given good results?

Mr. PEPLER: Mr. President, yes, I definitely think it has brought good results and progress to a certain extent. If I may revert to the Bushmen—I cited the approach just now—as far as success is concerned I can report that quite a number of them are already living a fairly settled life; in Tsumkwe for instance, a fairly large number of them are living a fairly settled life, and they have already accepted the goat; they have already reached the stage where they are building kraals for their goats. At other similar posts they have already accepted cattle, they are milking cows now, and they are living a more settled life. They have even

reached the stage now where they are growing vegetables and so on, and making use of these vegetables. They have actually reached the stage, as far as cows and goats are concerned, where they have developed a pride in these animals, and they have their own number which they put round their neck, and they put the same number on their goat which they regard as theirs and which they look after; so I think that is definitely some progress that could be reported, Mr. President—a little achievement, if I may say so.

As far as the Okavango people are concerned, again, and the Eastern Caprivi people, I have mentioned already that in Eastern Caprivi nagana and also lung sickness occur; now the approach here again related to combating those diseases, and they have now readily accepted prophylactic treatment, they have readily accepted the inoculation of their cattle, and actually they are taking a pride in participating in combating these diseases now. In the case of the Okavango people, they are already accepting cattle improvement by the selection of improved sires being brought in, and they have reached the stage where they feel that they are really happy about it, and they have reached the stage where they are also very, very happy to see the officials when they visit them, both the veterinarians and the agricultural officials. Nagana is being exterminated very rapidly there as a result of their co-operation, and the same applies in the case of lung sickness in Okavangoland.

In Ovamboland they have reached the stage where they are using manure for their crops already; they have accepted improved seed varieties; they are accepting the combating of stock diseases; they have reached the stage where some of their own people have been trained already to do the inoculation work and they are doing it themselves now; they call themselves inspectors and they go around and do the inoculation, etc.; but there is just this one phase which we could not succeed in yet, Mr. President, and that is that they will not part with their stock yet. If I may cite an example the Oshikango Hospital has been put up quite recently with over 400 beds, where meat is badly needed and they have the ready market next to them; they have been entreated to bring stock there but they refuse to do so—they do not want to part with their stock. The position is now that we have to introduce the slaughter stock from the Kaokoveld, where most people are prepared to sell stock.

That is the case so far as the Ovambo are concerned; the Nama in the southern portion, again, have already come to the stage, in cases where they have been working on the European farms and they have seen what karakul breeding meant, and so on that they have acquired karakul rams and they are already breeding karakul, and quite a number of them have thus entered the money economy. These are a few examples as far as South West Africa is concerned. In the case of the Republic I think I can report progress in the sense that the people have in certain instances, where certain irrigation schemes have been developed, accepted them readily; they are making full use of them and they are definitely attached to and settled on these schemes as full-time farmers.

I must also say that we do have our problems and set-backs at times; in cases, for instance, like irrigation schemes one finds that they make use of the scheme, they follow all the advice given to them, they put in their seeds, they work, the whole family work on the land, and they get good crops. Then they are assisted in the marketing of those crops and so on, but by the end of the season when the next crops are to be put in,



one finds that they are still living in their residential areas and they refuse to come and till the soil again, for they say "Well, I've got enough money for the next two or three years, so why must I now come back and till the soil?" Those set-backs we accept—we realize, Mr. President, that one must in one's approach be tolerant and patient, and knowing the people, working amongst them, understanding the people—I do not say this to try to belittle the people—we do anticipate and we do expect these set-backs, but we know that with perseverance they can also be overcome. I can cite one actual example of the set-back I have just mentioned, with your permission, and that is where a specific type of farming was brought to certain people, viz., improved dairy farming, and the people were very interested; they were actually specially selected people in their group, and a farm was specially set aside for them where they were assisted in acquiring very good dairy cows; they went so far as to dig their own silo pits; they gathered their maize, etc.; they ensiled it for the winter months; they even went further and put in clover and grass mixtures for grazing for their stock. They made excellent progress, receiving anything from 600-800 rand a year. We as officials were very proud, Mr. President, of the success, having specially selected these people and so on, but after three years they started disappearing, started selling their improved cows, started just leaving the farming operations altogether. Upon enquiries, the reply was the same: "We have got enough money for quite a number of years now—why should we work?" As I say, I do not cite such sample, Mr. President, to belittle the people; it is merely to show the Court that we and the officials belonging to the Department dealing with the people understand them, and we know that we must be patient and tolerant. Yet we are very optimistic that progress can be made, and we have definitely got cases where farmers who have appreciated our advice and have definitely progressed, and they do not run away from the farming projects any more, they stay there permanently.

Mr. MULLER: Mr. Pepler, you have now dealt up to this stage with agriculture only; can you tell the Court what the approach is in other economic spheres—industry, commerce, etc.?

Mr. PEPLER: Sir, the approach is naturally very much the same, but in the European sector, of course, it is different in this sense: that the European can act—he has the financial resources—as the entrepreneur, he takes the initiative, he takes all the responsibilities in respect of industry, and he has to find his own way. In the case of the non-White, they still lack not only the means but also the skill and the initiative. Again, as far as mining, for instance, is concerned, very little has been done in South West Africa in that respect; there is one man prospecting in the Kaokoveld already, but a further geophysical survey is still being made. We know of the salt and the soda-ash possibilities in Ovamboland—that can be exploited. As a matter of fact, the Bantu Investment Corporation is now doing whatever it can to exploit the possibilities of obtaining salt and soda-ash from the area so that this can be exploited.

In the case of industry, certain progress has definitely been made already. In Ovamboland, for instance, a factory has been put up quite recently for making furniture. The Bantu Investment Corporation has put up the buildings, it has brought the know-how, it has got two instructors, but for the rest there are only Ovambo people working in the factory. Small brick-making factories and so on are also at present being

put up; these are to be carried on in that particular area in Ovamboland. As far as industries are concerned in the Republic, I think we have advanced further there; the Bantu Investment Corporation has not only started quite a few factories in the homelands, but has even reached the stage where it has helped some of the Bantu people themselves to start factories in their homelands. I can cite one specific example in the Republic where a man has a cane factory; he was advanced by the Bantu Investment Corporation an amount of 30,000 rand to assist him to put up the factory; at present he is employing 77 employees—I was there a few weeks ago and I checked on the figures; he is doing quite well for himself, Sir, and he has got a ready market everywhere in the country; as a matter of fact I saw his balance sheet, too; he has a turnover of 122,000 rand per year and has a net profit of 14,000 rand per year. So progress is more advanced, I must say, in the Republic than it is in South West Africa.

As far as commerce is concerned, there are quite a few hundred traders already in South West Africa. There again the approach in Ovamboland was to say "Now, if you want to trade, you can trade", and then ultimately they sorted themselves out, and we have reached the stage now where there are quite a number of traders on a satisfactory footing.

There is just one other aspect, Sir, which I would also like to mention, and that is home industries.

Home industries is an activity that is definitely being encouraged. The Native peoples have the aptitude to make wonderful articles, handicraft articles, and that is extensively being encouraged in South West Africa, particularly in Ovamboland and Okavangoland. The people have a ready market for these things in the Police Zone and elsewhere. They have a standing order from the Administration for quite a large amount and what is more, they are also marketing, we are assisting them in marketing the stuff in the Republic and there is such a demand for it that every endeavour is now made to encourage them to make more of these things—basket work, woodwork—which we know they have the aptitude to make. These home industries are being encouraged and specially put up for the different national groups so that they can have a ready market for them and the idea is to encourage them to make these things so that they can have regular incomes for these products. I may cite the special depot which has been put up in the Republic and the sales for the stuff are so extensive there that one cannot really supply the demand. The turnover is approximately 3,000 Rand per month but that is still under the guidance of the Bantu Investment Corporation—it is nevertheless for the exclusive benefit of the people themselves.

Mr. MULLER: One final question—can you tell the Court what, in your opinion, the effect would be if these methods of differentiation, measures of protection, were to be done away with; for example, if by reason of the existence of a norm, rule or standard the governing authority were prohibited from differentiating between the inhabitants of South West Africa on the basis of membership of a group or tribe?

Mr. PEPLER: It is my personal opinion that if a norm of this nature has to apply, if I interpret it correctly, it will be a very tragic day for the Native peoples. The whole object of the Mandatory to protect the land rights of these people, the whole object of assisting them socially and economically so that they can develop their areas into self-governing, independent homelands, will be defeated. Mr. President, I think that

other groups, more highly developed, with better financial resources will buy up the lands of the less highly developed people. They will develop the natural resources for their own benefit and these people undoubtedly, the less developed people, will be the sufferers for it.

Secondly, Mr. President, my opinion is that if the top layer of any national group has to be integrated into the more developed groups, it will merely mean depriving that group of its leaders, those leaders who could guide and assist the group into nationhood. Sir, if that has to happen, then my personal opinion is it must lead to the ultimate disintegration of the underdeveloped national units.

Mr. MULLER: Mr. President, I have no further questions to put to the witness. Thank you.

Mr. PRESIDENT: I see, Mr. Gross, it is now ten minutes to one, would you desire to put any questions before one o'clock? Would you prefer to leave it until tomorrow?

Mr. GROSS: If it so pleases the Court.

*[Public hearing of 29 September 1965]*

The PRESIDENT: The hearing is resumed. Witness, will you come to the podium? Thank you. Mr. Gross.

Mr. GROSS: Thank you, Mr. President. Mr. Pepler, would you be good enough to tell the Court, Sir, what the extent of your travels in South West Africa have been, roughly in terms of time spent there and areas covered by yourself, Sir?

Mr. PEPLER: In South West Africa, Sir?

Mr. GROSS: Yes, if you please, Sir.

Mr. PEPLER: Sir, I went to South West Africa the first time in 1955 and I spent three weeks all told there. I flew up to certain parts and from there I made use of Land Rovers and crossed the northern part, that is the Kaokoveld, Ovamboland and Okavangoland. Then I came down towards the south. I crossed Epukiro and Ovitoto, that means the eastern part of the Territory, and I came right down to the south as far as Bondels. That was during the first three weeks when I went there in 1955.

In 1957 I went there again with the particular object of explaining to the officials what was meant by agricultural planning and development; I visited Otjimbingwe for several days. We examined the area very, very carefully; we studied the conditions there, the agro-ecological conditions and I explained to the officials what we meant exactly by planning on a farming economic unit basis.

At a later date—I cannot exactly say whether it was 1960 or 1961—I went again to assist the officials there and we visited quite a number of Reserves in the south.

In 1962 I went with our Minister. We again crossed the northern areas right from the Eastern Caprivi, where we conducted quite a few meetings. We also conducted a few meetings in all three of the other northern territories and then we came south again as far as Epukiro. My final visit was in March this year when I went by plane down to the south. I visited a few of the southern Reserves and then I went up north, again to the Eastern Caprivi and crossed all the other homelands.

Mr. GROSS: Thank you, Sir. In your visits there and in the course of your studies and discussions, did you have occasion to hold discussions

with members of the non-White groups in the various areas you visited?

Mr. PEPLER: Yes, Sir, particularly when the meetings were conducted.

Mr. GROSS: Sir, in what language were those meetings conducted?

Mr. PEPLER: Mainly on the agricultural aspects . . .

Mr. GROSS: No, Sir, I am sorry I did not make my question clear. What language, what medium of communication was employed?

Mr. PEPLER: There were interpreters. The language employed was either English or Afrikaans depending on what the interpreter could interpret into best, but we always used interpreters in communicating with the different groups.

Mr. GROSS: The non-Whites with whom you spoke generally could not speak English or Afrikaans. Is that correct?

Mr. PEPLER: Their leaders could invariably speak either English or Afrikaans, but for the sake of the majority attending these meetings an interpreter was used.

Mr. GROSS: Was that condition true, Sir, in the southern sector as well as in the northern areas?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: Approximately how much time have you spent in the southern sector outside the Reserves?

Mr. PEPLER: Outside of the Reserves, not much, Sir, because I do not deal much with the White sector.

Mr. GROSS: Are you personally familiar on the basis of first-hand knowledge, if I may put it that way, concerning the conditions on the farms in the rural areas of the so-called White sector?

Mr. PEPLER: Not personally, Sir, but I had quite a number of discussions with the agricultural officials there, that is, the veterinarians, and the staff working at Omatjenne Experimental Station, and on my travels I traversed quite a number of these farms.

Mr. GROSS: I believe it may be pertinent to put into the record at this point figures with regard to the population distribution by White and non-White in the rural areas of the southern sector. The figures derive from tables in the Odendaal report—table XVIII—I am sorry to take the Court's time with this, Mr. President.

The PRESIDENT: Table XVIII is on page 39, if that is what you are looking for.

Mr. GROSS: Yes, Sir. On page 39 and particularly table XIX on page 41. From those tables the figures derive that in round numbers there are 68,000 non-Whites in the rural areas of the southern sector outside the Reserves—68,000 non-Whites in the rural areas and 20,000 Whites. Do those figures correspond to your own appreciation, Sir?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: And it appears from the Counter-Memorial, III, on page 74, that there are some 25,000 adult male Natives employed by farmers in that same area. Does this correspond to your understanding, Sir?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: In other words, there are more adult male Natives employed on the farms than there are Whites in the rural area? That would be correct?

Mr. PEPLER: Yes.

Mr. GROSS: In the southern sector—I am speaking now about this population whose numbers we have just talked about, in the southern sector outside the Reserves—are you familiar, Sir, with restrictions

or limitations imposed by law on the acquisition and use of farm land?

Mr. PEPLER: Of farm land? In the White sector?

Mr. GROSS: Yes, Sir. We are speaking about the southern sector outside the Reserves.

Mr. PEPLER: Outside the Reserves—no restrictions whatsoever that I know of, Sir.

Mr. GROSS: Now, Sir, are you familiar with the restrictions on the lease or assignment of farm lands to non-Whites?

Mr. PEPLER: No, I am not familiar with any restrictions, Sir.

Mr. GROSS: These facts are undisputed in the pleadings, as I shall cite to you, Sir. On pages 115 and 116 of the Memorials (I) the averments are made by the Applicants, among others, that (this relates to land in the southern sector outside the Reserves)—I read from page 116, Mr. President:

“... the standard form of lease contains a condition that if the lessee marries or habitually cohabits with a ‘Native’ or ‘Coloured’ person, his lease becomes subject to immediate cancellation. While the settler may sublet or transfer his interest in the land with the written consent of the Administrator, he may do so subject only to an express condition that ‘in no case will consent be given to any hypothecation, assignment, transfer, sub-lease or subletting to natives, Asiatics or coloured persons’.”

Have you come across those provisions, Sir, in your experience?

Mr. PEPLER: I have not come across any of those but I presume that that refers to State lands and land that originally belonged to the State and was given out by the State. As far as private property is concerned, land which was not the State’s originally and was acquired by individual farmers, the provisions do not apply, to my knowledge.

Mr. GROSS: Your understanding, Sir, is that the White farmers are permitted to assign or sub-lease farm lands to non-Whites?

Mr. PEPLER: Provided it was not State land before that time, Sir.

Mr. GROSS: Now, could you explain to the Court, Sir, the reason for that distinction to which you have testified concerning the legal restrictions imposed with respect to land formerly State land and which is now owned in fee and which was not formerly State land?

Mr. PEPLER: Sir, I am afraid, as I explained yesterday and mentioned this morning, I deal mostly with the non-White population. I am not acquainted with the legislation as far as the White sector is concerned.

If I may comment on that subject, coming back to your original question that there are more male non-Whites in the White sector than in the non-White sector, I have made a survey of that particular section and my conclusion is that there is more than enough land in the Reserves to accommodate the non-Whites on an agricultural basis, on a farming economic unit agricultural basis. There is more than enough room for them and, therefore, they must have left the Reserves and find themselves on the European farms of their own choice.

Mr. GROSS: Sir, perhaps I misunderstood your testimony. The question which I addressed to you and which I thought you had answered before related to the ratio of Whites to non-Whites in the southern sector outside the Reserves—you understood that, Sir?

Mr. PEPLER: Yes, I understood that but if I may explain—the fact remains that far more people can be accommodated on a full farming

economic unit basis in the southern Reserves than one actually finds there. Now I take it, my assumption is, that they prefer to go to work on those White farms and in normal practice where a White farmer employs labour he might employ up to 10 or 12 employees on his farm, and for that reason you must invariably find more non-Whites on a White farm than Whites.

Mr. GROSS: The fact is, Sir, is it not then, that the non-Whites in this area to which we are referring, outnumbering the Whites in the rural areas as they do, may and do work on the farms but are not permitted to lease or sub-lease those farms—is that correct, Sir?

Mr. PEPLER: I cannot answer that question. As I say, I am not aware of the legislation in the White section.

Mr. GROSS: Just again to complete the record. In the Counter-Memorial, III, at page 32—with reference to the paragraph from the Memorials, which I have read a few moments ago—paragraph 29 in the Counter-Memorial states among other things “the facts contained in this paragraph are admitted” and there is some further discussion which is self-evident from reading it. The explanation given, and I would like to address your attention to this, in this same discussion on page 32 of the Counter-Memorial, is as follows:

“The reasons why Respondent formed the view that ‘the Natives generally have not yet reached the stage of development where they would benefit from individual land ownership, particularly of farms’ appear from the limited nature of their agricultural activities as described above.”

Then the footnote is to the description elsewhere in the pleadings.

Sir, I should like to ask you whether the reference to the Natives generally, and I stress the word generally, on the basis of your knowledge of the agricultural situation, can fairly be interpreted as meaning that there are indeed exceptions to the generality—is that correct, Sir?

Mr. PEPLER: Sir, if I understood you correctly, it conveys the idea which actually exists in the southern sector and that is that quite a number of people are still practising the traditional subsistence economy. Quite a number of them have not acquired the number of stock which they would like to have and so on, and for that specific reason, they go out and work on the White farms.

Mr. GROSS: Your use of the term “quite a number”—would you care to indicate to the Court, on the basis of your expert knowledge or any knowledge, approximately what proportion of the non-Whites would be exceptions, roughly what proportion, what percentage?

Mr. PEPLER: Sir, I would say over 50 per cent.

Mr. GROSS: Sir, the 50 per cent. would be exceptions from the generality that the non-Whites, or Natives as they are called here, generally have not yet reached the stage of development requisite to landownership and utilization?

Mr. PEPLER: Sir, yes, if you will allow me to take the case of the southern areas which we are discussing now. I have some figures available here showing that (if you will allow me just to look it up), according to my calculations, in the southern areas approximately 4,817 families can be accommodated as full-time farmers in that area, whereas there are at present less than 2,000 families practising farming in the southern areas.

Mr. GROSS: Sir, again on the same general point, and again in reference

to the restrictions upon alienation, leasing and assignment and sub-leasing, which are undisputed in the record, in the citations I have given, the further explanation is made on page 33, of the Counter-Memorial, III, and I quote from paragraph 30:

"A necessary corollary to the fact that Natives and Coloured persons are regarded as on the whole not sufficiently advanced to meet the rigorous requirements of commercial farming in the Territory, is that White farmers should not, at any rate while ownership in the farms remains vested in the Administration, be entitled to cede or assign their leases to non-Whites. However, once the farmer becomes owner of the land, no restraint is placed on his right of alienation."

That latter is the point you made before.

Now, Sir, I should like to call your attention to the phrase—"A necessary corollary to the fact that Natives and Coloured persons are regarded as *on the whole* not sufficiently advanced to meet the rigorous requirements . . ."—that also would necessarily apply, would it not, Sir, to exceptions to the generality?

Mr. PEPLER: Yes, definitely, Sir.

Mr. GROSS: And, Sir, in your testimony of yesterday, you, if I may refer to the record, stated that with respect to certain groups, you testified for example at page 210, *supra*—in the southern part of the southern sector, some Native farmers have already entered into the money or exchange economy—that was your testimony, was it not, Sir?

Mr. PEPLER: That is correct.

Mr. GROSS: You also testified on page 215, *supra*, of the same verbatim that the Herero "have already reached the stage where they have entered into market economy".

Mr. PEPLER: That is correct, Sir.

Mr. GROSS: And on page 216, *supra*, you testified yesterday, Sir, that "the Nama . . . have already come to the stage where they are breeding karakul" and "quite a number have already entered the money economy". Is that correct?

Mr. PEPLER: That is correct, Sir.

Mr. GROSS: So that on the basis of your testimony, there are exceptions to the generality references to Natives "on the whole" and that sort of qualification—are there not, Sir?

Mr. PEPLER: Yes, that confirms what I have stated, that some amongst the same group have reached a more advanced stage than the others but they are definitely, to my knowledge and my experience, in the minority.

Mr. GROSS: They are in a minority, Sir. Now with respect to that minority, would you explain to the Court, Sir, why that minority, whatever its number may be, is subject to restrictions of the sort described in the pleadings. If they are not at the same low level, shall we say, as the majority, why are they, this minority, subject to those restrictions, Sir?

Mr. PEPLER: Mr. President, I cannot explain exactly what the reason is for this. As I have already stated, I am not acquainted with the legal position but from the practical point of view, I think I can give an answer in this sense, that according to my survey and our planning made in

terms of the agro-ecological regions and the carrying capacity of the different Reserves, far more people, I am talking about the non-Whites now, can be accommodated agriculturally in their Reserves than what we find there today. Actually far more stock can be carried in those Reserves than we find there today. So if there were any of those more advanced people, who desired to remain as farmers in their Reserves, there is absolutely nothing to stop them from doing so. Actually, there are some of those people in the Reserves today who own up to 500 head of small stock.

Mr. GROSS: Would it then be accurate to say, Sir, regarding the southern sector, the rural areas outside the Reserves, that the restrictions which have been described are based on a policy which is extended to the group as a whole, irrespective of the minority, who are qualified to exercise these rights and to make effective use of the land?

Mr. PEPLER: Sir, I interpret it this way that there is no need at present for them to have more land and seeing that the groups want to remain together through their own choice, I presume that for that specific reason, this restriction might have been applied—if there is such legislation, I have, however, already pointed out that, to my knowledge, it does not occur in the case of privately owned farms. But my answer to that question would be that there is no pressure whatsoever, land pressure, in the Reserves and I do not see any curtailment on these people in this respect which will affect them detrimentally.

Mr. GROSS: In other words, Sir, if I understand you, you are not in a position to explain the restrictions to which I have referred in respect of the qualified non-Whites who reside in the southern sector outside the Reserves?

Mr. PEPLER: No, that is outside my field, Sir.

Mr. GROSS: That is outside your field. Now, when therefore the Respondent in, for example, the Counter-Memorial, III, at page 33, relating to the prohibition of assigning leases to non-Europeans, says as follows: "When Respondent deems the Native population ripe for individual land settlement, provision can be made therefor", did the reference there to "Native population", in your opinion, refer to every Native in the population?

Mr. PEPLER: I explained yesterday that they are not yet accustomed to individual land tenure, it is against their traditional customs; they want land tenure to be on a communal basis, and I think, that is my personal view, that the idea is not to give them private, individual land ownership unless it is their wish—the wish of the people themselves, as a group, not as individuals.

Mr. GROSS: The individual wish in that respect, therefore, is regarded as irrelevant as a matter of governmental policy, is it, Sir?

Mr. PEPLER: No, I would not say that.

Mr. GROSS: Then would you please, if you will, clarify your response in the terms of the group consideration? Suppose a qualified individual wishes to lease land for farming purposes in the southern sector outside the Reserves, would that individual be rejected because he is a member of a group, or would there be some other reason?

Mr. PEPLER: No, definitely not. I have already indicated that as far as individual land is concerned, acquired by the individual Whites outside land that used to belong to the State, he is absolutely free to do so; there is nothing to forbid him doing so.



Mr. GROSS: I am now referring, then, to land in the former category, that is to say, State land or former State land; would you answer my question in terms of that type of land?

Mr. PEPLER: As I said, that is outside my field. I am not in a position to answer that question.

Mr. GROSS: You are Director of Bantu Development, are you not—is that the title of your post?

Mr. PEPLER: That is correct, and may I qualify it by saying that I have never yet felt the need or necessity to go into those matters, because my experience is that all the people at present living in the southern as well as the northern sector could be accommodated on a sound agricultural footing on the lands reserved for them in those parts, so there was never any need for me to go into those matters.

Mr. GROSS: One of the points to which your evidence has been directed and to which you have testified is stated in the letter to which Respondent's learned counsel has referred on 22 September: "The reasons for differential treatment in the economic development of the areas occupied by different population groups." I am referring in that context to the reasons for differential treatment in the southern sector outside the Reserves in the rural areas. Is it your testimony that you are not acquainted with the restrictions upon alienation or assignment or leasing on a racial basis in that sector?

Mr. PEPLER: Yes, that is my evidence, that I am not acquainted with that.

Mr. GROSS: So that your testimony is not intended to be directed, as a witness or as an expert, to reasons for differential treatment in this area which we have mentioned—that is a correct summation, is it?

Mr. PEPLER: In the White sector, yes.

Mr. GROSS: In the rural areas outside the Reserves?

Mr. PEPLER: Yes.

Mr. GROSS: I should like, then, to turn to a more basic question, and that is the fundamental premise of separate development—a major premise, let me put it that way. You are familiar with the general policy of separate development or apartheid, are you not?

Mr. PEPLER: Yes.

Mr. GROSS: Is it not the fact that one of the major premises of the policy of separate development or apartheid, known either way in the record, is that the White or European is given a priority or exclusive position in the White area, the condition of reciprocity in theory being applied so that the non-White is given a similar position of exclusivity or priority in his own area—is that a correct summation of a major premise of the policy?

Mr. PEPLER: No, I do not agree with that. The European has a land area set aside for him and reserved for his occupation, and in a similar manner land has been set aside and reserved for the non-Whites in which the rights of the European have also been limited; he cannot acquire any land in the non-White sector; he cannot even lease land there; he is not allowed to enter that land without a permit; so I definitely do not agree.

Mr. GROSS: We perhaps misunderstand each other, but let me put it to you in the terms in which it was explicitly put by Prime Minister Verwoerd when he was Minister of Native Affairs in 1956. This is cited from the Counter-Memorial, III, at page 175—we are referring now to

a basic premise of the policy of separate development to which your testimony is directed:

"In these territories [that is to say, the Native areas] the European has no claim to property and certain civil rights. There he is the temporary inhabitant who helps with the development of those areas, but they belong to the Natives. The rights of the Natives are bound up with this fact . . . Just the opposite is the case in the European areas. There is the home of the European's rights and there the Native is the temporary resident and the guest, for whatever purpose he may be there."

Do you agree with that as a correct statement of a major premise of the policy of apartheid or separate development?

Mr. PEPLER: I fully agree with that statement.

Mr. GROSS: Then, in the southern sector outside the Reserves, would this not be an important element in the explanation for the restriction upon rights of alienation or leasing, which concededly exist there?

Mr. PEPLER: That would be the explanation.

Mr. GROSS: And could it not be said, then, that the restrictions upon alienation and leasing and assignment of other interests in land are imposed on the basis of whether a person is a White or a Native?

Mr. PEPLER: There is this policy of differentiation between the different national groups—I think that is generally accepted, and the known policy of the Republic of South Africa—differentiation.

Mr. GROSS: So that you would also agree, would you not, then, with the statement in the Counter-Memorial, III, page 233, that—

"Respondent has treated various parts of the Territory as areas in which particular population groups are to have certain priority rights of use and occupation, and that its policy in that regard, far from being 'arbitrary', is based on what Respondent considers to be a necessity inherent in the socio-economic situation in the Territory; and, far from being 'discriminatory', attempts at achieving a fair balance between the legitimate aspirations of the various groups."

Do you agree generally with that statement which I have quoted from the Respondent as an analysis of the policy of separate development to which you are testifying?

Mr. PEPLER: Yes, I do, but it is based, if I may explain there, on the fact the Whites are looked upon as, and they are, the more advanced group, and they regard it as their duty to protect the rights of the less developed people, and for that specific reason that policy is adopted, and is practised.

Mr. GROSS: The reference to—let us take the question of the matter of priority rights of use and occupation—I quote from this excerpt I have read—"attempts at achieving a fair balance between the legitimate aspirations of the various groups"; would you say that the reciprocal limitations upon rights that are referred to by Prime Minister Verwoerd as certain civil rights and claim to property—would you say that the reciprocal denial or limitation of those rights involves the determination of a fair balance between the legitimate aspirations of the various groups in the respective areas?

Mr. PEPLER: Yes, I would definitely say so.

Mr. GROSS: Now, in the case of the southern sector outside the Reserves

where there are these population groups which I have placed into the record, who makes the determination as to what is a fair balance between the legitimate aspirations of the White and the non-White groups?

Mr. PEPLER: I cannot answer that question.

Mr. GROSS: Does your department or function have anything to do with respect to the matter of determining the fair balance between the legitimate aspirations of the White and the non-White groups?

Mr. PEPLER: My department deals with that matter, but I am an agriculturalist and, as I have already indicated, the land which has been reserved for the non-White people and which it is proposed to extend in terms of the Odendaal report makes ample provision for the present population numbers to be established as farmers in their Reserves, that is, as farmers exclusively, which is the basic form of primary development. When one comes to the secondary sector, that is, the commercial sector, then one must find with progress that those people, irrespective of their group, must also enter that sector of the economy. But my finding is that up to the present there has been no need whatsoever for me, for instance, as an agriculturalist, to go to my department and say that I find that there is a shortage of agricultural land in the Reserves.

Mr. GROSS: Your testimony, if I understand, is then intended by you to be directed toward the question of land utilization and land shortage as a technical, agricultural, production question?

Mr. PEPLER: Yes.

Mr. GROSS: Your testimony, as directed to the reasons for differential treatment in the economic development of the areas occupied by different population groups, is then not based upon nor reflects the premises upon which the policy of differential treatment is based?

Mr. PEPLER: I do not follow that question.

Mr. GROSS: Your testimony with respect to the reasons for differential treatment—is that intended by you to reflect considerations of the premises upon which the policy is based, let me say, in social or political terms, or both?

Mr. PEPLER: My answer to that question is again that I am dealing with these different non-White national groups, and I know what the policy is; I know that the policy is to protect the rights of those people in every respect, and those rights that are protected in their Reserves are of a reciprocal nature. As I have already explained, up to this stage I have never come across any instance where it was necessary to approach the Government to say that there is a dearth of land or that the land reserved for the different non-White groups is not sufficient to accommodate them.

Mr. GROSS: I would just wish to put one further question on this specific line as to priority of use in several areas, depending on the race of the inhabitants. In the Counter-Memorial, III, page 266, it is stated that, *à propos* of achieving and maintaining a balance between the legitimate aspirations of the various groups, this "can best be accomplished by setting aside, as far as practicable, an area for the exclusive use and occupation of each group". Can you advise the Court whether this policy is applied in the southern sector of the Territory outside the Reserves?

Mr. PEPLER: Yes, Sir. I have already indicated that the Whites in the White sector have no rights in the non-White sector, to the different limits that have been discussed here this morning, and the same applies the opposite way.

Mr. GROSS: In the southern sector outside the Reserves?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: In respect of the reciprocity (I use the word: I am not sure whether you would agree with the use of it, or would you express a view on that? There is a reciprocity of limitation of rights—is that an agreeable way of expressing it, do you think?), do you, as an expert in the field of Bantu development and agriculture, regard the land policy as inter-related with the economic and political aspects of the policy of separate development?

Mr. PEPLER: Definitely inter-related with the economics of the different sectors.

Mr. GROSS: And the politics, or political rights and freedoms of individuals, would that be a related aspect of the land or agricultural policies?

Mr. PEPLER: The political aspects in their own Reserves or homelands apply so that they have exactly the same political rights there as the Whites have in their sector.

Mr. GROSS: And, conversely, that the deprivation of rights—just to go over the same ground, I admit, briefly, but to put it in this context specifically, the denial of rights, respectively, is based upon the same political policy. Did you understand my question, Sir?

Mr. PEPLER: I did not quite follow the question.

Mr. GROSS: If I understood you, you referred to the granting of rights in the several areas—White and non-White. Just for the sake of completeness I wondered whether your same answer applied to the denial of rights on a reciprocal basis?

Mr. PEPLER: That is correct.

Mr. GROSS: The pleadings of the Respondent (I will be very brief about this, Sir, not to throw a long quotation at you) in the Rejoinder, V, at page 253, stated as follows:

“The primary question at issue is political—the form which self-rule and self-determination must take in order to avoid strife and struggle for domination and preservation, and to ensure harmonious relations. In order to secure justice and sound relations in these respects, which are of overriding importance, separate development is desirable.”

And then I will call your particular attention to the following sentence:

“As a consequence, boundary lines become necessary also in the economic sphere, otherwise attempts at political separatism would be rendered nugatory.”

Sir, would you, as applied to the land policy, express an opinion to the Court as to what the phrase used by Respondent “boundary lines in the economic sphere” would imply?

Mr. PEPLER: Yes. I shall gladly explain that. The object of that really is that the boundaries, as determined for the different sectors, are not only based on the development of agriculture, but on each of these homelands developing a diversified economy. In other words, they must also be enabled to go through the different stages, from the traditional subsistence economy into the exchange economy and ultimately into the export economy. In other words, they must develop those different homelands to the fullest extent, both agriculturally and economically, and then the economy that grows in each and every one of those indi-

vidual areas can be inter-related with the adjoining territories or areas.

Mr. GROSS: Would you agree, Sir, that it is an objective of the land policy to further the objective of "political separatism" between the White and non-White areas?

Mr. PEPLER: Yes, because the whole object is that each national unit must develop as a political entity.

Mr. GROSS: On a racial basis?

Mr. PEPLER: I will not say on a racial basis—on an identity basis, which they prefer to keep themselves.

Mr. GROSS: Do you mean that Whites prefer to keep themselves in one area and non-Whites in another area? Is that what you mean, Sir?

Mr. PEPLER: As amongst themselves—the non-Whites as amongst themselves. In South West Africa, for instance, we experience it. I think it is explained in great detail in the Counter-Memorial. For instance, some years ago, in this century still, the Nama and the Hereros were enemies and it would be unfair to group them together now in one political, economical structure.

Mr. GROSS: In the execution of your function as Director of Bantu Development (is that the correct title, Sir?), do you proceed from the basis that the objective of the policy is separate geographical areas in which Whites, on the one hand, and non-Whites on the other, will be carrying on their lives and their livelihood?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: Do you, in the application of your policies in that respect, have any guide-lines with respect of time for accomplishment of this ultimate objective?

Mr. PEPLER: Sir, I cannot give guide-lines, but I can indicate, as I did yesterday, that the different groups have reached different stages of advancement, and some have reached further stages than others. I have indicated the case of the Bushmen and if I may take the group that we regard to be the most advanced at present, that is in the Republic, the Xhosa-speaking group, the Transkei, for instance, they have reached the stage of advancement where they have been given self-determination already.

Mr. GROSS: Your policy, then, if I understood you correctly and correct me if I did not, which you pursue in the discharge of your duties, is based upon no approximate time for accomplishing the geographical separation between Whites and non-Whites?

Mr. PEPLER: Sir, if I may explain that, in my capacity as Director of Bantu Development I invariably come across this phenomenon that if one develops, let me call it a homeland, for any particular group, one must take account of the customs and ways of life of the people concerned. I think I have already explained it yesterday. My experience is really that it is no use developing any homeland physically without the closest co-operation of and without the closest consultation with the people themselves. Physical development means absolutely nothing if one cannot condition the people with one and let them participate in whatever development does take place. If I may use the word, Mr. President, I always talk about balanced development and by balanced development I mean the physical development of the respective homelands, as well as the human development—in other words, the development of the human aspect.

Now, I cannot see what could be achieved if one develops physically

without a sound, solid foundation for the humans themselves. It is no good, Sir, putting up a roof before you build the foundations of the house—you must have this balanced development and that is why one must definitely take into account the stages of development of the different ethnic groups that we are dealing with.

Mr. GROSS: Yes, Sir. Now, in respect of the accomplishment of the geographical separation on the basis of race, does the calculation enter into your policy or plans whether or not the 68,000 non-Whites in the rural areas of the southern sector, outside the Reserves, will be removed, voluntarily or otherwise, as you choose, from that area to so-called homelands at some stage?

Mr. PEPLER: Will be removed voluntarily . . .

Mr. GROSS: Or otherwise, which ever you prefer. I did not raise that question, Sir. That they will, at some stage, no longer reside and work in this sector, is that an objective or a principle upon which your policy and plans are based?

Mr. PEPLER: The objective, Sir, is to develop these homelands in such a way that they can accommodate the majority, or all the people if necessary, but, there again, I must qualify that not only is it on an agricultural basis, but it must be on a diversified, economical basis. It means, that anyone is free who wants to go back to his Reserve, to go back voluntarily, and I do not for one moment think that they will ever be forced to go back.

Mr. GROSS: The purport of my question, Sir, is to enable the Court to understand, as clearly as possible, what the ultimate objective of the policy which you are administering in this respect is, with respect to the physical separation of Whites and non-Whites: (a) is that an ultimate objective of the policy and (b) is there a time-limit involved for its accomplishment if it is a policy? Those are two questions in one, if I may, Mr. President.

The PRESIDENT: I think it would be better if you broke it into two, Mr. Gross.

Mr. GROSS: (a) first, if you please, Sir.

Mr. PEPLER: Will you just repeat it first.

Mr. GROSS: Yes, Sir. Is it an objective of the policy which you administer in this respect that there will be a physical separation of Whites from non-Whites in separate geographical areas?

Mr. PEPLER: Not necessarily, Sir.

Mr. GROSS: So that when reference is made, still pursuing this same point (a), in the Odendaal Commission report, from which I have quoted, page 429, to the "separate geographical areas" or when references are made to "separation" on the basis of development in separate areas, do those statements mean, or do they not mean, that the objective is partial separation only?

Mr. PEPLER: Sir, I would like to define the objective in this way, that each national unit must have the land specially reserved for him where it can develop, where that group can develop into full nationhood. But if they have people who still desire to sell their labour, or want to work in the White sector or any other sector, I cannot see that the boundaries would be tied to such an extent that they would be prohibited from doing so.

Mr. GROSS: Coming to my question (b), do your plans and policies reflect, or are they based upon, any assumptions concerning the time

within which a major movement will take place of non-White from the rural areas of the White sector?

Mr. PEPLER: Yes, Sir, definitely; that is why these homelands are being developed.

Mr. GROSS: Now, Sir, what would be the approximate time-limit—that is what I referred to before as a guide line for your planning—in which this, may I call it, “mass migration” would be accomplished from the White sector?

The PRESIDENT: What mass migration?

Mr. GROSS: Of the non-Whites from the White sector outside the Reserves.

Mr. PEPLER: Sir, I do not foresee any mass migration whatsoever because the development is so evolutionary, and as the opportunities arise for the people to go to their own homelands then they will go there voluntarily and in an evolutionary way. So I do not foresee that there is really a yardstick in that respect enabling one to say that it will take so long. As I have already indicated, and I must stress this again; it is a question of balanced development; and there has never been any idea of pushing the people back without affording them a decent standard of living.

Mr. GROSS: Sir, there are 68,000 non-Whites in the rural areas of the southern sector outside the Reserves—this is a figure which we have established and agreed upon. In your planning and policy can you advise the Court whether, let us say, in 100 years' time, there will be only 30,000 people as you project your plans and policies? There will only be, let us say, 30,000 people in the southern sector?

The PRESIDENT: Mr. Gross, no question of that description can have any value: surely we cannot gaze that far into the future. You can ask the witness, in respect of the problem you are concerned with, what the contemplates will be accomplished in 5 or 10 or 15 years, but the question which you put to him surely is seeking to gaze into the far future, which no man can do.

Mr. PEPLER: Thank you, Mr. President.

Mr. GROSS: May I rephrase the question or change the question, Mr. President, to bring out the point which we have in mind?

The PRESIDENT: Yes, please do.

Mr. GROSS: What do you envisage in your policy and planning will be the number of non-Whites in the rural areas of the southern sector, outside the Reserves, in 50 years' time?

Mr. PEPLER: Sir, that is also an impossible question to answer, because you have the natural population increases and all that sort of thing. I am prepared to go so far as to say that with the physical development and other opportunities, that is commercial development, etc., in the different homelands, I foresee that more people will be accommodated in their separate Reserves, and that the figures will gradually decrease in the White sector. That I am prepared to say, namely that the present number domiciled today in the White areas will decrease.

Mr. GROSS: Sir, do you envisage in your planning and policy a state of affairs in which the northern territories will be independently viable economically?

Mr. PEPLER: Yes, Sir, definitely.

Mr. GROSS: At what level would you say in terms of a scale from subsistence to exchange economy?

Mr. PEPLER: Sir, at present, as I indicated yesterday, the majority are still practising a subsistence economy, but I have also indicated that in Ovamboland the whole territory is not occupied yet. It can accommodate far more people than it is accommodating at present, but seeing that it carries the highest population figure in the northern homelands, we have already started with the development of commerce and industries.

I have indicated that we have already got a furniture factory there; we want to put up a meat factory, a de-boning factory, and quite a number of other activities can arise. There is economic growth in Ovamboland today. There has been a hospital established, numerous clinics have been established, schools are going up, towns are being established, and all this will create economic viability in Ovamboland. So I do foresee that as one finds an area or a homeland where the population has grown to such an extent that economic viability should be created, and it is created, they can become economically viable.

Mr. GROSS: Would you care, as an expert, Sir, to indicate to the Court, you have an opinion about this, approximately what period of time do you envisage will elapse before this viability is achieved?

Mr. PEPLER: Sir, if I were to give a figure in terms of physical development then it can be an easy matter, because the physical development can take place very rapidly: water points can be made, as I have indicated; different factories can be put up, etc., but the whole object of this policy of separate development is a policy of protecting the people in their own homelands. In other words, let them become economically viable. For that reason, the Bantu Investment Corporation has been established. And with development these people will be absorbed in the factories, they will be absorbed in the hospitals, they will be absorbed in every respect, in trade and so on, so that they can become viable themselves.

Now I grant you that initially the more advanced Whites must take the initiative, but there again, the policy is that as they become available the Whites will withdraw.

Mr. GROSS: Sir, are you familiar with the comparative *per capita* income of the population in the northern territories, as compared with the southern sector at the present time?

Mr. PEPLER: At the present time—no, Sir.

Mr. GROSS: Sir, would you disagree, on the basis of your expertise in the area of development generally, with the figures of Professor Krogh, who testified here but not on this point, in *The South Africa Journal of Economics*, Volume 28, 1960, page 16, that "in the north the *per capita* income of the population is £8 5s., and in the south it is £176 1s. Does this ratio appear to you to be substantially correct from your knowledge of the Territory, north and south?

Mr. PEPLER: If Professor Krogh quoted those figures, Sir (I know he is a research man who must have done intensive research work on that), I must accept them.

Mr. GROSS: I will not press you for concurrence with these exact figures, I do not mean to do that. But you would agree, Sir, on the basis of your independent knowledge that there is, shall we say, a very substantial discrepancy between the *per capita* incomes, north and south?

Mr. PEPLER: I would agree with that.

Mr. GROSS: Now, the terms of the accomplishment of the viability



which you envisage for the northern territories—the so-called homelands—would you have an opinion with respect to, let us say, on the basis of your plans and policies, what the approximate disparity would be in 50 years' time? Does this enter into your plan?

Mr. PEPLER: Yes, Sir. If one takes the Eastern Caprivi, the Kaokoveld and Okavangoland, they are totally underpopulated. My approach, as an agriculturalist, will first be to assist them in developing agriculture—in other words, establishing a sound primary development footing. In the case of Ovamboland, where the population figures are much higher, one would undoubtedly stimulate progress in other respects too. The Ovambo people have the advantage that they have very regularly come into the White sector where they have learned to work on White farms, in White industry, etc., where they earned money, and all that sort of thing, and I think, in this respect, as far as the northern sector is concerned the Ovambo people are more advanced as a result of experience and in-service training that they have gained in the White sector, with the result that they have a layer of people who can take the initiative in stimulating this. I cannot give you a time and say it will be in 10 years' time or 20 years' time. I can repeat, and I want to repeat, that that growth will definitely, from an evolutionary stage, gradually grow to a more revolutionary stage.

Mr. GROSS: Sir, I am, of course, not asking you to be a prophet and make predictions. I am addressing you solely as Director of Bantu Development and a witness, an expert, on the policy of separate development. Is the Court to understand, Sir, that in the development of policies and plans with respect to this development, and to development, there are no forecasts or targets of accomplishment of particular stages—I am speaking now, Sir, in terms of your planning and policies rather than in respect of your prediction of accomplishment?

Mr. PEPLER: Sir, there are. Plans are being worked out regularly. The Physical Development Plans, Educational Development Plans, Health Plans, all these plans are being worked out very carefully, the lot are being budgeted for, but might I explain to the Court the difficulty that I am placed in by this question? If I may quote the case of the Transkei which had advanced to the stage when they asked for self-determination the Department (the Prime Minister as a matter of fact) told them: now you go into recess; you draw up your constitution, you say what you want, what you are prepared to do, what departments you are prepared to take over, etc. This they did. Self-determination was given to them, Sir. They have established in their Public Service 2,466 posts. At present there are still over 500 White officials working in the Transkei, being seconded by the Republican Government to them.

I had the occasion to read the Minister of Agriculture for Transkei's agricultural report very recently, in which he stated that he could not foresee that he could replace all the White officials in his Department of Agriculture and Forestry within ten years. That is something specific that I can go on, which I have read in his report.

It depends on how the people themselves progress, on how they themselves are interested in the different subjects. In the Bantu medical profession, Sir, I may say that there are quite a number of medical people already operating in the Transkei and depending on themselves, they can run the Health Department of the Transkei as soon as they get enough medical officers to do so. But your question was "Are we plan-

ning?" and my answer is: we are planning but it is most difficult to forecast how long it will take because it again depends on the human factor.

Mr. GROSS: Sir, may I stress that I am sure that the Court will appreciate the difficulties you confront in the development of these areas, and also, as I attempted to make clear for the sake of my question and your response, I am not requesting a forecast. I am trying to ascertain, for the elucidation of this problem what are your target plans, or, in terms of an enterprise, budget or forecast budget in that sense, in connection, for example, with your responsibility, which you testified you bore, in page 207, *supra*, of the verbatim yesterday: "I also have to budget for these development plans." And, with respect to the development plans, you referred to your function "to draw up development plans for the different Bantu authorities in respect of their physical development, as well as their socio-economic development, particularly in their different home areas". My question to you, Sir—perhaps you have answered it or may not care to—is: In preparing those development plans, which is your main function as you described it, and developing budgets for them, do you or do you not have a plan or target for accomplishment of certain stages of development? I started this line of questioning, you recall, with respect to the discrepancy in the *per capita* income. Taking that as an example, do your plans and do your budget recommendations for the development reflect in any way a time target for accomplishment in respect of narrowing the discrepancy between north and south of the *per capita* income? Do you have any objective in that respect set forth before you in developing your plans and budgets? I am speaking about a time factor here, Sir.

Mr. PEPLER: Sir, yes. In the case of the northern areas, for instance in Ovamboland, for the next five years in my planning and budgeting I have made provision for the expenditure of 35 million rand in Ovamboland alone, whereas the figures for the other three northern homelands are very much lower. I think that goes to indicate that I have a directive and I have a plan in developing them according to their needs and the requirements.

Mr. GROSS: Do you have an estimate upon which those plans and budget have been based? What will be the approximate *per capita* income of the population of Ovamboland at the end of the five-year period?

Mr. PEPLER: Yes, Sir. If I may look up the figure. On the basis of the *de facto* population in Ovamboland today, 161.41 rand per annum in 1970.

Mr. GROSS: Mr. Pepler, with further reference to this point, I have just one or two more questions. Reverting to the question of projections for planning purposes, which is all we are addressing ourselves to, would you indicate to the Court what the, if any, projected *per capita* income, let us say at the end of five years, would be with respect to Okavangoland? It has a population I believe of some twenty odd thousand or so—do you have a figure?—28,000.

Mr. PEPLER: 27,800, Sir, that is the number.

Mr. GROSS: Thank you.

Mr. PEPLER: Sir, it is based entirely on the potential agricultural income in terms of the methods that they are practising today, not in terms of the actual agricultural production capacity of the land and in their case it will amount to approximately 80 rand *per capita* in five years' time, in 1970.

Mr. GROSS: A rand, if I am not mistaken, Sir, is ten shillings in British currency?

Mr. PEPLER: Yes, two rand to one pound sterling.

Mr. GROSS: In your testimony of yesterday, at page 218, *supra*, in response to a question addressed to you by learned counsel, you replied as follows:

“The whole object of the Mandatory to protect the land rights of these people [that is Native peoples], the whole object of assisting them socially and economically so that they can develop their areas into self-governing, independent homelands will be defeated.”

That was *à propos* of a question addressed to you by Mr. Muller as to what the effect would be of, as he put it, “doing away with measures of protection”. Leaving aside, Sir, that characterization of the Applicants’ case, may I call your attention to your use of the phrase “independent homelands” and ask you to advise the Court what the economic significance, if any, of the word “independent” is in that context?

Mr. PEPLER: Sir, that means the same way as the Transkei has been built up towards a self-governing national unit, in other words, as I explained initially, after they had gone into recess they had indicated which departments they thought they were capable of administering with European assistance, that is, still with the assistance of European officials. They are not entrepreneurs and so on, they are Government officials who assist them and guide them in administering their national unit (in the case of the Transkei).

Now, if I may answer the question this way, it depends on what they actually require initially, but the group will also build up, depending on themselves, to an absolute independent national unit in which they can govern themselves in every sense of the word.

Mr. GROSS: Now, Sir, this response refers, I take it, to political aspects, if I understood you correctly. With respect to my question to you, what, if any, significance from an economic point of view, including agriculture, is to be attached by the honourable Court to your phrase “independent homelands”? What economic independence, if any, do you envisage by the use of that phrase?

Mr. PEPLER: Sir, by economic independence I mean opportunities over and above agriculture alone can be created. Now, there are so many natural resources in these different homelands where they can develop different forms of economies. In other words they can develop a diversified economy, but I think I have already mentioned that the boundaries mentioned by you do not indicate that the economy must sustain itself within those boundaries always. There will always be an inter-related economy. If I may quote the example of Basutoland in the Republic: the inhabitants are administered by the British Government. They are getting their independence, but I do not think that Basutoland, knowing the territory as I know it, will ever become economically independent. They have not got the resources to become economically independent but there is an inter-related economy. In other words they buy food from the Republican Government and whenever they have anything surplus such as wool and so on, they market it through the Republican Government. There is an inter-related economy.

Mr. GROSS: Would it then, Sir, be a fair distillation of the essence of your response to say that when you used the phrase “independent home-

lands" you did not intend to include economic independence in that concept or formulation?

Mr. PEPLER: Sir, one can be economically independent in the sense that one can control one's own economy within the country, but there is always such a thing as a commercial and export economy. When I referred to that I had in mind the export economy too, which will be inter-related just as we have it all over the world.

Mr. GROSS: Thank you, Sir. Now, specifically with reference to South West Africa again, the Odendaal Commission report, on page 299, paragraph 1248, referring to Namaland, the population of which is set forth as 34,806, states as follows:

"As in the case of practically all the other homelands as well as South West Africa as a whole, this region will remain dependent upon supplies from elsewhere for its staple food requirements."

Is that a correct statement on the basis of your knowledge?

Mr. PEPLER: That is absolutely correct, Sir, and if I may say, which I omitted to do in my evidence yesterday, that is the case as far as the whole of South West Africa is concerned. They still cannot produce all their food requirements and are dependent on the Republic for certain food requirements.

Mr. GROSS: So that it is correct to say that with respect to the northern area of the Territory generally they will be dependent on the outside to meet their staple food requirements—is this correct, Sir?

Mr. PEPLER: It is correct.

Mr. GROSS: Now also with respect to possible new industries in South West Africa, and this is *à propos* of your testimony yesterday, when you were asked by learned counsel with respect to industry and commerce development at page 217, *supra*, and following from the verbatim, the Odendaal Commission report at page 431, paragraph 1443, under the heading on the preceding page "Possible New Industries in South West Africa" states as follows:

"The list of possibilities is not impressive, and except for a few relating to the fishing and rock lobster industry, and a possible cement factory at one of five towns, it is clear that there are at present no important or obvious possibilities which could lead to large-scale developments."

Do you agree with the accuracy of this analysis of the economy of the Territory with respect to industry and commerce?

Mr. PEPLER: As far as our present knowledge goes, Sir, yes.

Mr. GROSS: So that in the development of plans for Bantu development, is this premise, as set forth in the Odendaal Commission report, a premise upon which your planning and policy also is based in Bantu development?

Mr. PEPLER: No, Sir, not necessarily, because I have mentioned yesterday that a geo-physical survey is being made to see what other natural resources do exist which could be exploited.

Mr. GROSS: So that the forecast on this point depends entirely on exploration and is not yet completed—shall we put it that way, Sir?

Mr. PEPLER: Correct, Sir.

Mr. GROSS: On the basis of your present knowledge would it be, however, correct to say that your planning reflects the same assumption

which is set forth in this reference from the Odendaal Commission report with regard to new industries?

Mr. PEPLER: Except, Sir, that I do feel that as far as karakul sheep breeding is concerned, that could still advance and progress in the Territory and as you are aware, Sir, karakul farming in South West Africa is the biggest source of income of the Territory. So I foresee from the agricultural point of view that economic growth can be stimulated by improved karakul breeding in Namaland.

Mr. GROSS: That would be in the northern area, would it, Sir?

Mr. PEPLER: No, in Namaland.

Mr. GROSS: That is in the southern sector. I see. So that with respect to the northern areas, would there be any question about the accuracy or validity of this estimate of the Odendaal Commission with respect to new industries?

Mr. PEPLER: Sir, there are natural resources such as the indigenous forest . . .

Mr. GROSS: I just wanted to check for the sake of clarity, with the President's permission. I am referring to new, not existing, industries. The statement of the Odendaal Commission report, which I have read, refers to possibilities and says they are not impressive, I wanted to ask you for the sake of clarity, whether this relates to northern areas as well as the southern sector?

Mr. PEPLER: At the present stage it is not impressive, I admit, except for Okovangoland and the Eastern Caprivi where they have these indigenous forests and according to a survey made by Mr. Keet, a previous Director of Forestry, and the figures that he actually arrived at, the value of these indigenous forests in those areas amount to 68 million rand. Now these have not yet been exploited at this stage.

Mr. GROSS: Now the exploitation of that, Sir, is that part of the presently envisaged plan of your department?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: And is that budgeted at the present time, Sir?

Mr. PEPLER: That has been budgeted for and actually provision has been made for more factories.

Mr. GROSS: For the manufacture of furniture?

Mr. PEPLER: For the manufacture of furniture.

Mr. GROSS: Now, Sir, again coming to this question of the furniture manufacturing, I would refer in that specific context to the Odendaal Commission report, in which the following statement is made on page 435, in paragraph 1458:

"As regards other industries, [there are some listed previously, cement, fishing, etc.] the Commission cannot express any opinion, because their establishment must depend on entrepreneurs who are prepared to venture into the various fields of enterprise. Special attention should, however, be given to the establishment of a furniture factory in Ovamboland. There is an abundant supply of excellent *Transvaal teak* in the eastern part of Ovamboland, which is very suitable for furniture."

Now Sir, are you at all familiar with the problems for the finding of entrepreneurs "prepared to venture into the various fields of enterprise" including the furniture factory which is suggested here?

Mr. PEPLER: Yes, Sir. For that specific reason, the Bantu Investment

Corporation was established in 1959 in the Republic of South Africa and it also functions in South West Africa. According to the Act, the Bantu Investment Corporation acts on behalf of the different national units. The Bantu Investment Corporation are granted money by the Government of South Africa and they operate on those funds. In the specific case of the furniture factory in Ovamboland, they have already invested over 100,000 rand in establishment of that and they act as entrepreneurs, the idea being not to use private initiative there, but the Bantu Investment Corporation, in terms of its Act, can employ people with the necessary knowledge to advance that factory for them and I mentioned in my testimony yesterday, Sir, that they are at present also employing people to instruct the Ovambo people to manufacture that furniture. Now that will apply in the case of every factory that is opened in any one of those territories, the Bantu Investment Corporation is the body that really initiates industrialization.

Mr. GROSS: Excuse me. Thank you. Where are the headquarters or the main offices of the Bantu Investment Corporation?

Mr. PEPLER: The main office is in Pretoria but they have branch offices in quite a number of the homelands and in the case of South West Africa they have a branch office in Ovamboland.

Mr. GROSS: And would the Bantu Investment Corporation have a board of directors, Sir?

Mr. PEPLER: Yes, Sir. I mentioned yesterday that I am a director myself.

Mr. GROSS: Are there any non-Whites who are members of the board of directors, Sir?

Mr. PEPLER: No, Sir.

Mr. GROSS: Could you explain whether that is a policy, Sir?

Mr. PEPLER: That is a policy, yes.

Mr. GROSS: Not to have non-Whites, Sir?

Mr. PEPLER: Yes.

Mr. GROSS: Are the officials representing the Bantu Investment Corporation in the Territory all White?

Mr. PEPLER: No, Sir. A large number are non-White.

Mr. GROSS: At official level?

Mr. PEPLER: Officials, yes, Sir.

Mr. GROSS: What is the highest level which a non-White occupies in that structure, Sir?

Mr. PEPLER: Sir, there are few graduates in commerce and they act in various and different capacities. At present, they are mostly employed by the Bantu Investment Corporation as a directive body to guide and assist their own people in whatever enterprises there are—in trade, in manufacturing, and all that sort of thing.

Now, I may go further, Sir, and explain there too that it is actually the policy of the Bantu Investment Corporation to bring on to its staff as many qualified people as possible, the object being not only to keep them as officials, but to give them an in-service training in such a way that they can ultimately be the entrepreneurs in any of those projects. If I may cite an example, two whom I know qualified at the university of the North and have now left the Bantu Investment Corporation and they are running their own businesses.

Mr. GROSS: Sir, what posts did those two, for example, occupy in the Bantu Investment Corporation during their service?

Mr. PEPLER: I think they are commonly named Extension Officers of the Bantu Investment Corporation.

Mr. GROSS: And, speaking generally now, the non-Whites who are on the staff, you referred to this, I believe, Sir, do any of them supervise White officials or employees?

Mr. PEPLER: No, Sir, they do not supervise White employees.

Mr. GROSS: Is that a matter of policy, Sir?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: With respect, finally, on this line, to minerals; you testified in the record yesterday, at page 217, *supra*, you referred to the fact that non-Whites "lacked not only means but skills". You recall having testified that, Sir?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: Could you explain to the Court, Sir, the reason for the absence of skills in the context of your testimony?

Mr. PEPLER: Sir, what I mean by that is that the Whites have more capital resources . . .

Mr. GROSS: I am not referring to means but skills. My question was whether you could account for the lack of skills which you testified was prevalent in the situation.

Mr. PEPLER: Sir, the opportunities are being offered for these people who want to acquire the skills, but one finds that there are not so many of these people who want to enter into these different sectors, and that is why, relatively speaking, there are far less with the necessary skills.

Mr. GROSS: You are referring, Sir, in the context of your testimony, to minerals. It is a fact, is it not, Sir, that there are some 8,000 or more non-White employees in the mines in South West Africa?

Mr. PEPLER: Yes, Sir, that is correct.

Mr. GROSS: When you refer to lack of skills available in the northern area, can you explain to the Court why it is that there is such a lack of skills in the mineral industry when there is that number of non-White employees in the mining industry at the present time?

Mr. PEPLER: Sir, I was not only referring to mining. I was talking about a general diversified economy, that means in all the different sectors of development.

Mr. GROSS: I think, Sir, that perhaps the record should be clarified in this respect. I take it that, with respect to mining, you would not make an exception, or would you make an exception to your statement, your general statement with regard to lack of skills available? Does that lack also apply to the mining industry, as part of your response?

Mr. PEPLER: Sir, I am sorry but I do not know enough about the mining industry in South West Africa to express an opinion on that.

Mr. GROSS: So that when you referred on page 217, *supra*, to "In the case of the non-White, they still lack not only the means but also the skill and the initiative", with reference to the skill, the lack of skill, you did not mean to include the mining industry in your answer. Is that correct, Sir?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: That is excluded?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: With respect to lack of skills in industry, I take it that that was within the scope of your response yesterday, was it not?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: Could you explain, in any detail you wish, the reason why such skills are lacking in industry?

Mr. PEPLER: Sir, I must talk of observations only because I have definitely not made a study of the different skills. I have indicated that people who desire to undertake anything in their respective homelands, or even in the European areas reserved for them in the towns and so on, can undertake anything, they are not prohibited from undertaking any enterprise. But in the case of the homelands, which I am representing here, if they show the desire, even if they lack the skills, then they are assisted in developing those skills through the Bantu Investment Corporation.

Mr. GROSS: Sir, I am simply trying to clarify the scope and intent of your testimony yesterday. I am referring to page 217, *supra*, and I think you have now testified that in your response you were not intending to refer to the mining industry.

Mr. PEPLER: Yes, Sir.

Mr. GROSS: The question addressed to you by Mr. Muller was:

"Mr. Pepler, you have now dealt up to this stage with agriculture only; [this is on page 217, *supra*, of yesterday's verbatim record] can you tell the Court what the approach is in other economic spheres—industry, commerce, etc.?"

Then your response was:

"The approach is naturally very much the same, but in the European sector, of course, it is different in this sense: that the European can act—he has the financial resources—as the entrepreneur he takes the initiative, he takes all the responsibilities in respect of industry, and he has to find his own way. [And then you went on to say] In the case of the non-White, they still lack not only the means but also the skill and the initiative."

Now my question to you, Sir, was with reference to the skills that you say were lacking. Leaving aside mining, as to which you are not testifying, and turning to industry, would you explain, if you can, Sir, why there is a lack of skills, in the terms of your testimony, in the economic spheres, industry, commerce, etc.?

Mr. PEPLER: Sir, in the case of industry, for instance, one who wants to take the initiative in putting up a factory, requires engineers, requires architects, requires quite a number of technicians to put up a factory of that nature. Then it is a case of administering that factory, and there are not so many—apart from the means that these people do not have, but which has been provided for now for they can obtain that through the Investment Corporation—I cannot foresee that there are so many people with the skills who will be capable of running a factory as it should be run, knowing that the factory is a composite concern where people with various types of education are required. For instance, as I have indicated, I can think of very few factories where engineers are not required, where architects are not required, and all that sort of thing, and there are not many people qualified for that purpose at present.

Mr. GROSS: Yes, Sir. In respect of this elaboration of your response to Mr. Muller yesterday, can you explain to the Court the reason for the lack of available skills in the enterprises you have just mentioned, for example? Why?

Mr. PEPLER: Sir, I cannot explain the reasons, because as I have said



already, there are many provisions made for the people if they want to acquire the knowledge. But then knowledge does not mean everything; experience after knowledge counts more really than the basic knowledge, I should say.

Mr. GROSS: Precisely, Sir, and would it not, to put the same point in a different way, be correct to say that skills are normally acquired on the job, and at work; is not that the normal method?

Mr. PEPLER: Up to a certain stage, Sir, but an engineer cannot ever qualify by in-service training.

Mr. GROSS: Now, Sir, in the case of the lack of skills in the respects that you mentioned, having in mind that this is the forty-fifth year of the Mandate, do you have any specific information available to you with respect to the restrictions or limitations upon the training of non-Whites? Do you have any knowledge of that?

Mr. PEPLER: Not in South West Africa, Sir.

Mr. GROSS: So that your response to Mr. Muller, in testifying with regard to separate development, without qualification of the point, to which your testimony is directed, was not intended to cover the question of limitations upon the training of non-Whites in South West Africa: is that correct?

Mr. PEPLER: My testimony was based on my knowledge of the people and on the fact that I know so few of them. I am, as I have explained, Mr. President, Director of the Bantu Investment Corporation. I see all these applications that come in from people who are interested in such enterprises, and my judgment was based upon my practical experience.

Mr. GROSS: Now, Sir—incidentally, if we can get a flat, perhaps, response to this—you are not aware, or are you aware, of the job restrictions and reservations in South West Africa? Are you aware of these, in industry?

Mr. PEPLER: No, Sir, I am not.

Mr. GROSS: I should like, if I may, Sir, and I am coming, Mr. President, to my conclusion, refer once more to the Odendaal Commission report, page 311, paragraph 1283—its sub-paragraph No. (15). I should like to read it since it is, I think, within your precise area of responsibility, and it comes under the heading "Certain Observations and Recommendations of the Odendaal Commission". It reads as follows (p. 311):

"That since the planning and establishment of agricultural training centres and the provisions of properly trained staff will take at least a few years, consideration should also be given to the possibility of meanwhile recruiting suitable non-White students for training in agriculture at institutions in the Republic of South Africa, and of providing them with the necessary financial assistance to complete their courses."

Stopping there, before reading the next sentence, have there been, so far as you know, any non-White students recruited during the past 45 years for training in agriculture at institutions in the Republic of South Africa with provision of necessary funds?

Mr. PEPLER: I can give a positive answer on that, as I was dealing with that personally when I was Director of Agriculture. On different occasions we made it clear to the officials in South West Africa that they had to try to recruit people from the different national units to come to the Republic of South Africa to take a diploma in agriculture; bursaries

were offered, free study—it would not have cost them anything, but we could not recruit one. At present we are again endeavouring to obtain students who are prepared to study agriculture in the Republic, but we have not succeeded in recruiting one yet. Now that is, as I foresee, one of our difficulties that we are going to experience; we have planned an agricultural training centre at Orongo in Ovamboland; we are prepared to put up a second one, but if we cannot find the students, then I foresee that we might experience a little difficulty.

Mr. GROSS: Thank you, Sir, but the answer to my question, if I understood you correctly, was that no non-White student has proceeded to South Africa for training in agriculture at institutions there?

Mr. PEPLER: Although the opportunities were offered.

Mr. GROSS: I understand the qualification, but that is the fact, that you have testified?

Mr. PEPLER: Yes.

Mr. GROSS: With regard to the Odendaal Commission recommendation that consideration should be given to this as a possibility, how do you explain that recommendation composed in those terms in view of what you have said about the past practice or effort?

Mr. PEPLER: I was not consulted by the Odendaal Commission members, and actually I do not know for what reason they have put that in, but I personally was responsible for instructing the staff in South West Africa to endeavour to recruit people and emphasized that we were prepared to give free tuition, free transport facilities and everything in the Republic but we never got a recruit.

Mr. GROSS: You said, if I understood you, that the Odendaal Commission had not consulted you?

Mr. PEPLER: I was not consulted on this aspect.

Mr. GROSS: Did you testify before the Commission?

Mr. PEPLER: No.

Mr. GROSS: Were you consulted on any other aspect of the policy?

Mr. PEPLER: No.

Mr. GROSS: Of the agricultural policy in South West Africa?

Mr. PEPLER: The staff of the Odendaal Commission asked me to submit quite a number of papers which I had previously prepared on agriculture in South West Africa, and I presume that they have made use of those, but they did not ask me for evidence, nor did they consult me.

Mr. GROSS: And so far as you know, Sir, among the papers submitted none related to the training of agricultural students, that subject was not covered?

Mr. PEPLER: That subject was not covered in my papers.

Mr. GROSS: I see. Now may I proceed to the next sentence in that same paragraph—this is *à propos*, you recall, of the suggestion that possibility be given to recruiting suitable non-White students for training in agriculture at institutions in the Republic, and now I read the second sentence: "The media of instruction in the Republic of South Africa are Afrikaans and English, and no language problems should therefore be experienced in this connection." Going back to your previous testimony with regard to the fact that your discussions and consultations in the Territory with non-Whites was mainly, if not almost exclusively, through interpreters, could you indicate on the basis of your knowledge whether the difficulty you described in obtaining recruits for these studies might have been a consequence of language deficiency?

Mr. PEPLER: I would not think so, because the minimum scholastic requirement to enable a person to take his Diploma in Agriculture is Standard 8, and in the schools they are taught either English or Afrikaans or both, so I do not think that should have been an impediment.

Mr. GROSS: Is it regarded by you in the Bantu development process and function that there be a widespread knowledge and ability to speak English or Afrikaans or both on the part of the non-Whites in the Territory?

Mr. PEPLER: Do you mean in the schools?

Mr. GROSS: No, in their lives.

Mr. PEPLER: Generally?

Mr. GROSS: Yes.

Mr. PEPLER: Yes.

Mr. GROSS: You think it is?

Mr. PEPLER: Oh, yes—I have come across many, many who speak both languages.

Mr. GROSS: I think that you have answered my question affirmatively, and I would like to conclude the reading of this paragraph: "Many students from Rhodesia and elsewhere have already received their training in the Republic of South Africa." Can you explain to the Court, on the basis of your own knowledge, why it has proved possible to find suitable recruits from Rhodesia and not from South West Africa for this purpose?

Mr. PEPLER: If I may endeavour an explanation—I do not say it is absolutely correct—but there are quite a large number of South Africans in the agricultural field in Rhodesia. As a matter of fact, their last Director of Agriculture was a South African, and it might be that these people, having been accustomed to South Africa, have advised them that they could go there; that might be an explanation, but I do not say that is the case, because the counter-question can be: why didn't the same happen in South West Africa? Then my answer would be that the reaction was not the same in South West Africa as it was in Rhodesia.

Mr. GROSS: But you cannot explain the reason for that difference of reaction?

Mr. PEPLER: No, I honestly cannot explain that.

Mr. GROSS: The Odendaal Commission report with respect to agricultural technical services—page 309, paragraph 1283—in making recommendations states—

"with a view to more efficient administration, the various territories in South West Africa be grouped together as follows:

(a) *White Area.*

(b) *Southern Sector (non-White areas)."*

I pause there. Do you feel that you have covered in your testimony up to this point adequately, from your point of view, the answer to the question I now pose to you as to why and in what respects this grouping on a White and a non-White basis would lead to more efficient administration?

Mr. PEPLER: Yes, that has been our experience—my personal experience, too, in meetings with these people they have on many, many occasions indicated that they wanted to retain their identity, and I think that is in full conformity with their expressed desires.

Mr. GROSS: I see. Now, efficiency of administration in that respect,

then, is a corollary of the desire of the non-Whites to be administered separately—is that the purport of your answer?

Mr. PEPLER: Amongst their own national units.

Mr. GROSS: So that with respect to the desires of the non-Whites in the southern sector outside the Reserves, would you say that the question of their desires would be material or relevant?

Mr. PEPLER: I would say we take full cognizance of their desires.

Mr. GROSS: Were they consulted, "they" being the non-Whites in the southern sector outside the Reserves?

Mr. PEPLER: In what respect?

Mr. GROSS: In respect of this recommendation, if you know, of grouping together for administrative purposes. Perhaps you do not know the answer to that question?

Mr. PEPLER: I do not know the answer.

Mr. GROSS: That is the answer to it.

The PRESIDENT: Mr. Muller?

Mr. MULLER: I think in fairness to the witness my learned friend should put to him that all this is under a heading of "Expansion of Agricultural Technical Services", and that the whole of the recommendation relates to agricultural technical services.

Mr. GROSS: Sir, I think that my learned friend will find that I precisely stated that this is under the heading "Agricultural Technical Services".

The PRESIDENT: I did not notice it, myself.

Mr. GROSS: Yes, Sir. If I did not, it was purely an omission on my part—I know I intended to.

Proceeding now to sub-paragraph (2) in paragraph 1283 on page 309, the following recommendation is made:

"That, for agro-economic reasons, the homelands in the Northern Sector be grouped as follows:

(a) *Ovambo-Okavango Complex: . . .*

(b) *Herero-Damara Complex: . . .*",

and so forth; I will pause there. Can you explain, if you know, what the Ovambo-Okavango Complex means in this respect—in respect of this recommendation for so-called grouping of the area?

Mr. PEPLER: I cannot say that I have an authentic explanation, but the grouping has historical backgrounds. The Ovambo people settled themselves in what was ultimately called Ovamboland, whereas the Okavango people, who I indicated yesterday consist of approximately five tribes, settled themselves in Okavangoland, along the Okavango River; and my presumption is that the Odendaal Commission felt that they did not want to upset that structure. I may add, too, that in meetings that we conducted in Ovamboland, they invariably stated that they wanted to retain their boundaries, and that they wanted to retain their identities.

Mr. GROSS: It is not my purpose to go into the purely hypothetical and contingent planning for the so-called homelands, but I should like to address the question to you as an agricultural expert, what significance is to be attached, if any, to the characterization of Ovamboland, Okavangoland, Bushmanland and Western Caprivi as an "Ovambo-Okavango Complex" in this context? What does that grouping mean with respect to the four areas designated? Does this mean that they will be operated as a unit in certain respects?

The PRESIDENT: For agro-economic reasons.

Mr. GROSS: I do not understand that phrase. Sir.

The PRESIDENT: Well, it says, you see, for agro-economic reasons, the grouping should be in that complex.

Mr. GROSS: Yes, Sir, but it does not explain, Sir, with respect, what happens, how it is to be administered, and my question was, I am afraid, clumsily fashioned. In respect of this grouping for the agro-economic reasons, what would be the administrative or structural form in which this, so-called, complex would be administered—if you know, Sir?

Mr. PEPLER: Sir, if it is in the sense of the agro-economic regions, I would like to explain that, that is now as an agriculturalist from the scientific point of view, the area has been divided into 16 different agro-economic regions . . .

Mr. GROSS: No, "reasons" is the word, Sir. I am afraid you misunderstood me. Reasons—for agro-economic reasons. My question, Sir, is: For those reasons, what would be the administrative, or governmental, or other structure, which would be designed, if you know, to relate to these reasons? Perhaps you do not know the answer to it, Sir?

Mr. PEPLER: Sir, I think I do understand what is meant by that. In other words, let us take the Ovambo people, again, as such—that the concentration will be on the Ovambo people, as such, the object being to train their own people, to guide them on the agricultural lines so that they have their own people as teachers, as agricultural extension officers, etc.

Kaokoveld, for instance, is, again, inhabited by the Herero people, the idea being, again to train, to establish a centre where the Herero people will have the opportunities of being trained by their own people, of being guided and assisted by their own people. I think that is mainly what is meant by the agro-ecological . . .

Mr. GROSS: The agro-economic reasons relate, Sir, to—I will not pursue this too much further but it would be helpful, I think, to have clarity both in my question and response. The extract which I have read says that "for agro-economic reasons the Homelands in the Northern Sector be grouped as follows", and one grouping which I take as illustrative (there are two mentioned) is the Ovambo-Okavango complex, and it suggests by its listing that four projected homelands (without mentioning that term) should be dealt with as a complex. My question, Sir, to you is—what are the implications of that (if you know, with respect) to the administrative structure that presumably would be intended to carry out the purpose for which that recommendation is made? Do you know, Sir? Perhaps you do not?

Mr. PEPLER: No, Sir. What I understand by that is that the agro-ecological conditions are more or less the same and what is actually meant by that is that development can take place in Ovamboland but a different form of development can take place in Okavangoland, and that separate administrations must be developed for these different areas because the approach will be different.

Mr. GROSS: So that, Sir, so far as treating them as a complex is concerned, you have no light to . . .

Mr. PEPLER: I have no light on what is meant by a complex as used in that context.

Mr. GROSS: Thank you, Sir.

Now, just one final question. Would you be prepared to summarize

your testimony in the following terms, as used in the Odendaal Commission report, on page 427, paragraph 1433. Because it is a fairly lengthy paragraph, from which I propose to read not more than three sentences, I shall identify the first sentence, for the convenience of the Court, as occurring towards the bottom of the first left-hand column on page 427, in paragraph 1433. The sentence to which I would call your attention, Sir, reads as follows, and I would be glad to read the introduction if the meaning of this sentence is not clear because of the context:

“Consequently, a group gives preference to its own group members in regard to opportunities within its group, so that members of another group are handicapped or excluded from the activities of the group, other members being admitted only in so far as they are supplementary to the group and not competitive.”

The other sentence, which I should like to read, is in the second paragraph on page 427, on the right-hand column, and it reads as follows:

“The result of this phenomenon [and the phenomenon relates to problems in] underdeveloped territories where economic opportunities are limited and where group loyalties are very strong and dominate the individual's life . . .”

The PRESIDENT: Where are you reading from there, Mr. Gross?

Mr. GROSS: That is the top of page 427, on the right-hand column, the second full sentence. To come back to the last paragraph of 1433:

“The result of this phenomenon is, therefore, that there is socio-economic mobility within a group for its members and that their mobility outside is restricted to the extent to which they are supplementary to other groups. This phenomenon manifests itself at the international level in a high degree of internal (homogeneous ethnic group) socio-economic mobility, in contrast with a low degree of international mobility. Thus the group or nation offers its members the most favourable atmosphere and opportunities to develop progressively. Similarly the group offers its members security by protecting them against ‘unfair’ infiltration by members of other groups. [And then it concludes] In this way the group or nation fulfils a very important socio-economic welfare and developmental function.”

Now, extracting from that lengthy and somewhat complex series of basic premises of the Odendaal Commission, which it regarded apparently as of vital significance, I would like to ask you, Sir, whether you agree that, in the situation prevailing in South West Africa, the premise of separate development, to which you have directed your testimony, is based upon the policy and approach that there is a White group which has its membership, from which the non-White group are excluded, except as they are supplementary to the White group, and, conversely, that there is a non-White group, or groups, from which Whites are excluded from membership, except in so far as they are supplementary to the non-White groups. Is this essentially the premise from which you proceed in your testimony with regard to the desirability, or necessity, of apartheid?

Mr. PEPLER: Sir, yes, that is the position. As I have explained yesterday, the approach in the techniques of promoting agriculture—this

is my specific subject, I am not talking about other spheres of development—is that the different groups have reached different stages of development, and, now when I say that, I mean that different non-White groups have also reached different stages of development. I think I indicated that in my testimony yesterday.

If one were to take the Bushmen group, as such; the Odendaal report defined an area, or two separate areas actually, which they have specially recommended to be reserved for the Bushmen people. If a more advanced people amongst the White group were to enter the boundaries of what is proposed to be, ultimately the Bushmen homeland, where they can also develop, then it stands to reason that the more advanced people can also exploit the Bushmen, which means that they will not be able to build themselves up to the state where they can have their ultimate self-determination, but that they may be subjected to exploitation by those other peoples and I think this is what the Odendaal Commission report wishes to convey in that context.

Mr. GROSS: And, Sir, with respect to the other side of the picture—of the non-White in the White sector of the economy, as it is described in the Odendaal Commission report—the non-White is there as a temporary sojourner, or as a guest, as the Prime Minister has said, for whatever reason he may be there, is that the corollary of what you have described for the other side of the line?

Mr. PEPLER: Yes, Sir.

Mr. GROSS: Now, Sir, finally, with respect to the future, in your planning and policy, do you envisage a permanent system in which this concept will be applied?

Mr. PEPLER: Sir, if I may express an opinion on that, I do not think that one must regard this policy of separate development as something to be static. It is really a dynamic policy and I do not foresee that these different national groups will always be bound and confined to their individual groups. So, if *they* so desire—and I would like to stress the word “they”—to come together, to form a federation, or whatever the case may be, I do not think there would be anything prohibiting them from doing so, but that I can only foresee as happening in the future. The policy of separate development is really based on the foundation of building up these people, as I have already explained, to a stage of self-determination. Once they have that self-determination, I do not see why they should be forbidden by anybody if they, of their own wish and desire, want to form a federation, and so on. That is what I foresee for the future, Sir. I may be wrong.

Mr. GROSS: Now with respect to the White economy, the White sector, does the same reasoning apply that it is the White group as a matter of “self-determination” which decides the degree to which the freedoms and advancement of the non-Whites shall be subjected in the White sector?

Mr. PEPLER: Could that question be repeated, Sir?

Mr. GROSS: Yes, Sir. With respect to your testimony concerning the policy in the non-White area—I am now asking with respect to the White sector—and in that sector, Sir, would you apply the same reasoning and policy to it that the White group, who are members of the White economy, by the exercise of self-determination, which is the phrase you used on the other side of the line, will determine the extent and quality of the limitations of freedom and advancement which shall be imposed upon the non-White group in their sector?

The PRESIDENT: That is a different proposition altogether to what the witness has been speaking about.

Mr. GROSS: With your permission, Sir, I should like to withdraw the previous question and pose this one.

Mr. PEPLER: I have answered to the first question, Sir.

Mr. GROSS: You answered in terms of the non-White areas, Sir—I am referring to the White sector, and I ask you . . .

Mr. PEPLER: Sir, my answer to that is that that is a projection of a future political structure, on which I, honestly, am not an authority, and if you would excuse me, I am not prepared to express an opinion on that.

Mr. GROSS: No further questions, Sir.

The PRESIDENT: Thank you, Mr. Gross. Judge Jessup, I think wishes to ask a question. Judge Jessup.

Judge JESSUP: Mr. Pepler, I would like to ask you to give the Court a few additional points of factual information in connection with your testimony and, in asking these questions, I hope you will realize that I have in mind the stress you have laid upon the differences between different groups and also your particular emphasis upon the necessity for patience and for evolutionary processes, and I am not asking you to look into the future but rather to give us information about the past. I am interested to know about how long some of the developments you described took to move from initiation to completion. May I, as an example, take your reference to the development of the Bushmen and, as I understand it, you were talking about the same experiment or development which is dealt with in the Odendaal Commission report at page 29, at a place known as Tsumkwe. You said that first you must start and bore the holes, get water and accustom them to coming for the water, and that after a while you might bring goats and cattle, and then later you could teach them to plant. Can you tell me about how much time elapsed between the first boring of the water holes and the eventual settling of these people using their goats and cattle and plants?

Mr. PEPLER: Approximately two-and-a-half years, Sir.

Judge JESSUP: Thank you. And did that experiment or development begin before 1961, when you became Director of Bantu Development?

Mr. PEPLER: Yes, Sir. If I remember correctly, it started in 1958, but I am not positive of that date, Sir, but it was before 1961.

Judge JESSUP: And in a similar context, when you spoke of the development of home industries, how long from the time you induced them to begin develop these industries do you find a satisfactory evolution in terms of production?

Mr. PEPLER: Sir, if I could explain it this way, as I said yesterday in my testimony, they have an aptitude for these things. Now the difficulty in the past had been that there was not always a ready market for their home-craft products, so it stands to reason that quite a number of them did not take the keen interest in home crafts that they did in the past, but since tourism has gone apace now in South West Africa, as well as in the Republic, it is our special endeavour to assist them and guide them, and point out to them that they can manufacture these things; that they can bring them to central points and that these things will be acquired. If I may say about this position, as I explained it to the officials with whom I am dealing in encouraging this, a man, for instance, makes walking-sticks (and they can make very fine walking-sticks, Sir) then he has to go to a road and he must try to sell his product there.



Now, it might take him a day, or it might take him three days to sell his product. Tourists come along—one might be prepared to pay his price. You find a type of man who is generous, who feels that a lot of work has been put into a thing, and he says "You are charging me too little, I will pay you more for it"; but you get the other type again, who says "You are charging me far too much for this" and he starts bargaining with him which I, personally, as an official representing the Department, feel is unfair towards him. So we started in South West Africa by negotiating with the Administration itself, asking it "Now, look here, do encourage these people. You have the Etosha Game Reserve there, buy these products from them and sell them".

The idea is that we feel it is a culture that should definitely not die out amongst these people, and we want them to retain quality and for that reason we are encouraging it and it is quite obvious that it has an outlet and . . .

Judge JESSUP: But, Mr. Pepler, what I am trying to get at is how long some of these processes take? You said, in connection with the Bushmen project, two-and-a-half years. From the time you began to develop these home industries until the time when you got a flow of goods to market, so to speak, is it a question of one or two years, or five years?

Mr. PEPLER: No. In the case of home industries I am really optimistic that it would take not more than two years, because once they know there is a ready market it is inherent in them to make these things.

Judge JESSUP: Now, another development you spoke of, I think, in Ovamboland. You said that you finally were able to convince them of the advantage of using manure in their moulds where they were growing their crops. How long a process of persuasion or indoctrination before they began to adopt this method?

Mr. PEPLER: Sir, it is a very gradual process. One first of all has to demonstrate this to them, then one gets a few falling in with the idea and then it gradually works up and . . .

Judge JESSUP: Within a question of two or three years?

Mr. PEPLER: In the case of Ovamboland, Sir, about five years.

Judge JESSUP: Then you testified and you discussed it again this morning that, in certain instances, some of the non-White groups had entered into the market economy, or the money economy. Am I correct in understanding, from your testimony, that you consider that progress desirable? You wish to have them move on into a market economy?

Mr. PEPLER: Yes, Sir.

Judge JESSUP: Or money economy?

Mr. PEPLER: Yes, Sir.

Judge JESSUP: Then you also testified at pages 216 and 217, *supra*, yesterday, that in certain cases persons would work for a while and then say, well, we have enough money now and we will just relax for a few years. I am interested to know whether, in your programme, you have any methods or devices for persuading these people of the advantage of accumulating additional money and entering into the money economy, so to speak?

Mr. PEPLER: Yes, Sir, we do. That is one of our specific tasks, that we do encourage them. We advise them about savings banks and there are quite a number today—not so much in South West Africa as in the Republic—who are already making extensive use of savings banks and so on. And they have quite a number who have come to the stage where

they do not believe in just numbers, but quality, and as soon as they have more than they can actually carry, they market the stuff.

Judge JESSUP: And if these people were among the peoples who like to own cattle, would you be prepared to show them a source from which they could buy more cattle with these extra funds they are earning?

Mr. PEPLER: Yes, Sir. We assist them not only in marketing cattle, but we also assist them otherwise. If I may explain, we feel that we cannot just tell these people "Go to such and such a place and you can buy improved sires", say. Our government officials go and they buy these improved sires; they bring them to central spots and they offer them to these people and advise them. Now these sires are available here, or improved cows, etc., and they even get these at subsidized prices, Sir. They do not pay the full price that the Mandatory or the Government has paid.

Judge JESSUP: Thank you. Now this is a different type of question. Under Bantu Development, does the development of the Coloureds come under your jurisdiction?

Mr. PEPLER: No, Sir, that is separate.

Judge JESSUP: Is there a separate organization . . . ?

Mr. PEPLER: Yes, Sir, there is a special department for Coloured affairs.

Judge JESSUP: One other point—this is my last. You have at several points referred to the comparative developments in the Transkei—can you indicate to the Court whether those developments began earlier in time than comparable developments in South West Africa?

Mr. PEPLER: Yes, Sir.

Judge JESSUP: Or did they all begin about the same time?

Mr. PEPLER: No, Sir, in the Transkei they started, I think, in 1915, if I remember correctly, because the first agricultural school that was put up there was in the early twenties.

Judge JESSUP: And at the present time, in the homelands in the Republic of South Africa, is the amount of money, personnel and effort devoted to the development of the homelands and the people in them more or less equivalent to the comparable effort in South West Africa, if you compare the two?

Mr. PEPLER: Sir, Yes. Can I put it this way, that as far as funds—the allotment of funds, or the allocation, rather, of funds—for the development projects are concerned (I have invariably, and on several public occasions, made the statement), we have never yet had a scarcity of funds. Over the last ten years the provision of funds has never been a problem—we have always received all the funds which were required, but as I indicated yesterday, we are a little scared to go too fast with the physical development. We must always keep balanced development in mind—that is, the human development—as well as the physical development.

Judge JESSUP: Thank you, Sir. That is all, Mr. President.

*[Public hearing of 30 September 1965]*

The PRESIDENT: The hearing is resumed. There being no further questions of Mr. Pepler from Members of the Court, Mr. Muller, do you desire to re-examine?

Mr. MULLER: I have no further questions, thank you. Mr. Pepler has indicated to me that, since reading the record, he would like to explain

an answer given to one of the questions asked by Judge Jessup yesterday, if the Court will permit him to do so.

The PRESIDENT: Would you first indicate upon the transcript at what particular page, without indicating what is the explanation which is to be given?

Mr. MULLER: Yes, I shall, Mr. President. At page 248, *supra*, of the record of yesterday.

The PRESIDENT: Very well. Mr. Pepler, I understand you desire to make an explanation or modification or amplification of some statement you made in relation to a question put to you by Judge Jessup, is that correct?

Mr. PEPLER: Please, Sir, if I may do so.

The PRESIDENT: Would you kindly proceed and do so?

Mr. PEPLER: Sir, the question was put by Judge Jessup after he had explained what exactly he desired; he ended up by saying:

"Can you tell me about how much time elapsed between the first boring of the water holes and the eventual settling of these people using their goats and cattle and plants?"

In this respect he referred to a place known as Tsumkwe. Mr. President, when I replied to that question I specifically had Tsumkwe in mind, and my reply to that was "Approximately two-and-a-half years". Unfortunately I omitted to say that previous to that quite a number of bore-holes and watering wells had been sunk at various places to enable these people, the Bushmen people, to gather there, and they were actually given food there and medical treatment. When Tsumkwe was established, and a special Bushman Affairs Commissioner was appointed and stationed at Tsumkwe, then the Bushmen people were encouraged to settle around Tsumkwe, and I had Tsumkwe specifically in mind in answering the question; but what I would like to explain to the Court is that these watering points, wells, etc., were established quite a number of years before that, and quite a number of the Bushmen people were attracted from those wells to Tsumkwe and after they had been conditioned at the other places, and came to Tsumkwe, it took approximately two-and-a-half years for them to accept goats, cattle, and to start planting vegetables; that is what I would like to explain to the Court.

The PRESIDENT: That is all that you desire to add, Mr. Pepler?

Mr. PEPLER: Thank you, Sir.

The PRESIDENT: Does Judge Jessup desire to put any further questions at all?

Judge JESSUP: No thank you, Mr. President.

The PRESIDENT: Well then, Mr. Muller, the witness may leave.

Mr. MULLER: Thank you, Mr. Pepler. Mr. President, the next witness will be Dr. Van Zyl, and with the permission of the Court Dr. Rabie will introduce the witness and put certain questions to him.

The PRESIDENT: Mr. Muller, Mr. Pepler will be released from further attendance, unless you are informed to the contrary by midday.

Mr. MULLER: I thank you, Mr. President.

Mr. RABIE: May it please the Court, Mr. President, Dr. Van Zyl's evidence relates to Applicants' Submissions Nos. 3 and 4. As set out in a letter to the Deputy-Registrar of the Court on 30 July<sup>1</sup>, a copy of

<sup>1</sup> See XII, Part IV.

which was sent to the Applicants' Agents, Dr. Van Zyl's evidence will be directed to the following points, and I quote from that letter:

"Considerations underlying differential education for the various population groups in South Africa and South West Africa. The basic principles of the Bantu Education System, its application and effects. The probable consequences of doing away with differential measures in the educational field."

Mr. President, the Applicants were also notified on the 28th instant that Dr. Van Zyl would not deal with education at the university level, and that Professor Rautenbach, whose name appears on the Respondent's list of witnesses, would deal specifically with university education.

May I now introduce the witness, Mr. President, and ask that he be allowed to make both the declarations provided for in the Rules, that is, both as witness and expert?

The PRESIDENT: Let the declarations be made. Will you make the declarations, Doctor?

Mr. VAN ZYL: In my capacity as a witness, I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth. In my capacity as an expert, I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

The PRESIDENT: Thank you.

Mr. RABIE: Dr. Van Zyl, your full names are Hendrik Johann Van Zyl?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: You are at the moment Deputy-Secretary of the Department of Bantu Education; you are stationed in Pretoria?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: In your capacity as such, you are mainly concerned with Bantu primary and secondary education and vocational and teacher training, is that right?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: In regard to academic qualifications, you have a B.A. Degree, and your major subjects of study were Bantu Languages and Anthropology, is that right?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: You also have an M.A. Degree in Anthropology and a Ph.D. Degree, also in Anthropology?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: Dr. Van Zyl, do you have a knowledge of Native languages spoken in South Africa?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: Do you speak any of them?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: How many?

Mr. VAN ZYL: Three, I should say.

Mr. RABIE: You speak three, and do you have a knowledge of any others?

Mr. VAN ZYL: I have a working knowledge of a fourth, Mr. President.

Mr. RABIE: You speak three and have a working knowledge of a fourth one, Sir. You started off your career as a teacher in 1937, is that right?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: And during the next four years you taught in a few European schools, and also in two Native teacher-training institutions, is that correct?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: In 1942 you became a Principal in a Bantu High School in the Northern Transvaal, is that right?

Mr. VAN ZYL: Correct, Mr. President.

Mr. RABIE: And you held that post until 1948?

Mr. VAN ZYL: Correct, Mr. President.

Mr. RABIE: During the years 1937-1948 you also taught a Native language, Northern Sotho, as a subject, is that right?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: What did you do during the years after 1948—let us say from 1948-1957, when you took another post?

Mr. VAN ZYL: Mr. President, I was Inspector of Bantu Education from 1948-1957, when I was appointed Professional Assistant in the Department of Bantu Education. After that I became Under-Secretary for the Department of Bantu Education, and at present I am holding the post of Deputy-Secretary for the Department of Bantu Education.

Mr. RABIE: Would you just state in a few words what your duties were when you were an Inspector of Bantu Education?

Mr. VAN ZYL: I had to inspect primary and secondary schools as well as teacher-training institutions, and give guidance to teachers generally.

Mr. RABIE: In 1957 you went to Head Office of the Bantu Education Department in Pretoria, and then became an administrator, is that right?

Mr. VAN ZYL: That is right, Mr. President.

Mr. RABIE: In 1958 you were Chairman of the Commission of Enquiry appointed by the South West Africa Administration into Native and Coloured Education in South West Africa, is that correct?

Mr. VAN ZYL: That is right, Mr. President.

Mr. RABIE: And for that purpose you spent some months in South West Africa?

Mr. VAN ZYL: That is right, Mr. President.

Mr. RABIE: During that period you had to make a study of the different population groups in the country?

Mr. VAN ZYL: I did, Mr. President.

Mr. RABIE: Have you also visited South West Africa on other occasions?

Mr. VAN ZYL: Yes, subsequently on two occasions.

Mr. RABIE: In 1964, from April to July, you visited the United States, and you visited various educational institutions in different parts of the country, is that right?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: In 1957 you represented your Department at what is usually called the C.C.T.A. Conference at Tananarive, Madagascar?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: I believe it was a conference dealing with technical subjects, or something of the kind?

Mr. VAN ZYL: A conference for the co-operation of technical services in Africa.

Mr. RABIE: You are also a member of the Joint Matriculation Board in South Africa?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: What does that Board do—would you just say, in a few words?

Mr. VAN ZYL: The Joint Matriculation Board exercises control over the standards at the matriculation level in the Republic of South Africa, that is, to ensure that all the different education departments come to the same standard at the end of all the school curricula.

Mr. RABIE: Matriculation is the final year of the secondary school course in South Africa?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: You are Chairman of the Committee for Bantu Languages of that Joint Matriculation Board?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: You are also a moderator of matriculation examination papers in three Native languages of South Africa?

Mr. VAN ZYL: That is right, Mr. President.

Mr. RABIE: What does a moderator do, would you say briefly?

Mr. VAN ZYL: In the first instance the moderator has to give guidance to the examiners, and then moderate the papers which are set for the different examinations to see that they are up to the required standard, and then, after the examination has been written, a sample of the scripts presented by the candidates is submitted to the moderator, and he has got to go through these scripts to see whether in marking the examiner has maintained the required standard.

Mr. RABIE: Dr. Van Zyl, you are the author of a number or series of what are called "graded language manuals" for use in both primary and secondary schools in two Native languages?

Mr. VAN ZYL: That is correct, Mr. President.

Mr. RABIE: These have been published over a number of years?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: And they are also used in Bantu schools?

Mr. VAN ZYL: That is correct, Mr. President.

Mr. RABIE: You have also written a book called *A Practical Guide for Bantu Teachers*. Is that right?

Mr. VAN ZYL: Correct, yes.

Mr. RABIE: And you have translated into Northern Sotho, which is a Native language used in South Africa, a series of graded arithmetic books for use in lower and higher primary schools.

Mr. VAN ZYL: That is right, Mr. President.

Mr. RABIE: And you have published an English translation and notes of a collection of traditional Northern Sotho praise poems?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: And, in addition to that, you have written a number of works of an anthropological nature in both English and Afrikaans?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: One of them, I believe, concerns games played by the Northern Sotho people of the Northern Transvaal and another is an anthropological study of the economic life of a South African Bantu tribe?

Mr. VAN ZYL: That is correct, Mr. President.

Mr. RABIE: Finally, you have written several Afrikaans readers for use in Bantu schools?

Mr. VAN ZYL: Yes, Mr. President.

Mr. RABIE: Now, Dr. Van Zyl, could you explain briefly to the Court

to what extent there is differentiation in the education of the different population groups in South Africa and South West Africa?

Mr. VAN ZYL: Mr. President, there are eight education departments in the Republic of South Africa, established mainly for geographical and cultural, including language, reasons and there are four provincial education departments for Whites, one national department for Whites providing mainly technical and vocational training; there is one education department for Coloureds; there is one education department for Indians and one education department for Bantu, with six regional offices. In South West Africa there is only one education department, with a sub-section for White and Coloured children and another for Bantu children. The Odendaal Commission recommended that Native education in South West Africa be transferred to the Bantu Education Department in the Republic of South Africa and, according to a White Paper, which I believe is before this Court, issued by the Government in connection with the recommendations of this Commission, the transfer of the educational services for Bantu in South West Africa to the Department of Bantu Education has been accepted, in principle, by the Government, but its implementation has been deferred. Then, I should add, Mr. President, that the education departments for Whites and Coloureds in both areas have separate schools for English-speaking and Afrikaans-speaking pupils. The Department of Bantu Education has separate schools for seven different language groups, and in South West Africa there are also separate schools for different language groups among the Bantu. I should perhaps also mention that there are separate universities also for the different population groups.

Mr. RABIE: Now, Dr. Van Zyl, are curricula and examinations in the schools of the various groups in South Africa the same?

Mr. VAN ZYL: Mr. President, curricula for all departments are virtually the same, that is, the same subjects are offered by all the different education departments. Each department has its own syllabuses, which are substantially also the same as those of other departments and vary only in so far as content and method are determined by factors of culture, tradition and background, but at the top level, that is, at the end of the secondary course, the standards for all syllabuses and examinations are the same and are controlled by the body to which we have just referred—the Joint Matriculation Board.

The facilities, equipment, teaching aids, etc., may differ from department to department, depending on local circumstances, the particular needs of a group, etc., but the minimum requirements are, however, laid down to ensure adequacy of standards.

Then, Mr. President, each department conducts its own examinations quite independently up to the junior certificate level.

Mr. RABIE: Would you just stop there and say what is meant by junior certificate?

Mr. VAN ZYL: Yes. Mr. President, I was also going to explain why we so often refer to examinations in the Republic of South Africa and also in South West Africa, whereas in other countries my experience is that external examinations do not play such an important role, but in the Republic of South Africa, and also in South West Africa, standards are mainly ensured by way of a system of external examinations conducted by various examining bodies.

Now, Mr. President, the junior certificate course is the first course

taken at the secondary level. Pupils who emerge from the primary school, or the elementary school, into the secondary school take a junior certificate course, which extends over three years and which is followed by the senior certificate course, which ends up in the matriculation examination.

Mr. RABIE: Yes. You said, when I interrupted you, that each department conducts its own examinations up to the junior certificate level and you have now said that there is uniformity at the matriculation level?

Mr. VAN ZYL: That is right, Mr. President.

Mr. RABIE: Now, could you just say what examinations Bantu students in South Africa and South West Africa write?

Mr. VAN ZYL: Bantu students in the Republic of South Africa write the junior certificate examination, which is also a public examination conducted externally by the Department of Bantu Education itself. Bantu students write that examination and also Bantu students in South West Africa are called upon to write that examination because they follow the same syllabuses. But when we come to the matriculation examination, we have decided not to introduce a specific matriculation course, or examination, for the Department of Bantu Education, and Bantu candidates in the Republic, and also those of South West Africa, are to write the matriculation examinations conducted by the Joint Matriculation Board itself, or the examinations conducted by the Department of Education, Arts and Science. That is the Department, Mr. President, to which I referred in the beginning, which is a national department providing mainly for technical and vocational training.

Mr. RABIE: Now, the next witness is going to deal with university education, but could you just briefly indicate, while we are on the subject, how those universities are run?

Mr. VAN ZYL: Mr. President, as I have indicated, there are separate universities for the different population groups. These universities are independent. The university colleges mainly attended by Bantu students are also run by their own councils and senates but, for academic purposes, they are linked with the University of South Africa.

Mr. RABIE: My next question, Dr. Van Zyl is: has there ever been an integrated system of education in South Africa or in South West Africa?

Mr. VAN ZYL: Mr. President, there were attempts at integration in two territories which subsequently became two provinces of the Union of South Africa, now known as the Republic of South Africa. During the Dutch period in the Cape—1652 to 1806—an attempt was made to establish integrated schools for Whites and non-Whites who had accepted the Christian faith, but it soon became evident, however, that integration was impracticable and that it served to accentuate the differences between White and non-White, rather than to eliminate them. The last remnants of this system were done away with by the Dutch Government itself in the early years of the settlement by the Governor de Mist in 1685. Then, after 1806, under British rule, the authorities tried to unite White and non-White into a single community, with a common language, common religion, common culture. Mixed schools were considered to be the most powerful agent in this regard, but the attempt again failed and the scheme actually had the opposite effect.

Then, there was another experiment towards integration in the Province of Natal in the nineteenth century. With the British annexation of Natal in 1843, the purpose became again to westernize the Natives



who lived in that area, who were known as the Zulus, and to integrate them into White community schools, which were then declared open to all. The experiment was also a failure.

Then, Mr. President, the British South Africa period—a short period of ten years only, from 1900 to 1910. The few remaining mixed schools, which were mainly schools for Coloureds and Whites in the Cape also disappeared gradually. Certain private schools, which were theoretically still open to White and non-White failed to harmonize practice with theory, and in 1910, when the Union of South Africa was founded, a policy of separate schools for the different population groups was adopted.

Mr. President, in South West Africa there have never been integrated schools for Whites and non-Whites, and no attempt was made to institute a joint system of education there when the Mandate was granted to South Africa.

Mr. RABIE: Dr. Van Zyl, would you briefly describe the system of Bantu education that existed in South Africa before the passing of the Bantu Education Act in 1953?

Mr. VAN ZYL: Mr. President, as in many other parts of the world, the first Bantu schools in South Africa came into existence as a result of missionary activity. For the purposes of evangelization, the missionaries had to teach the Bantu to read and write and, accordingly, had to establish and maintain schools. The first Mission School for Bantu was established almost 200 years ago in 1789. So, a system of mission schools was founded and for many years the burden of so-called Native education was borne entirely by missionary societies. It was their pride but, ultimately, the burden became so heavy that they could not carry on without State aid. Financial support from the State was first introduced in 1854 in the Cape Province, and was progressively increased, until by 1925, virtually all expenses were borne by the State. Because of this, the State had to exercise some form of control over these fully subsidized schools.

Then, for the purposes of local administration, the State-aided schools came under the various missionary societies. The administration of funds and professional control was entrusted to the four provinces of the Union, each acting quite independently of the other. Some form of co-ordination was ensured by the establishment of a so-called Native Education Advisory Board for the Union.

Then, Mr. President, the main contribution of the missions to Bantu education was their pioneering work during the difficult years of its inception. The missionaries studied the Bantu languages and developed them into written languages. They also translated the Bible into various South African languages. As may be expected, religious education enjoyed pride of place in the mission schools. Education was not—this is another point which I should make—an integral part of a general plan for the development of the Bantu, and the central Government, as I have pointed out, had no share in this service.

Mr. RABIE: Dr. Van Zyl, the then existing system was altered in 1953: is that right?

Mr. VAN ZYL: That is right, Mr. President.

Mr. RABIE: Could you briefly say why that was done?

Mr. VAN ZYL: Mr. President, because it was felt that there were certain definite shortcomings in the system that existed prior to 1953.

Mr. RABIE: Would you briefly say what those were, or were considered to be?

Mr. VAN ZYL: Mr. President, a serious defect in the old system was the divided control of Native education, to which I have already referred. The missionary approach differed from church to church, and the result was that confusion was created in the minds of many Bantu Christians, who were not all adherents of the same church. Further, as I have already indicated, each of the four provincial authorities had their own policies in regard to the administration of the subsidies to mission schools and in connection with the control of professional work.

That should perhaps be considered as the main defect of that system, but the system also did not contribute adequately to Bantu community development, I mean to the development of self-reliant, self-respecting Bantu communities, which could be further developed to the full in all spheres.

Further, Bantu schools were managed by missionary superintendents, and inspected by departmental officials. The result was that parent communities had no share in the management of these schools and accordingly showed little interest. They did not regard the schools as their own institutions. They were foreign institutions, to which they had to send their children for the sake of an education which they themselves did not fully understand.

Then, Mr. President, there was also the uncertainty as to the future and development of Bantu culture. In this respect there were two schools of thought. Firstly, those who believed that Bantu culture was inferior and that it should gradually disappear. Secondly, those who believed that the traditional Bantu culture, including the various Bantu languages, could develop into, or could serve as a basis for, a modern culture fully able to satisfy the needs of a modern world. While this uncertainty in connection with Bantu culture remained, there was little hope for the schools to play an effective part in the development of Bantu culture.

Mr. RABIE: What was done in an effort to bring about an improvement in the old system?

Mr. VAN ZYL: Mr. President, the usual thing was done: a commission of inquiry was appointed, the so-called Eiselen Commission, which was appointed in 1949. This Commission made a thorough study of all matters concerning Native education, and consulted a large number of interested persons and bodies in an attempt to find satisfactory solutions for the problems which they were called upon to solve.

The Commission also consulted Bantu individuals as well as organizations.

Mr. RABIE: Now, could you briefly say what the basic recommendations of this Commission were?

Mr. VAN ZYL: Mr. President, I should first of all try to indicate what the all-embracing finding of the Commission was, and this was that education for the Natives should be co-ordinated with a definite and carefully planned policy for the development of Bantu society. That is what I would call the all-embracing finding of this Commission.

Then in order to achieve this, further recommendations were made which were substantially as follows: to secure efficient and co-ordinated planning, designed to develop sound social institutions, education should come under the central Government and be taken away from the provincial authorities to which I have referred earlier on.

Secondly, increased emphasis was to be placed on the education of the

masses, so as to enable them to co-operate in the evolution of new social patterns.

Further, that schools should be linked as closely as possible with existing Bantu social institutions; and further, that active steps should be taken to produce literature of a functional value in the Bantu languages.

And it was also recommended, Mr. President, that the mother tongue should be used as the medium of instruction for at least the duration of the primary school course. Further, that Bantu parents should, as far as practicable, have a share in the control and life of the schools. It was argued that parents and schools should be complementary and they should not be competitors in the field of education. Further, that Bantu personnel should be employed to the utmost. Also, that schools should provide for a maximum development of the Bantu individual, mentally, morally and spiritually.

And these recommendations, Mr. President, were accepted by the Government, and the Bantu Education Act was passed in 1953, and the principles which I have outlined were implemented in practice.

Mr. RABIE: Dr. Van Zyl, would you tell the Court what the reaction of the public was, and of the Bantu in particular, to the new education system?

Mr. VAN ZYL: Mr. President, for reasons of their own, certain individuals went out of their way to criticize and to belittle the new system. These critics received considerable publicity. The matter was dragged into politics and various persons and bodies, who knew little or nothing of the system, attacked it even before it had an opportunity of proving itself. The result was that many Bantu at first regarded the new system with suspicion and were made to believe that their children would be given an inferior education. But after some time it became clear that there was no reason for alarm, and now that the aims are better understood by all, and the achievements are known, the atmosphere has changed and the system is showing itself to be an enormous success.

Mr. RABIE: Dr. Van Zyl, what would you say or what do you regard as the main advantages of the present system?

Mr. VAN ZYL: Well, here again, Mr. President, there is an all-embracing advantage, and I should start by saying that an educational organization which the Bantu can call their own is being established for them. Since the passing of the Bantu Education Act in 1953, the Bantu have been given an active share in the education of their children.

Community schools, managed by all Bantu school committees and school boards, have been established, and some 50,000 Bantu parents are serving on these bodies, and are being trained in the rudiments of self-government.

The ultimate aim is to enable Bantu groups to assume full responsibility for their own educational service, as is already the position in the Transkei today.

The scheme has also led to increased interest in education on the part of Bantu parents, who in turn encourage their children to go to school and, what is perhaps more important, to remain there until they have acquired literacy or even more advanced education. There was a time prior to this new system when the parents did not care; if a child wanted to go to school he could have gone of his own free will, and if he felt like leaving the school, because he was bored, or for some other reason of his

own, the parents did not mind and just allowed him to leave the school. Now that the schools have become part and parcel of the Bantu community, and now that the parents have a share in their management and take an active interest in what is going on, they urge their children to go to school, and they also, should I say, compel them to remain there for a sufficiently long time to acquire literacy, or whatever education they are aiming at.

The new system has brought about a phenomenal increase in the enrolment during the past ten years. The number of pupils has doubled during this period and grows at the rate of 100,000 per year. Of all children in the age group 7 to 14, about 80 per cent. are at present attending school, which I should say, Mr. President, is a very high percentage. And in 1964—unfortunately these are the latest figures I have at my disposal—the enrolment figure was, in round figures, 1,840,000, nearing the 2 million mark, as against 870,000 in 1953.

The number of schools has increased by over 3,000 during the same period, and during the past three years new schools have been registered at the rate of a school a day. The total number of schools has grown from 5,602 in 1953 to 8,672 in 1964. The expansion is still going on and it has become a real problem to cope with the demand.

These schools are of various kinds. There are the ordinary schools, to which I have referred; and then there are 26 technical and vocational schools, offering courses to boys and girls; there are still 43 teacher training schools, training teachers at secondary level, after the junior certificate examination; and in 1964 there were 4,186 students being trained as teachers—2,000 of them took the examination at the end of the course, and some 1,630 passed.

The system, Mr. President, also creates extensive opportunities of employment to Bantu as teachers and in other related posts. The number of teachers has grown from 21,150 in 1963 to 32,200 in 1964; and for the purposes of these figures I still include the Transkei because the figures were taken together for our statistics. There is still a shortage of certain types of teacher, especially in secondary schools, and at present the Department of Bantu Education still employs some 500 White teachers, but this number, 500, comprises only 1.2 per cent. of the total teaching staff.

Bantu teachers are appointed to the highest posts of principal, inspectors and assistant inspectors of schools. There are as many principals of schools as there are schools, and perhaps we should note that a principal gets, in addition to his basic salary, an allowance, a principal's allowance, for this added responsibility. There are at present 55 Bantu inspectors of schools and 170 assistant inspectors. Perhaps I should point out that until recently these officials were called sub-inspectors and supervisors of schools respectively. The new terminology, however, is as I have indicated. I am given to understand, that the post of sub-inspector and supervisor of schools has also been introduced in the Department of South West Africa.

Administrative functions are also gradually being handed over to the Bantu. Every school board has a secretary, and 470 boards in the Republic have full-time paid secretaries. Altogether 502 boards employ 20,000 teachers, that is 73 per cent. of all the teachers, and in this case the Transkei is excluded.

In an integrated educational system, Mr. President, progress by the

Bantu in these respects would have been hampered by competition from more experienced and more advanced groups. Then, separate schools stimulate the development of the Bantu languages concerned, and the production of school books in these languages. They also provide the stimulus in other respects of culture, such as literature, folk-songs, etc.

Then, Mr. President, I must add that the separate school system makes it possible to adapt educational facilities to the background, need, and circumstances of a particular group. In this connection, I may mention the following factors, which come into play.

Firstly, certain educational principles relating to mother-tongue instruction, the provision of specialized class-books, the application of the principle of proceeding from the known to the unknown, the preservation of particular cultural institutions, the adaptation of syllabuses, etc.

Secondly, technical and vocational training are offered to meet particular needs.

Thirdly, provision of teachers and facilities and the expenditure connected therewith.

Mr. RABIE: Now, Dr. Van Zyl, you have referred to instruction through the medium of the mother-tongue as an advantage of the system of having separate schools. Could you explain briefly why you regard such instruction as an advantage in education?

Mr. VAN ZYL: Mr. President, there are many reasons why mother-tongue instruction is of vital importance and I would like to mention just a few of these reasons. My own experience of Bantu schools in South Africa, as a teacher, as principal, and also as inspector of these schools, has convinced me that mother-tongue instruction is the best method, especially in the primary school. It is, in fact, a generally accepted educational principle that the mother-tongue is the best medium of teaching and I know of no educationist of standing that denies that principle. The use of the mother-tongue as a medium has various advantages. I may point out that it has been stated in United Nations publications that "experts accept as axiomatic, on psychological, sociological and educational grounds, that the best medium of teaching a child is his mother-tongue". I have quoted from a publication by Unesco and I have been told that this passage and others, which I hope to quote, have already appeared in the Respondent's pleadings.

I may also point out that Unesco experts have recommended that every effort should be made to provide education in the mother-tongue to as late a stage of education as possible. I should like to refer to a recent article by an African professor of the University of Ghana, K. E. Darkwa, entitled *Education for Cultural Integrity, the Ghanaian Case*. It was published in *New Era*, Volume 46, No. 3, of March 1965. In his concluding remarks, the author wrote:

"What then should be the position of the vernacular in our educational system? The answer is simple, vernacular must be given top priority. One of my own deficiencies in life is the lack of ability to express myself sufficiently in either English or my vernacular."

Mr. RABIE: Dr. Van Zyl, before you proceed, you have a copy of the article there?

Mr. VAN ZYL: I have, Sir.

Mr. RABIE: You will hand it in?

Mr. VAN ZYL: Yes. Shall I hand it in, now, Mr. President?

The PRESIDENT: Are you tendering the article in evidence, Mr. Rabie?

Mr. RABIE: Yes, Mr. President.

The PRESIDENT: Very well then.

Mr. RABIE: We have notified, I may say, the Applicants of the article and it will be handed in.

The PRESIDENT: Any objection, Mr. Gross?

Mr. GROSS: No, Sir.

Mr. RABIE: Will you proceed, Dr. Van Zyl?

Mr. VAN ZYL: Also, Mr. President, experts have pointed out, and we in South Africa ourselves have experienced, that the vernacular is of the utmost importance in bridging the gap between home and school. Our experience is also that if a child is taught in his mother-tongue his parents tend to display a greater interest in his education. This is to be understood. The use of the mother-tongue is the best way to ensure that pupils understand what the teacher tries to teach them and it helps to develop their reasoning powers, and their initiative. It also promotes original thinking.

Mr. President, we have experienced that pupils who are taught through the medium of their own language perform better than pupils who are taught through a foreign medium. Our experience has been confirmed by tests made elsewhere. In this regard I may refer to experiments carried out by Unesco experts in the Philippines. Those experiments showed that vernacular-medium pupils performed better than foreign-medium pupils in various non-language subjects. These experiments also showed, and it has also been our experience in South Africa, that vernacular-medium pupils are emotionally more stable and develop more confidence than others, and, furthermore, that they show a greater ability to organize and to express their thoughts, that their social education is better, and that they attend school more regularly.

Mr. RABIE: Would you indicate where the results of the experiments you refer to are recorded, Dr. Van Zyl?

Mr. VAN ZYL: Mr. President, they are recorded in Unesco publications on the experiments carried out in the Philippines—published in Unesco, April-May 1958, Volume X, Nos. 4-5, pages 43 and 44.

Mr. President, I may say also that the mother-tongue medium has the added advantage that it stimulates the development of the language and the literature of that particular population group. It also stimulates the development of a culture generally, because, in the same article by Professor Darkwa that I have referred to before, the view is expressed, and I agree with him, "that language is the foundation of society and the root of culture. This is why every society must preserve its language if it does not want its foundations to be destroyed."

Mr. RABIE: Dr. Van Zyl, can you indicate whether school examination results in South Africa have provided any evidence of the efficacy or otherwise of mother-tongue instruction in Bantu schools?

Mr. VAN ZYL: Mr. President, we have had some very interesting experiences in this connection in the Republic of South Africa and I would like to deal with this question in two parts: firstly, with examination results at the end of the primary school course—that is at the standard six level—because, in the primary school course up to standard six the actual medium in our country is the mother-tongue, and, for the junior certificate course as well as the matriculation course, the medium is a

different language—one of the official languages. So there is a difference. Secondly, then, I would like to deal with the junior certificate and the matriculation examinations. Now, we have little doubt that the use of mother-tongue as a medium has contributed greatly to better results in the standard six examination.

Perhaps I should explain, Mr. President, that, prior to the New Deal for Bantu Education in the Republic of South Africa, mother-tongue was an accepted policy and was carried out up to the standard two level in the primary school. At the standard three level—that is actually in the fourth school year—English or Afrikaans was introduced as a medium of instruction. But the Bantu Education Act required that mother-tongue instruction should carry on from the fourth year up to the sixth standard. Now, in 1958 the standard six examination was conducted in the mother-tongue for the first time. The percentage of passes in this examination rose from 68 in 1958 to 79 in 1960 and as mother-tongue medium became well established in the primary school the percentage rose to 84 in 1964.

In junior certificate examinations there have also been better performances in recent years. The reasons for this improvement, I must admit, cannot precisely be determined or ascribed exclusively to mother-tongue instruction for standards of teaching are steadily improving. We have evidence, however, that students who started on secondary courses in recent years had a better grasp of subjects learned during the primary school course, and that they were, for that reason, able to make faster progress.

Mr. President, then I would only like to say that, in the junior certificate examination prior to mother-tongue medium in the primary schools, the percentage of passes was in the neighbourhood of 55. In 1962 this percentage rose to 57 and two years later, after mother-tongue medium became well established again, in the primary school the percentage rose to 74. I should point out, Mr. President, that, although this examination is conducted by the Department of Bantu Education itself, it is a public examination organized in the same way as any other public examination. External examiners are appointed. The majority of examiners for this junior certificate examination do not belong to our Department. They are taken from other education departments. Also, the moderators are taken from other education departments, so there is no question of thinking that there was a possibility of the lowering of standards. Students who wrote the matriculation examination in 1960 and 1961 had their primary school training through the medium of English and the percentage passes in those years were exceedingly poor, because there were also other disturbing factors.

But 1960 was again a more or less normal year and then, when candidates who had their primary training partly through the medium of the mother tongue wrote the examination, the percentage of passes rose from 26 to 40. In 1963 and 1964 the results were even more revealing. Here again I want to point out that the candidates who wrote the matriculation examination, which is an entirely external examination, had their whole primary school course through the medium of the mother tongue and in these years these candidates did so well that the percentages rose from, as I have said, 40 the previous year to 61 in 1963 and 62 in 1964, and we have reason to believe that the results in coming years will be even better.

Mr. RABIE: Now, Dr. Van Zyl, you have referred to the mother-tongue in the primary and secondary schools. Would you briefly indicate what the position is in regard to the teaching of the official languages, English and Afrikaans?

Mr. VAN ZYL: Mr. President, when mother-tongue instruction was first introduced in the Republic of South Africa people were given to understand by critics that the teaching of English and Afrikaans as subjects had come to an end and that Bantu children were not given the opportunity of acquiring a knowledge of these languages, and more particularly English, in our Bantu schools. But the Bantu Education Department fully realizes the importance of teaching Bantu children English and Afrikaans and provision is made for the teaching of these subjects from a very early stage. A Bantu child who comes to school starts his second language, his first language being his mother tongue, in sub-standard A, that is, the first year of the primary school, and he starts the second official language in the same year, but six months later. These subjects are taught right through until the end of the secondary school course.

The position is therefore, Mr. President, that a Bantu pupil studies English and Afrikaans as second languages in the same way as an Afrikaans pupil, for instance, would study English.

Mr. RABIE: Now, Dr. Van Zyl, you referred earlier to facilities for technical and vocational training in South Africa which have regard to particular needs of the Bantu people. Would you briefly describe what these facilities are?

Mr. VAN ZYL: Mr. President, in view of the special circumstances pertaining to the Bantu people at present, it is considered best to provide formal training in certain directions at departmental institutions. The requirements for admission to such schools is standard 6, that is, the end of the primary school course and after the eighth year of schooling. There are no such trade schools for Europeans and provision is made for them in a different way.

I can give some particulars: there are five technical schools which offer courses in general mechanics, building construction, electricity, wood-work and draughtsmanship. There are 11 vocational schools for boys. By "vocational schools", Mr. President, I actually mean trade schools, where the boys are enabled to qualify as artisans, tradesmen. These schools offer courses in building, electrical wiring, tailoring, upholstery, plumbing, motor mechanics, carpentry, baking, radio mechanics, courses for radiotricians and brick-making, etc. There are ten vocational schools for girls offering courses in subjects such as home management, dress-making, hairdressing and beauty culture, baking, millinery, etc.

Mr. RABIE: Dr. Van Zyl, you also stated earlier that separate school systems have a bearing on the provision of facilities and teachers and the cost thereof. Would you briefly say what you had in mind when you said this?

Mr. VAN ZYL: This question, or similar questions are often asked and my answer to this question is of more than ordinary significance. I do hope that I shall manage to make a very important point clear. It is the policy to build up Bantu communities and to help them to participate in this process. To achieve this purpose it is essential to teach the masses and to make schooling available to as many pupils as possible. It is a fact that these masses are, both in South Africa and in South West Africa,



at a lower level of development than the other groups and that they maintain a lower standard of living.

Now, Mr. President, since this is so, Bantu teachers are employed at a lower salary than in the case of the other groups, salaries which bear a reasonable relationship to the incomes of other members of their group. For the same reason, buildings and other equipment generally need not, and are not expected by the people to be exactly the same as in the case of the other groups. I may point out in this regard that it is also our policy to employ Bantu workmen for the erection and maintenance of buildings and for the manufacture of furniture. This, too, reduces costs and helps to make it possible to provide services on a wider basis than would otherwise have been possible.

With the advancement of the Bantu people, economically and otherwise, the considerations I have mentioned will necessarily be affected and a basis for financial provision will naturally have to be adjusted. The position is not a static one. Furthermore, I would like to emphasize in regard also to the present time that there is no question of providing inferior facilities. The savings are effected in respects which do not affect the quality of the education provided. Where facilities have a necessary bearing on the quality of instruction, for instance, in the technical and vocational schools I have mentioned, the general policy is to make them at least as good as similar institutions or facilities for the other groups. On the whole, the savings that could be effected here, I am sure, enabled us to reach the masses much more extensively than would have been feasible if the cost per unit had been as high as it is for White education.

The taking over of the educational system by the Bantu peoples themselves on their way to independence and self-determination is greatly facilitated in the sense that they would not have to carry from the outset an expensive educational system with, for instance, teachers paid on a scale which they would be unable to maintain. There is also, I may point out, to my knowledge no resentment at this differentiation. Of course, teachers, Whites and non-Whites, are for ever asking for higher salaries but there is no objection to differentiation as such. We are in this respect proceeding on much the same lines as independent African States north of us.

Mr. President, the differentiation as compared with White education and with salaries paid to White teachers operates in a practical way to the advantage of the Bantu people.

Mr. RABIE: Dr. Van Zyl, in 1958, the South West Africa Administration appointed a commission of enquiry into Native education in South West Africa of which commission you were the chairman. Now could you say briefly what were the main reasons for the appointment of that commission?

Mr. VAN ZYL: Mr. President, the reasons were substantially the following: a general survey of all educational services in the Territory was carried out during the years 1957 and 1958. I should point out that during 1957 there was another commission of enquiry to enquire into the whole question of education of South West Africa and that commission had to deal with all the different population groups, but before it had come to the end of its task it decided that it could not do the specialized work required for Bantu education. So, they completed their work only in regard to White education and the administration appointed another commission in 1958 to deal with the non-White groups. Of course, the

commission was so composed that there were experts also in the field of Coloured education. It was felt at the time that the time had arrived to assess the position which obtained then with a view to bringing about improvement where necessary. The commission was asked to determine existing shortcomings and to formulate an effective system for the Native communities of South West Africa. It was also asked to ascertain to what extent Bantu education in the Union of South Africa could serve as a basis for Native education in South West Africa.

Mr. RABIE: Now, what in broad outline were the recommendations of your commission?

Mr. VAN ZYL: Mr. President, there was a wide range of recommendations and they included, *inter alia*, that a system of community schools with Native governing bodies be introduced; that a separate section of the South West African Education Department be established in order to specialize in the needs of Native education; also, that the development of the Native languages should be cared for by establishing a language bureau for the production of literature and more particularly the production of school books. We also recommended the progressive introduction of mother-tongue instruction in the primary schools. The principle of mother-tongue instruction was not a new one in South West Africa but application and practice was a different matter. We also further recommended that the South African syllabuses and examinations be introduced in South West Africa so that teaching aids, and in particular graded class books, which were available in South Africa, could be used; certain primary school syllabuses were to be adapted to local circumstances.

Mr. RABIE: Did your commission consult the Native groups and leaders in Native communities in an effort to find a suitable system for the Territory and, if so, what was the general attitude towards the proposed changes?

Mr. VAN ZYL: Mr. President, the consultation with the various Native community leaders, I would say, was the most interesting part of our task and representatives of all sections of the Native population were consulted and prolonged discussions, which I may say we enjoyed, sometimes lasted two days in one place. The commission explained the different possibilities to these leaders—all were in favour of the proposed school committees and school boards on which parents could serve and thereby have a share in the management of their schools. The majority of these people, whom we have consulted, favoured a type of government school in preference to mission schools and indicated that they were prepared to consider a community school, as we tried to explain to them, as a kind of government school for all practical purposes. The only indication, Mr. President, of doubt or reluctance to co-operate in the launching of a new system came from the Hereros, and to a lesser extent from some Namas. The Hereros, who number about 35,000, are known to oppose most government schemes.

Mr. RABIE: To what extent have the recommendations of your commission been implemented—I refer only to the few you have mentioned?

Mr. VAN ZYL: Mr. President, as neither I nor my department are officially connected with Native education in South West Africa, the information at my disposal was gained through a personal interest that I take in the Territory and in education generally. To the best of my knowledge the following steps have been taken: community schools

involving school committees and school boards have been introduced and the process is far advanced in the northern territories, where parent communities have responded well to the new system, but because of various problems the introduction of this system of community schools in the southern area has been delayed. Bantu education syllabuses, pertaining to the Department of Bantu Education in the Republic of South Africa, have been introduced on the following basis: syllabuses for the primary schools have been adapted to suit local conditions and examinations are conducted independently by the South West Africa Department of Education at the standard six level; junior certificate syllabuses have been introduced unchanged and candidates write the Bantu education examinations. This, Mr. President, is important because the junior certificate syllabuses are so designed that they link up with the syllabuses of the Joint Matriculation Board and the Department of Education, Arts and Science because our junior certificate candidates are destined to write the examination conducted by those bodies; the Bantu Education Department's courses for teacher training have also been taken over; the wide range of graded class books available in the Republic are also used in South West Africa as far as possible; a Bantu language bureau has been set up, as we recommended, and a separate section for Bantu education with its own chief inspector and inspectorate has been established in the existing education department.

Mr. RABIE: Now, Dr. Van Zyl, do you know whether the Odendaal Commission also made recommendations in regard to the education of the Native people in South West Africa?

Mr. VAN ZYL: Mr. President, yes. First of all, as I have said before, the Commission recommended that Native education in South West Africa be transferred to the Department of Bantu Education in the Republic of South Africa. Secondly, I wish to mention that certain recommendations made by the Commission show a striking resemblance to the recommendations made by the 1958 Commission. So, for example, the Commission approved of the principle of community schools, partly instituted in South West Africa as a result of the 1958 recommendations. It also approved of the principle of mother-tongue instruction and the development of Bantu languages. It found that there was a poor demand for vocational courses offered for Native pupils at the Augustineum, but, nevertheless, thought that the general development programme which it proposed for the Native groups would create a need for vocational training and for facilities for training in agriculture and animal husbandry. It accordingly also recommended the extension of facilities at the Augustineum and the establishment of a training centre in Ovamboland.

The Odendaal Commission also stressed the importance of commercial and technical junior certificate courses and recommended that such courses be instituted. These courses already exist in the Republic of South Africa.

Mr. RABIE: Dr. Van Zyl, finally, what, in your opinion, would be the results if an attempt were made to institute a system of joint schooling in the Territory of South West Africa?

Mr. VAN ZYL: Mr. President, I do not think that there is any hope of success. The differences among the population groups in background, language, tradition and culture are so big that the people do not mix socially, with the result that integrated schools are almost inconceivable. From what I know of the people, there cannot be peaceful integration in

the field of education and any attempt to enforce integration will cause the collapse of the educational services. Further, integration will bring friction and enmity among the pupils. In other countries with heterogeneous populations, attempts at integration have brought about serious clashes between the racial groups and in some instances have even led to violence and this, Mr. President, is, in my opinion, exactly what will happen in South West Africa.

From an educational point of view, a system of joint education would, if it could be introduced, mean the end of some of the advantages I have previously mentioned. It would be impossible to apply sound educational principles which can be applied under the present circumstances. So, for instance, instruction through medium of the mother tongue would be out of the question for at least one group and it would be impossible to do full justice to the traditions and culture of all the groups. If the official languages, English and Afrikaans, were to be the sole media the Bantu groups will suffer as a result.

Mr. President, as I see it, all such unfortunate results can be avoided by having a system of separate education as at present and by providing proper facilities for the different groups. As far as I know, nobody in South West Africa has ever requested or propagated integrated schools and I make bold to say that everybody realizes that such a policy would be impossible.

Mr. RABIE: Mr. President, that concludes the questions I wish to put to the witness.

The PRESIDENT: Very well, Mr. Rabie. Mr. Gross?

Mr. GROSS: Dr. Van Zyl, you will understand, Sir, that I am cross-examining you on the basis of notes hastily prepared while you were testifying and, therefore, if I do by chance misquote you or in any other way not correctly reflect your testimony, would you please, for the benefit of the Court, correct me at once. It will be unwitting.

I understand, Sir, that you testified that from 1948 to 1957 you were an Inspector in the Department of Bantu Education. Is that correct, Sir?

Mr. VAN ZYL: Yes. Mr. President, perhaps I should give a little more explanation. I was in the field, as I call it, for seven of those nine years and for the last two years of my position as Inspector of Schools I was called to the new head office for Bantu education to assist in the planning of the new Department.

Mr. GROSS: Thank you. Now, as you testified, I believe your function was to inspect institutions and to give guidance to teachers. Is that substantially correct?

Mr. VAN ZYL: That is right, Mr. President.

Mr. GROSS: Did you, in the course of that period and in that function, visit South West Africa in the performance of your duties?

Mr. VAN ZYL: No, Mr. President.

Mr. GROSS: This was entirely, then, in South Africa itself, Sir?

Mr. VAN ZYL: Yes.

Mr. GROSS: The function of your Department of Bantu Education, perhaps this will emerge more clearly from your testimony when I have had an opportunity to read the verbatim record—was it your testimony, Sir, that the Department of Bantu Education, of which you were Deputy-Secretary, has jurisdiction over the Bantu education system of South West Africa?

Mr. VAN ZYL: No, Mr. President.

Mr. GROSS: If it does not involve too much repetition, since it is already in the record, would you clarify the extent to which your Department has any responsibility with respect to South West Africa, if any?

Mr. VAN ZYL: Mr. President, I should say that the responsibility of my Department would only be indirect because, as I have indicated in my main evidence, certain syllabuses which are applicable in the Republic of South West Africa have been introduced in South West Africa as, for instance, for the junior certificate course and for the teacher-training course. So South West African pupils have to follow those courses and ultimately they have to write the examinations conducted by my Department.

Mr. GROSS: Does your Department determine the nature of the examinations and the syllabuses to be administered and applied in South West Africa?

Mr. VAN ZYL: In those particular cases, yes, Mr. President, for the junior certificate course and the teacher-training courses, also for vocational training, I should not omit that. But my Department has an Examination Board consisting of senior officials and specialists in various fields and, on this examination board South West Africa also has representation.

Mr. GROSS: Let us take as a hypothetical example, Sir, that a teacher or school official in South West Africa considers that changes should be made in the curriculum or syllabus. What would be the procedure by which such a recommendation would be received and disposed of by the governmental agencies concerned?

Mr. VAN ZYL: The normal way, Mr. President, is that any teacher in the Department who feels that a change should be effected—a change of any kind—if he is an assistant teacher he would take the matter to his principal, discuss it with him and, if they agree, the principal would go forward with the proposal, give it to the inspector, who will, in turn, take it to the heads of the Department, and the Department will ultimately refer the matter to the Examinations Board which I have mentioned.

Mr. GROSS: The Department being your Department?

Mr. VAN ZYL: No—the Department being the South West African Education Department.

Mr. GROSS: And is the South West African Education Department in any way affiliated with your Department of Bantu Education?

Mr. VAN ZYL: Only in the sense, Mr. President, that that Department has representation on our Examinations Board.

Mr. GROSS: On your Examinations Board?

Mr. VAN ZYL: On our Examinations Board, yes.

Mr. GROSS: Does the Department for South West Africa have full authority to make changes in curriculum or syllabuses on its own authority, or does it have to refer such changes for approval to some higher agency or some different agency?

Mr. VAN ZYL: The South West African Education Department is free to make whatever changes it chooses in the lower primary course and the higher primary school course. As it is, they only use the Republican syllabuses as a basis and they adapt these to local conditions and nobody can stop them from even changing these syllabuses radically, but when they come to the junior certificate course they have to act more carefully

because, as I pointed out this morning, the junior certificate courses are so designed that they link up with the matriculation courses which these Bantu pupils are called upon to take after the junior certificate course.

Mr. GROSS: When you use the phrase "act more carefully", would you elaborate that in terms of the discretion, if any, which they have to make alterations on their own authority?

Mr. VAN ZYL: Well, Mr. President, they will not be able to introduce changes on their own without notifying anybody. Then they will have to follow the procedure which I have tried to explain and if there is a suggestion for a change or for the introduction of another subject, as was the case with the subject of German, they bring that through their representative to the Republican Examinations Board and ask for its co-operation in effecting the change that they have in mind.

Mr. GROSS: Where does the final authority for decision lie?

Mr. VAN ZYL: With the Head of the Department for Bantu Education.

Mr. GROSS: In Pretoria?

Mr. VAN ZYL: In Pretoria.

Mr. GROSS: Is that same procedure applied to any other aspects of the function of the education system in South West Africa?

Mr. VAN ZYL: No, Mr. President, it concerns only certain courses, as I have said before—the junior certificate course, the teachers' training course and also the courses for vocational training.

Mr. GROSS: Would the necessity of approval by the Department of Bantu Education in the Republic apply also to, let us say, changes in the matriculation examination?

Mr. VAN ZYL: No, Mr. President, the Department of Bantu Education has no right to bring about any change in the matriculation courses. There again the Department of Bantu Education has a representative on what I have referred to as the Joint Matriculation Board, and should the Department of Bantu Education feel that the change or extension of facilities are necessary, that representative must take it to the Joint Matriculation Board and ask for its approval, and then, after discussion, it will be formally approved by the Board.

Mr. GROSS: So that in the case of matriculation courses or examinations, do I understand you correctly to testify that the approval of the Joint Matriculation Board in Pretoria would be necessary for changes in the matriculation examination and course—is that correct?

Mr. VAN ZYL: That is right, Mr. President.

Mr. GROSS: The department concerned with education in South West Africa—where is that located?

Mr. VAN ZYL: In Windhoek, capital of the Territory.

Mr. GROSS: And how is it composed—I mean, what is its composition, its membership, how many?

Mr. VAN ZYL: Mr. President, I would like to know whether Mr. Gross is referring to the top officials . . .

Mr. GROSS: I beg your pardon—I should have asked it differently.

The PRESIDENT: What is the governing body?

Mr. GROSS: Thank you, Sir. I am asking for the picture of the administrative set-up—how is it composed?

Mr. VAN ZYL: I will try to answer that question. At the head of everything there is the . . .

Mr. GROSS: We are talking about South West Africa?

Mr. VAN ZYL: South West Africa. There is the Administrator in person, who has a Legislative Council with an Executive Committee, and they may be considered the political authority in that country; and then there are different departments . . .

Mr. GROSS: May I interrupt you there, Sir, if you will permit me, just for the sake of sequence? By whom is the Administrator appointed?

Mr. VAN ZYL: The Administrator is appointed by the Government of the Republic of South Africa.

Mr. GROSS: By any particular branch or department thereof?

Mr. VAN ZYL: If I have to answer that question, Mr. President, I will have to guess; I would rather not answer it, it is not in my particular field.

Mr. GROSS: I am sure the Court would not wish you to guess. Let me ask you whether the Department of Bantu Education, of which you are Deputy-Secretary, has any relationship with the Administrator of South West Africa in an official capacity?

Mr. VAN ZYL: No, Mr. President.

Mr. GROSS: To whom in South Africa, in the Republic itself, does the Administrator report, if you know, Sir?

Mr. VAN ZYL: I should say to the Government itself.

Mr. GROSS: There again, would you answer that you are not aware to which department or agency of the Government he reports?

Mr. VAN ZYL: There again I think I should guess; I think he reports to the Prime Minister's Department.

Mr. GROSS: To the Prime Minister directly—but that is simply a guess.

Mr. VAN ZYL: I would not vouch for its correctness.

Mr. GROSS: That is all right, Sir. Now, with respect to the Legislative Council (I believe you described it), how is that constituted, both as to personnel, membership, and as to method of appointment; take one question at a time—I am sure the President would wish me to put it to you one at a time: first, with respect to the composition of the Legislative Council, how is it composed?

Mr. VAN ZYL: It is an elected body.

Mr. GROSS: What is its composition—how many members does it have? Do you know?

Mr. VAN ZYL: No, I would not know, exactly. We can check up on the figures.

Mr. GROSS: What is the function of the Legislative Council, what are its responsibilities?

Mr. VAN ZYL: In connection with Bantu education—their responsibilities?

Mr. GROSS: Yes, what are their responsibilities in that connection, what do they do?

Mr. VAN ZYL: Up to now I should say that it was their duty to define policy in general.

Mr. GROSS: Education policy for South West Africa?

Mr. VAN ZYL: For South West Africa.

Mr. GROSS: In the Bantu education field?

Mr. VAN ZYL: Yes.

Mr. GROSS: And they report, presumably, do they, to the Administrator—is that correct?

Mr. VAN ZYL: I should think so.

Mr. GROSS: Who in turn reports to the Prime Minister's office, you guess, I take it?

Mr. VAN ZYL: I guess, yes.

Mr. GROSS: With respect to the Legislative Council, you have said you do not know the number of members composing it—is that your testimony?

Mr. VAN ZYL: Yes; there again, if I were to give an answer, it would be a guess—I may be a few out.

Mr. GROSS: Can you approximate it—roughly how large a body is it—is it half a dozen, or is it 50—roughly speaking?

Mr. VAN ZYL: It would be in the neighbourhood of 40, I should say.

Mr. GROSS: Of something around 40?

Mr. VAN ZYL: Yes, say between 30 and 40.

Mr. GROSS: The Court will understand that you have stated that you do not know the exact number. Of that number, whatever it may be, how many are non-White?

Mr. VAN ZYL: They are all White.

Mr. GROSS: Do you have any basis for an opinion, either as witness or expert, as to whether the fact that they are all White is a matter of policy?

Mr. VAN ZYL: It is not a matter of educational policy.

Mr. GROSS: Is it a matter of governmental policy?

Mr. VAN ZYL: I should think so, yes.

Mr. GROSS: Do you know who determines that policy?

Mr. VAN ZYL: I believe the Government of South Africa determines the policy.

Mr. GROSS: When you say that it is not a matter of educational policy, do you mean that you see no relationship between the composition of that Council and the educational policies pursued in the Territory?

Mr. VAN ZYL: I should say no.

The PRESIDENT: You see no relation.

Mr. GROSS: You see no relationship between those two—that was the sense of your response, that this is not a matter of educational policy? I will not pursue that further, I think I am confusing the witness; if I may withdraw that, Mr. President? With respect to the composition, again, do you know, roughly again approximating, what the types of persons are who compose the Council with respect to profession or occupation, generally speaking?

Mr. VAN ZYL: Mr. President, do I understand correctly—does Mr. Gross refer to the Legislative Council?

Mr. GROSS: Yes, I am still talking about the Legislative Council of approximately 40 people that we are still discussing. Are there lawyers on it, are there teachers, are there engineers?

Mr. VAN ZYL: I really would not be able to say, Mr. President.

The PRESIDENT: You don't know?

Mr. VAN ZYL: I have not gone into details about that qualification.

Mr. GROSS: Just to save agony on the part of everybody in the Court room, would you state that you do not really have information concerning the structure and functioning of the Administrator's Office and of the Legislative Council and of the Executive Committee—would you state that for the record, so that I do not have to ask you detailed questions about them?

Mr. VAN ZYL: I have a general knowledge of what is going on, but the



Court will appreciate that I would not be able to give evidence in that field as an expert.

Mr. GROSS: I have asked you, Sir, as a witness or expert—I am attempting to save the Court's time, not to debate with you—do you as a witness or expert have knowledge concerning the functioning of the Office of the Administrator of South West African Education, the structure and responsibilities of the Legislative Council of that Office and the Executive Committee thereof; do you have personal knowledge concerning these matters, as witness or as expert?

Mr. VAN ZYL: I have a general knowledge of their duties and the way they function, yes.

Mr. GROSS: If I ask you questions which you consider to be more specific than you have knowledge of, you will please indicate that by your reply. With respect to the Legislative Council, I may revert to that for a moment: what responsibilities does the Legislative Council, if any, have with respect to the determination of the extent to which, let us say, mother tongue should be used as a medium of instruction in the schools of South West Africa?

Mr. VAN ZYL: Up to the present moment it is for the Legislative Council, I should say, to determine whether it should be so, and it is also the Administration acting on behalf of the Council that a Commission of Inquiry was appointed, and the recommendations were received, and it was for the Council to decide whether they wanted to implement those recommendations; no other body, so far as I know, in South West Africa would have had the authority to choose.

Mr. GROSS: Does it follow from your response to my question that the Legislative Council has final authority to make that decision?

Mr. VAN ZYL: I should say so, yes.

Mr. GROSS: Could they be overruled by the Administrator?

Mr. VAN ZYL: I should say yes, if he chooses to, but in practice I do not think it ever happens.

Mr. GROSS: I am talking now about the principles of the structure. Could the Administrator be overruled by the Prime Minister?

Mr. VAN ZYL: Be overruled by the South African Government, I should say yes, because he is in a subordinate position.

Mr. GROSS: So that it would be fair to say that the ultimate authority for such installation or change of policy, for example with respect to mother-tongue instruction in South West Africa, would ultimately be within the power of the Republic Government itself—is that correct?

Mr. VAN ZYL: I should say yes.

Mr. GROSS: I suppose that the Executive Committee to which you referred is an Executive Committee of the Legislative Council—is that correct?

Mr. VAN ZYL: Yes.

Mr. GROSS: Do you know approximately how many members of the Executive Committee there are, or is this within the specific area of which you are ignorant?

Mr. VAN ZYL: I believe there are four members and the Administrator.

Mr. GROSS: Four members of the Executive Committee?

Mr. VAN ZYL: Yes.

Mr. GROSS: Are they all members of the Legislative Council?

Mr. VAN ZYL: There are four elected members, and of course the Administrator is also *ex officio* a member of the Executive Committee.

Mr. GROSS: I see. And are the four members of the Executive Committee all members of the Legislative Council, if you know?

Mr. VAN ZYL: They are.

Mr. GROSS: It would follow, then, that none of those is non-White, they are all White, I take it?

Mr. VAN ZYL: They are all White.

Mr. GROSS: Does the Executive Committee, if you know, have full authority to act for the Council?

Mr. VAN ZYL: I should say, in certain respects, but I would not be able to say exactly what the position is; I have never made a careful study of the position.

Mr. GROSS: In other words, when you testify to the point of the basic principles of the Bantu education system, its application and effects, you are not including in your expert testimony evidence with respect to the structure within South West Africa by which the system is given effect—is that a fair statement?

Mr. VAN ZYL: I was aware of the fact that the administrative authorities in South West Africa had the authority to decide and to determine policy, but I never bothered to know exactly how they act in coming to their decisions.

Mr. GROSS: With respect to the testimony you were giving when I interjected my questions regarding the Administrator and the Legislative Council and the Executive Committee, you had, I think, referred to those as "political authority"—did you use that phrase, or some such phrase?

Mr. VAN ZYL: Yes.

Mr. GROSS: Would you clarify that for the Court?

Mr. VAN ZYL: I would not like to say more than that it is a body that is elected on political lines, I should say.

Mr. GROSS: Is the Council elected?

Mr. VAN ZYL: The Council is elected, yes.

Mr. GROSS: Who are the electors of the Council—by whom is the Council elected?

Mr. VAN ZYL: By the White members of the Territory, who qualify as voters.

Mr. GROSS: Now, these White members of the Legislative Council that administer the Bantu educational affairs are all elected by only White members of the Territory—is that correct, Sir?

Mr. VAN ZYL: Yes, I should say so.

Mr. GROSS: Do you happen to know, Sir, whether they run for office, are there candidates for election? Do you know, Sir?

Mr. VAN ZYL: I could not follow that question.

Mr. GROSS: Is there a slate of candidates placed before the White voters for election to the Legislative Council—do you know, Sir?

Mr. VAN ZYL: I am sorry, Mr. President, the first word I could not get.

The PRESIDENT: "Slate."

Mr. GROSS: Is there a slate of candidates for election to the Legislative Council placed before the White voters of the Territory?

Mr. VAN ZYL: I would not be able to answer that question.

Mr. GROSS: With respect now to your testimony regarding the structure, would you continue, Sir, if you remember, where you left off—you had just referred to the Executive Committee. Now would you continue from there, Sir.

Mr. VAN ZYL: Well, Mr. President I should come down to the Department itself. There is an Education Department at the head of which is a Director of Education; he is assisted by a Deputy-Director for all services and by a Chief Inspector for Bantu education and they, in turn, are assisted by an inspectorate—a number of inspectors for White and Coloured schools on the one hand and a number of inspectors for Bantu schools on the other hand. They are further assisted by administrative officers in the head office and perhaps in their regional offices and then the system consists further of 316 schools throughout the Territory of which the majority are in the northern territories and that is about the whole set-up.

Mr. GROSS: Now, Sir, by whom is the Director of Education of the Territory appointed?

Mr. VAN ZYL: He is appointed by the Civil Service Commission of the Republic of South Africa on the recommendation of the Executive Committee of South West Africa.

Mr. GROSS: The Civil Service Commission is, I take it, a branch of the Government of the Republic, is it, Sir?

Mr. VAN ZYL: You are right, yes.

Mr. GROSS: Is there a Civil Service Commissioner or is that a Commission of more . . . ?

Mr. VAN ZYL: It is a Commission consisting of a number of persons.

Mr. GROSS: Approximately how many, Sir?

Mr. VAN ZYL: I should say there are five.

Mr. GROSS: Are they all White, Sir?

Mr. VAN ZYL: They are all White, Mr. President.

Mr. GROSS: Now, you said, did you not, Sir, that there is a Chief Inspector in the Education Department?

Mr. VAN ZYL: Yes.

Mr. GROSS: Presumably appointed by the Director of Education, is he—as far as you know?

Mr. VAN ZYL: Well, also appointed by the Civil Service Commission on the recommendation of the Director and the Executive Committee.

Mr. GROSS: You referred also, did you not, Sir, to a Deputy-Director?

Mr. VAN ZYL: Yes.

Mr. GROSS: Is he also appointed by the Civil Service Commission?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: And there are a number of inspectors composing an inspectorate for various population groups, is that correct, Sir?

Mr. VAN ZYL: That is correct, Mr. President.

Mr. GROSS: And how are those inspectors selected, Sir? Are they appointed?

Mr. VAN ZYL: Usually vacancies are advertised and from amongst the applicants recommendations are made by the Director and the Executive Committee to the Civil Service Commission and they finally appoint a candidate.

Mr. GROSS: And there is an inspector for the Coloured, an inspector for the White, an inspector for the Native schools, is that correct, Sir?

Mr. VAN ZYL: As I have pointed out in my chief evidence, Mr. President, I am not perfectly sure of what the position is at the present moment but from what I have gathered in conversations with colleagues in that area, they have got one inspectorate inspecting White and

Coloured schools on the one hand and another inspectorate for the Bantu schools.

Mr. GROSS: Are those inspectors also appointed by the Civil Service Commission or have you answered that, Sir?

Mr. VAN ZYL: They are appointed by the Civil Service Commission.

Mr. GROSS: In Pretoria?

Mr. VAN ZYL: In Pretoria.

Mr. GROSS: Are they . . .

Mr. VAN ZYL: I must make this clear, Mr. President, the first selection takes place in Windhoek and the first recommendations are made by the Director and the Executive Committee, and the Civil Service Commission in Pretoria acts only on their recommendations when they finally appoint them.

Mr. GROSS: They recommend and the Civil Service Commission appoints, I take it.

Mr. VAN ZYL: You are right. Yes.

Mr. GROSS: Do you know how many inspectors there are, Sir?

Mr. VAN ZYL: For Bantu education?

Mr. GROSS: Yes, Sir.

Mr. VAN ZYL: There are five. Five approved posts; whether they are all filled at the present moment I could not tell you.

Mr. GROSS: Can you tell the Court, Sir, whether, as far as you are aware, they are all White?

Mr. VAN ZYL: The inspectors are all White, Mr. President.

Mr. GROSS: At what level, Sir, in the hierarchy of the educational administration does the non-White occupy a position—name the highest level if you will please, if you know?

Mr. VAN ZYL: In South West Africa?

Mr. GROSS: Yes, Sir.

Mr. VAN ZYL: Mr. President, as far as I know the first post from the top occupied by a Bantu is that of sub-inspector. It is a post just below that of inspector of schools and the aim is that he should ultimately take the position of that White inspector. As soon as he is considered capable of doing so, as soon as the particular Bantu group or Bantu authority has come to the stage where it assumes full responsibility for its educational services, the White inspector is withdrawn and the Bantu sub-inspector takes his place. There may still then be a person in a position of authority over the Bantu inspector, he will also ultimately be withdrawn and be replaced by a Bantu, say Director, or whatever he may be.

Mr. GROSS: Are there any Bantu sub-inspectors, so far as you are aware Sir, in the portion of the administration dealing with Coloured or White schools?

Mr. VAN ZYL: There are none, as far as I know, Mr. President.

Mr. GROSS: With respect to the promotion eligibility of Bantu sub-inspectors to inspectors, how many, if any, such promotions have been made in the history of the Territory since the Mandate?

Mr. VAN ZYL: None, as far as I know, Mr. President.

Mr. GROSS: Now, Sir, would you, as an expert, be in a position to advise the Court, express your opinion, concerning the reason why no Bantu sub-inspectors have become inspectors?

Mr. VAN ZYL: The reason, Mr. President, is mainly because at the present moment there is no Bantu authority yet which has assumed full responsibility for its educational services, and so long as the final re-

sponsibility of such services rests with the White Government in South Africa the White Government is represented by a White inspector in a particular area but as I have said, as soon as they reach the stage where the White Government withdraws for all practical purposes, then the White Government's representative in the person of such an inspector is also withdrawn.

The PRESIDENT: Could I ask the witness, Mr. Gross; when you say: until the Bantu group has assumed the full responsibility, does that mean every responsibility including financial responsibility?

Mr. VAN ZYL: Yes. Of course, the financial responsibility may still be made possible through subsidies received from the mother government, as the position is in the Transkei at the moment.

Mr. GROSS: Excuse me, Mr. President.

The PRESIDENT: Certainly.

Mr. GROSS: You testified I believe, did you not, that you had spent some months in the Territory in 1958 as Chairman of the Enquiry into Bantu and Coloured education in South West Africa?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: And that you had, if I understood your testimony, numerous consultations, I do not remember the qualifier, but you had consultations in the course of your enquiry there with members of the population groups—is that correct, Sir?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: Did you, as a result of your enquiries and consultations, reach a conclusion with respect to whether or not there were actually in the school system in South West Africa, Bantu teachers or principals who would be qualified to become inspectors or higher in the educational administration of the Territory?

Mr. VAN ZYL: Mr. President, I was impressed by some of the Bantu teachers I met in South West Africa, by their persons and also by their ability to teach because I made use of the opportunity also to attend some lessons conducted by some of these teachers. But of course, I would not consider anyone adequately qualified for the post of inspector until he has had experience in other posts leading up to that high post of inspector.

Mr. GROSS: Did you ascertain whether there were such persons who are obtaining experience in those sub-posts, if I may call them that?

Mr. VAN ZYL: At the time of the enquiry, Mr. President, there were no such posts. There were no posts of Bantu supervisors of schools as we used to call them in the Republic at the time. There were also no posts of Bantu sub-inspectors of schools. As a matter of fact there were not even White inspectors for Bantu education; they had only one inspectorate serving all the schools in South West Africa. It was only our Commission that recommended the institution of posts of Bantu supervisors of schools—we did not even at the time recommend the post of sub-inspector because it was something that came later and we thought that they should first establish properly a post of supervisor and then, subsequently, the post of sub-inspector should be introduced as things developed.

Mr. GROSS: Do I understand you correctly, Sir, to testify that in 1958, when you were conducting your enquiries in South West Africa, there were no Bantus employed in the educational system as sub-inspectors, is that correct, Sir?

Mr. VAN ZYL: That is correct, Mr. President.

Mr. GROSS: Were any Bantus employed in the educational system at administrative levels or executive levels in any capacity, Sir?

Mr. VAN ZYL: Not that I know of, Mr. President.

Mr. GROSS: You would have known, Sir, that was relevant to your enquiries, was it, Sir?

Mr. VAN ZYL: Yes, I would have known, Mr. President.

Mr. GROSS: Did you not also testify that from your observation and analyses of the situation, as well as consultations, you reached the conclusion that there were individual Bantus, who had qualification to exercise these posts subject only to lack of training for them—is that the sense of your testimony, Sir?

Mr. VAN ZYL: Well, I came to the conclusion that there were Bantu in the Territory who were capable of assuming certain administrative responsibilities and we immediately recommended the institution of such positions for these people.

As I have pointed out, we recommended the post of supervisor of schools which will place certain Bantu educationists in positions of authority over principals of schools. As a matter of fact, within the Police Zone at the time there were not even proper posts of principals of schools. We also recommended that, so as to give them more authority. We recommended posts of supervisors of schools who could be in positions of authority over the principals, and we recommended the institution of school boards which would have fully fledged and full-time secretaries; and we considered those to be the fields for these people to gain experience in the service of their own people.

Mr. GROSS: Were your recommendations accepted, Sir, in any of these respects?

Mr. VAN ZYL: They were, Mr. President.

Mr. GROSS: If you have not already testified to this, Sir, would you please tell the Court how many Bantu sub-inspectors there are at the present time employed in the system.

Mr. VAN ZYL: Mr. President, I would not be able to tell how many have actually been appointed, and also what I say is not because of official information that I have, but in conversations with colleagues and friends there I have concluded that they have approved of five posts of sub-inspector. Whether these posts are all filled at the present moment I would not be able to say.

Mr. GROSS: But it would presumably follow, would it not, Sir, that if the recommendation had been made for five such posts, that it was not considered beyond the realm of practical possibility that there were people eligible to fill them? Is that not a fact?

Mr. VAN ZYL: I should think so, yes, Mr. President.

Mr. GROSS: This recommendation with respect to the creation of these five posts, to which you refer, was made when, Sir?

Mr. VAN ZYL: I am absolutely uncertain, Mr. President: I would not be able to say. Also, perhaps I should just add this, it might be possible that they have not yet decided on the term "sub-inspector", that they would still call them "supervisors" of schools, but it will come to the same thing, the principle will remain unchanged.

Mr. GROSS: This clarifies, Sir, I think, what you meant by the word "posts" in connection with my question as to whether you knew the highest level at which Bantus were actually employed. You testified

now, Sir, that you are not aware, of your own knowledge, whether any of these five posts are actually filled by Bantu; is that correct, Sir?

Mr. VAN ZYL: That is right, Mr. President.

Mr. GROSS: Now, Sir, therefore, may I revert to my question and ask whether, on the basis of your own knowledge, you can tell the Court the highest level in the administrative structure, with respect to education in South West Africa, in which Bantu are actually employed and at work?

Mr. VAN ZYL: I am afraid, Mr. President, that I would not be able to tell.

Mr. GROSS: Would you, Sir, as an expert, regard it as important that such positions be filled? Important, if I may clarify my question, for the sound training of Bantu and for the betterment of the educational system with respect to the Bantu?

Mr. VAN ZYL: Mr. President, it is South African policy not to have integrated systems of any kind, so there will not be and I cannot advocate the establishment of an integrated administrative system, but the opportunities for administrators to be trained are created when separate administrations for the different Bantu authorities are established. Then all potential administrators are taken up into that system and they are trained by White seniors until those seniors withdraw.

Mr. GROSS: Would it be a fair interpretation of your testimony just now that the reason why there are no Bantu in administrative positions—that is the case, is it not, Sir, incidentally?

Mr. VAN ZYL: I believe it is the case, I would not be . . .

Mr. GROSS: According to your view, your opinion, would you say, Sir, that the reason for that is because by employment of such persons in administrative positions you would produce what you describe as an integrated system? Is that the point, Sir?

Mr. VAN ZYL: That is right, Mr. President.

Mr. GROSS: And would it not follow then, Sir, that the reason why the Bantu are not employed in these positions is because of the policy of apartheid, is that correct, Sir, or separate development, as it is known?

Mr. VAN ZYL: The policy of separate development, I should say so, yes, Mr. President.

Mr. GROSS: There would be no other reason, so far as you are aware, Sir, for this phenomenon—that there are no Bantu employed in the direction of their own system of education?

Mr. VAN ZYL: Of course, Mr. President, there are many reasons for maintaining this policy of separate development.

Mr. GROSS: Well, Sir, I had not intended at the moment to get into the policy of separate development, which I shall, with the Court's permission, come to in due course. I am attempting to establish, and I believe the answer has already been given, Sir, that it is the policy of separate development or, as it is alternatively known in this record, apartheid, which accounts for the fact that there are no Bantu employed in administrative positions in the Bantu education system in South West Africa. That is a correct reflection of your testimony?

Mr. VAN ZYL: I should think so, yes, Mr. President.

Mr. GROSS: I should like to turn now, Mr. President, to a different but related subject, and that is with respect to the broad aspects of the education policy in the Territory. I think you testified, if my notes are correct, Sir, to the effect that one of the criticisms of the earlier system of

education was that it was not part of a general plan. Was that substantially your testimony, Sir?

Mr. VAN ZYL: Not part of a general plan for the development of Bantu communities.

Mr. GROSS: And you testified, if I understood you correctly, that the schools formerly in existence in the educational system in vogue then did not tend toward the development of self-reliant, self-dependent Bantu communities; was that substantially your testimony?

Mr. VAN ZYL: Well, not to the extent that they ought to have done so.

Mr. GROSS: Now, Sir, with respect to the southern sector of the Territory, did you in your studies, in 1958, take into account conditions there and make recommendations with respect to that sector?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: You did not confine yourself exclusively to the northern areas of the Territory, is that correct?

Mr. VAN ZYL: Definitely not, Mr. President.

Mr. GROSS: Did you, in connection with your studies of the education problem and system in the southern sector, take any special notice of the situation prevailing in that portion of the southern sector, or Police Zone, lying outside the Reserves?

Mr. VAN ZYL: Yes, we did, Mr. President.

Mr. GROSS: In connection with the education policies—I ask you this either as a witness or expert, or both—then in effect in 1958, in the southern sector outside the Reserves, was that educational system directed toward the development of what you described, I believe, as self-reliant, self-dependent Bantu communities?

Mr. VAN ZYL: As I have said, Mr. President, if it did contribute towards it, is it not do so to the extent it should have contributed.

Mr. GROSS: The Odendaal Commission report, Sir, refers, in several places which have been placed into the record, to numbers of Bantu, of various tribes, who are, as the Commission expresses it, "absorbed" into the diversified economy of the southern sector. In your studies with regard to the education system, and I am talking now about the exchange economy, the southern sector outside the Reserves, in your studies of the education system there, did you take into account the significance, if any, of the fact that the Bantu were absorbed in the diversified economy?

Mr. VAN ZYL: I think we did, Mr. President. I cannot remember well, but I think we did.

Mr. GROSS: But you did pay attention, I assume, to the problems presented by this absorption of the non-Whites into the economy, did you not, Sir?

Mr. VAN ZYL: Yes, yes we did take . . .

The PRESIDENT: I think, Mr. Gross, you should make clear what you mean by the words "absorb" and "absorption".

Mr. GROSS: With deference, I would like to ask the witness if he could make it clear.

The PRESIDENT: No, I think you should make it clear because it has been a matter of controversy as to what the word really means.

Mr. GROSS: Sir, I do not know what the word means so I cannot make it clear. I will do my best, however, to avoid misleading the witness, by referring specifically to the section of the Odendaal Commission report which I have in mind, and which has been previously introduced into the evidence.



For example, Sir, on page 31 of the Odendaal Commission report, paragraph 113, the following statement is made:

“With the arrival of the Whites, resulting in increased personal safety and greater development, the Damara were able to evolve a totally new way of life. Large numbers were absorbed in the economy of the southern part of the country and displayed exceptional aptitude as employees.”

Sir, would you have an opinion as to what the Odendaal Commission meant by the use of the word “absorbed” in that context?

Mr. VAN ZYL: Sir, I would not like to give an opinion on that matter. I have not studied it and I fail to give an expert opinion on it.

Mr. GROSS: Would you care to advise the Court what you considered the correct designation of the relationship between the non-White employees and the economy; would you describe it, Sir, if you do not accept the term “absorbed”?

Mr. VAN ZYL: No, I would not know what to answer, or how to answer that question, Mr. President. You will agree that it is not in my particular field of interest.

Mr. GROSS: Well, Sir, I do not think that I would agree to that but that is not for me. I think that the question might be approached from a slightly different way. Do you feel, as an educational expert, and in the light of the responsibilities you have testified you perform, that education has a relevance to the relationship of an individual to the economy in which he works?

Mr. VAN ZYL: I should say yes, Mr. President.

Mr. GROSS: And if he is a working member of the economy, let us say during his life, would the nature and objectives of his education have a relevance to his potential of accomplishment in that economy?

Mr. VAN ZYL: Yes, it would.

Mr. GROSS: From the economic point of view—I am not addressing this question to you as an economist, which we know you are not, Sir, but as an educator—what, if any, consideration did you give, in the course of your enquiries, in 1958 or at other times, to the problems posed by the education of persons, non-White persons, who were—and I, with the permission of the President, put the word in quotes—“absorbed” into the White economy, as it is called? Did you pay attention to that problem, Sir?

Mr. VAN ZYL: Well, Mr. President, we were mostly concerned with the economic development of the Bantu homelands and the different Bantu national groups.

Mr. GROSS: When you say you were mostly concerned, Sir, I think you have testified that you did consider, did you not, I do not want to put words in your mouth, but did you not testify, Sir, that you did consider the educational problems of the southern sector outside the Reserves? You did testify to that?

Mr. VAN ZYL: Yes, we did.

Mr. GROSS: Would you wish the Court to understand that you did not regard that as an important aspect of the educational system in South West Africa?

Mr. VAN ZYL: Yes, Mr. President, but we did not take those Natives who had established themselves outside the Native Reserves as being completely cut off from their regions of origin, and from the national

groups to which they belonged. We still took them to be an integral part of those national groups.

Mr. GROSS: So that, if I understood you correctly, Sir, in devising your recommendations you started from a point of departure, did you, that the Bantu in the modern economy in the southern sector should be regarded as a member, so to speak, of the northern areas? Is that correct, Sir?

Mr. VAN ZYL: I should say so—yes, Mr. President.

Mr. GROSS: Now, Sir, did you pay any attention at all to the problem of education with respect to his performing a role in the economy of the Territory in the southern sector?

Mr. VAN ZYL: Yes, we did, Mr. President.

Mr. GROSS: And, Sir, in that connection, would it be, then, relevant to refer to the creation of self-reliant, self-dependent Bantu communities as the major objective of the education of such a person who is employed in the White economy in the southern sector?

Mr. VAN ZYL: I should say so—yes, Mr. President. Being engaged in the White economy does not imply that an individual is cut off from his own national group. I mean his earnings and his skills may be of economic value to his own national group.

Mr. GROSS: May we take, as an example, Sir, for the purpose of making the matter more clear to the Court, perhaps, the subject you have testified to, that is to say the teaching in vernacular or mother tongue? Shall we focus on that for a minute, Sir? Now, with respect to the requirements of a non-White who, let us say, spends his entire life as an employee in the modern sector of the economy, would you explain to the Court, as an expert, whether or not vernacular—his tribal language—is as important to him as knowing well the language of the economy in which he works?

Mr. VAN ZYL: Well, I should say, Mr. President, that there is no need to decide whether his mother tongue is of any significance for him in his own group, but the point that we, as educationalists, wish to make is that as a medium of instruction, as a means of conveying knowledge to a student or to a pupil, his mother tongue is a very important factor, because he understands it better than any other language. That does not take away the fact that any pupil with any mother tongue may acquire a useful knowledge of any other language for whatever purposes there may be.

Mr. GROSS: Sir, is it a fair interpretation of your previous testimony, on direct examination, that the first priority is given to teaching through the medium of the mother tongue—the higher priority? Is that the correct version of your testimony?

Mr. VAN ZYL: Yes, Mr. President. I may add, at the present moment, for at least the duration of the primary school course.

Mr. GROSS: Yes, Sir. Now, would you state whether you believe, also, that the same priority of teaching in vernacular, or mother tongue, should be accepted in the case of the non-White who spends his life as an employee in the modern sector?

Mr. VAN ZYL: Most definitely yes, Mr. President.

Mr. GROSS: What is the reason for your opinion in that respect, Sir?

Mr. VAN ZYL: Because it does not bring about any change, Mr. President. No matter where a pupil lives, if he has a particular mother tongue, that mother tongue serves the same purpose as it would have served anywhere else.

Mr. GROSS: Let us take, as an example, Sir, if I may, a non-White—a Bantu, a Native, according to the census category—who is employed, let us say, for most or all of his working life as a domestic servant in a “White household” in Windhoek. Now, in respect of his work and life, would you say, as an expert educator, that it is reasonable to give a higher priority to teaching him in the medium of vernacular than in the medium of the language of the area, spoken by the persons for whom he works?

Mr. VAN ZYL: Mr. President, provision is made for communication with his employer by teaching him the employer’s language, if he cares to learn it, but, before he goes out to work, while he is still at school, the employer’s language is not of such great importance to him as his mother tongue, more particularly as a medium of instruction.

Mr. GROSS: Sir, there are, are there not, numbers of non-Whites (I am referring now to Natives) in the southern sector outside the Reserves, who are born and live and die in that sector? Is that correct, Sir?

Mr. VAN ZYL: It could be. Yes, Mr. President.

Mr. GROSS: Now, with respect to a person, let us say, who has been born of parents who themselves have been born and worked in the southern sector—my question to you, Sir, is whether you feel that a purpose is served by giving a higher priority to instruction through the vernacular to such a person than through the language of the community in which he works and is destined to work?

Mr. VAN ZYL: Yes, Mr. President, the fact that an individual stays for his whole life in a particular area—or, shall we say, in a White area—does not imply that he adopts another language as his mother tongue. In his home, in his dealings with his parents and with his friends, he still uses his mother tongue.

Mr. GROSS: It is the policy, is it, Sir, of the educational system, so far as you are aware, to perpetuate that condition, that situation? Is that correct, Sir?

Mr. VAN ZYL: I should think so. Yes, Mr. President.

Mr. GROSS: What is the reason for that, Sir?

Mr. VAN ZYL: Well, the educational reason, of course, is that the mother tongue still remains a very valuable means of conveying knowledge to the pupils at school in the first instance. Also, the Bantu languages in South West Africa and in the Republic of South Africa are of great cultural value, and, as those entrusted with the development of the Bantu people and their culture, the South African Government would not like to be held responsible for having neglected such cultural institutions.

Mr. GROSS: Sir, would you agree that the short explanation is that it is the policy of the South African Government to give first priority to the development of separate homelands? Is that the foundation of the educational system?

Mr. VAN ZYL: That is right, Mr. President.

Mr. GROSS: The question then would be, would it not, Sir, whether the non-White, living and working in the modern economy of the southern sector, is to receive an education which adjusts him more effectively to the economic situation in which he lives, or to a homeland or area of another description? Is that a correct formulation, or do you disagree with that statement, Sir?

Mr. VAN ZYL: Mr. President, I think that both conditions should be

taken into consideration, because, at the present moment, one never knows where a pupil receiving education will ultimately land. He may go back to his homeland immediately, or he may be employed temporarily in a White area.

The PRESIDENT: It is just on one o'clock, Mr. Gross, and you might be prepared to stop or stay at this moment, but, before the Court adjourns, I would be personally grateful to you—since you have, in your case from time to time, placed emphasis upon those people in the urban areas outside the Reserves who were born, live and die there—if you would indicate where the Court would be able to find any evidence to establish the approximate number of people involved.

Mr. GROSS: I shall endeavour to supply that, Sir.

[Public hearing of 1 October 1965]

Mr. GROSS: Mr. President, at the conclusion of the proceedings yesterday, the President asked the Applicants to indicate to the Court where the Court would be able to find any evidence to establish the approximate number of people (I am referring, Sir, to this page, *supra*, of the verbatim record) involved, that is to say, with respect to the number of persons who, in my locution, were born, lived and died in the Police Zone in the urban areas outside the Reserves.

Sir, would the Court wish to have me commence with the reply to that question, or proceed with the witness?

The PRESIDENT: I think you might proceed with the witness, Mr. Gross, and all the Court requires is a reference to the evidence, not any explanation.

Mr. GROSS: I could give that briefly, Sir, if you wish.

The PRESIDENT: Well, you could do so now then.

Mr. GROSS: The reference would be to the Odendaal report, page 39, table XVIII; to page 39 of the Odendaal report, paragraph 148; to the testimony of Professor Logan, X, pages 481 and following; to further testimony of Professor Logan, X, pages 395 and 396; to the Odendaal report, page 117, paragraph 438; further reference to page 41 of the Odendaal report, table XIX, the 1960 census; and as corroborative evidence, the U.N. General Assembly document A/AC 73/L14, 5 October 1959, page 6; and the General Assembly document A/AC 73/L10, 19 August 1957, page 15; and, finally, the Odendaal report, Chapter X, page 117, in particular paragraphs 446 and 447. In one sentence, Sir, the conclusion inescapably to be drawn . . .

The PRESIDENT: That is all I have asked, Mr. Gross. The only further question I ask, are the two United Nations documents in the record?

Mr. GROSS: Of that I am not certain, Sir. They are available in the library, but I do not know whether they are in the record.

The PRESIDENT: Thank you.

Mr. GROSS: I would appreciate the opportunity, Mr. President, of explaining the significance of these figures in a sentence, lest I leave a misleading impression. May I have that permission?

The PRESIDENT: Well, yes, Mr. Gross; I only want the reference, but if you desire to do so please do so.

Mr. GROSS: Yes, Sir. The phrase "Natives who were born, lived and died in the respective areas" is a locution meaning those permanently resident there. The two terms used by me interchangeably are, it is sub-

mitted, established by the information given to the Court. Thank you, Sir.

May I proceed with the witness?

The PRESIDENT: Certainly.

Mr. GROSS: Dr. Van Zyl, towards the conclusion of your testimony yesterday, I believe, or during the course of your testimony, you were referring to the teaching vernacular in the school system, were you not, Sir, and I have several further questions along that line, on that subject.

I should like to know what consideration has been given to the problem presented by the fact that in the Reserves in the southern sector there is a wide distribution of so-called Native tribes: specifically, Sir, I refer to the information derived from the Odendaal Commission report, table XX, at page 41, which reveals that of the seven non-White groups represented there, all are scattered among the 17 Native Reserves; and that the Damara, for example, are spread among 14 of the 17 homelands or Reserves. The Nama live in 12 of the 17; the Herero in 16—let me pause there, if I may.

The PRESIDENT: Is this in table XX, Mr. Gross?

Mr. GROSS: This is derived, these figures are derived from table XX in the Odendaal Commission report, at page 41.

The PRESIDENT: Thank you.

Mr. GROSS: Now, Sir, would you explain, in the light of those figures of the scattering of the tribes throughout the Reserves, what consideration, if any, was given to the problems presented by that fact in the establishment of vernacular instruction in the schools in those Reserves?

Mr. VAN ZYL: Mr. President, I would like to point out that each of the Bantu homelands, or Reserves as Mr. Gross prefers to call them, belongs mainly to one of those groups, and I should say that in any of the Reserves there is a language which predominates. If there are any people in a particular Reserve belonging to another language group, they will definitely be a very small minority group, and the mere fact that they are found in a foreign Reserve, if I may call it that, will be an indication that they are familiar with the home language of that particular area. They might have grown up there, and they might have been absorbed by that particular group, where they constitute a minority group.

Mr. GROSS: Sir, may I take as an example—we are talking of course now about the southern sector—the Reserve of Tses. It would appear from the cited table XX, that in that Reserve the population is composed as follows: Damara 11.6 per cent.; Nama 34.9 per cent.; Herero 48.94 per cent.; and then a small scattering of Ovambo and Okavango, less than 1 per cent.

Now, with respect to the situation in Tses, then, given this particular distribution, what would be the language vernacular of Tses, for example?

Mr. VAN ZYL: Mr. President, in this case there would be substantial communities representative of the different national groups which Mr. Gross has mentioned. I think it can be taken for granted that the 11 per cent. Damara constitute one, or two, or maybe three sizeable communities of their own; and even if they are integrated with the Damara in other communities, the Damara still speak Nama, because those two groups have the same language. So in actual fact, in this particular Reserve there are only two groups to be considered, the Nama-speaking group, consisting of 11 per cent. Damara and the Namas, who are also Nama-speaking, representing 34 per cent.: and then, of course, the Herero, speaking a different language. And here again, knowing the

Hereros as I do, I am perfectly sure that they would not be integrated into the other communities, they would form a community of their own and it would not be difficult to provide schools with the Herero language as a medium.

Mr. GROSS: Sir, would your explanation, which you have been good enough to give to the Court, apply also to a Reserve such as Fransfontein, where the distribution is Damara 60.9 per cent.; Nama 18.5; Herero 11.1, and Ovambo and Okavango 9.49, approximately 9.5 per cent.? Would the explanation you gave with respect to Tses apply likewise to Fransfontein?

Mr. VAN ZYL: Mr. President, it will be substantially the same.

Mr. GROSS: In that case, Sir, where you have a relatively small distribution of Ovambo and Okavango, let us say roughly 9.5 per cent., do they receive instruction under the vernacular teaching plan in the language of the predominant population group in that Reserve?

Mr. VAN ZYL: Mr. President, if this small minority group constitutes a community of its own, it will be possible to provide a separate school for them only. If they are individuals, scattered among the other main groups in that particular area, one may assume that they have learned to know the language of those groups into which they have been taken up.

Mr. GROSS: Would you have any idea, Sir, of the population of the Fransfontein Reserve? The breakdown—I have not figured the total, Sir—is as follows from the same table: Damara 494; Nama 150; Herero 90; and Okavango and Ovambo 77—a total of 811.

Now, this, of course, is a small proportion of the total population of the Territory—the Court will understand that. However, the point of the question is to elucidate, taking this as an illustration, if you will, the solution devised by the educators for the vernacular teaching where you have a situation of this sort. Would there, Sir, be a separate school for the 90 Herero? Would that be contemplated in that Reserve?

Mr. VAN ZYL: It is difficult to say, Mr. President. This presents a particular problem with which the authorities will have to deal as best they can.

The PRESIDENT: Dr. Van Zyl, there is a copy of the report on the table next to you. You might be able to follow Mr. Gross more carefully if you have reference to page 41, so that you need not make any notes; you can follow it on the table itself.

Mr. VAN ZYL: Thank you, Mr. President.

Mr. GROSS: I have been referring, particularly, Dr. Van Zyl, to table XX—as the President says, it is at page 41. Now you say, Sir, this type of situation presents a particular problem; how, Sir, is it proposed to resolve this problem?

Mr. VAN ZYL: Well, I should say it will depend very much, Mr. President, on the number of, say, Herero children present there. They could be taken into one of the other schools. I should point out again that here the two main groups—the Damaras and Namas—will present no problem because they belong to the same language group. It might, then, be possible to institute a class for Herero children at one of these schools for the bigger language group—a separate class in the same school. That often happens. That is one way of getting out of the difficulty, Mr. President.

Mr. GROSS: Would you, then, care to comment, if you will, Sir, on the statement made in the Respondent's pleadings, in the Counter-Memorial, III, page 362, paragraph 22, sub-paragraph (i) which states that—

"Of the 102 schools in the *Police Zone* at present, 1 offers instruction in 3 languages, and 20 in two languages. Herero, is the medium of instruction in 11 schools, and 10 of these are attended almost exclusively by Herero pupils. Nama is the medium in 68 schools: in 6 of these lessons are also explained in Herero, and in the others Nama-speaking pupils form the overwhelming majority. Tswana is the medium of instruction in 2 schools, at both of which Tswana-speaking pupils form the vast majority."

Now, would it be a fair construction of that statement in the Counter-Memorial that, generally speaking, it is the situation that minorities attend school and that the instruction which they receive is, maybe, offered in the vernacular of another tribe, of the majority of those in attendance at the same school? Is this a correct inference to be drawn from this analysis?

Mr. VAN ZYL: Mr. President, yes. If the minority group is so small that the children from this minority group constitute a few individuals. I should say they could easily be taken up in the other classes because it could be taken for granted that if there are so few living in that particular area they would be thoroughly conversant with the predominating language of the community.

Mr. GROSS: Now, leaving this problem, you have testified with respect to the general policy of the introduction of the vernacular teaching, or mother-tongue instruction, as the medium of instruction, that this was, among other reasons, to preserve the culture of the tribe concerned. Is that correct, Sir?

Mr. VAN ZYL: Partly so, yes, Mr. President.

Mr. GROSS: With respect to the medium of instruction employed, is it also taken into consideration whether the culture, or the language itself—the cultural implications of the language itself—is such that modern terms are used—terms to describe modern economic or political phenomena, shall we say? Does the normal vernacular language encompass those ideas or forms of expression?

Mr. VAN ZYL: Mr. President, I should point out again that, at the present moment, the vernacular medium in the case of Bantu schools does not extend further than the primary school course. For the purpose of instruction in the primary school, these languages are almost adequate. We have had the experience in the Republic of South Africa that we had to calculate, or we had to determine, whether there is an adequate vocabulary to cope with the demands set by the requirements of the instruction in the primary school. We have come to the conclusion that about 90 per cent. of the terms needed already exist in the Bantu languages, and, as for the remaining 10 per cent. of the terms needed for this particular purpose, there are several ways of finding suitable terms. We actually had to (I would not like to say fabricate) make them by employing various methods. For instance, in the Republic of South Africa we have issued, in each of the seven Bantu languages in that country, a vocabulary list, or a list of terminologies, for use by the teachers in the primary school, consisting of 8,000 words. As I have pointed out, about 90 per cent. of these words already existed; they had only to be given their rightful place in the list and they were to be made use of in the school, and we have had great success in making the terms which were lacking.

The point I would further like to make, Mr. President, is that, at the

primary school level, it is not necessary to use difficult terms connected with economics, politics, and such matters as those to which Mr. Gross referred. For the ordinary purposes of primary school lessons, the languages are adequate.

Mr. GROSS: Now, Sir, the primary school goes through what standards?

Mr. VAN ZYL: The first eight years of schooling, Mr. President.

Mr. GROSS: What would be the last standard of the primary school, Sir?

Mr. VAN ZYL: Mr. President, there are two sections of the primary school in the Republic; this is also being introduced in South West Africa. Firstly, there is what we call the lower primary school, extending over four years, the first two years being called sub-standard A and sub-standard B, and then standards 1 and 2. Then there is the higher primary section, also extending over four years, which includes standards 3, 4, 5 and 6.

Mr. GROSS: Now, Sir, with respect to the number of students enrolled in South West Africa—I am referring now to South West Africa—I would refer you to the Odendaal Commission report, page 255, paragraph 1061, and, in particular, table No. LXXXVI, which is set forth in that paragraph. You will notice, if I am correctly reading the table, that in the enrolment per standard of Indigenous Language Groups—which, as you notice, is the heading of paragraph C on that page of the report—that the enrolment at Standard IV is 1,124, or a percentage of 2.38 of the total. Would that figure mean that, at that stage, the teaching in vernacular would end and the teaching through English or Afrikaans, as a medium of instruction, would begin, or would you describe what happens at that point in the educational level—at Standard IV level?

Mr. VAN ZYL: Mr. President, I assume Mr. Gross is referring to South West Africa only?

Mr. GROSS: Yes, Sir.

Mr. VAN ZYL: Now, according to information at my disposal, mother-tongue instruction in South West Africa at the present moment is only applied up to the end of the lower primary school, that is up to standard 2, in the southern territory. In the northern territories it goes as far as standard 3, at the present moment, according to the information that I have. So in certain areas they will change to, I believe, Afrikaans medium at the standard 3 level, and, in other areas—and more particularly the northern areas—they change over to Afrikaans medium in standard 4. That is correct, Mr. President.

Mr. GROSS: At that stage, Afrikaans, if I understand you correctly, Sir, becomes the medium of instruction, does it, Sir?

Mr. VAN ZYL: That is right, Mr. President.

Mr. GROSS: And, at that stage, is the indigenous language taught any more?

Mr. VAN ZYL: I would not be able to say for sure, Mr. President, whether it is done, but the recommendation of the 1958 Commission was that the mother tongue should be taught as a subject right through the primary school, that is up to the standard 6 level. I think that the Odendaal Commission has stressed the importance of that point also. So I assume that the mother tongue, the vernacular, will be taught in all these classes as a subject.

Mr. GROSS: Finally, Sir, on this point and in evaluating these figures, it would appear, would it not, Sir (I am referring to table LXXXVI



once more), that approximately half, that is to say, 47.45 per cent. of students are enrolled in sub-standard A and then the figure for sub-standard B drops off down to 21.32 per cent. Did you notice that, Sir, in the figures?

Mr. VAN ZYL: Yes.

Mr. GROSS: Could you explain to the Court the reasons for that dropping-off of enrolment at that early age?

Mr. VAN ZYL: Mr. President, I would not be able to say exactly what the reason is, but usually the normal reason for such a reduction in the numbers is because the school system has not got the co-operation of the parents. In the Republic of South Africa, before we had our system of community schools with parental bodies assuming responsibility for the local management of these schools, we had the same position and it was found that the numbers dropped as indicated in this table. The main reason, I should say, Mr. President, is that in South West Africa they have not yet got the full co-operation of the parents to see that the children come to school and that they remain at school for a considerable period.

Mr. GROSS: Sir, in your experience as an expert educator, you have dealt with the problem of the attitude of parents towards the educational system; have you not, Sir?

Mr. VAN ZYL: Yes.

Mr. GROSS: Would you explain to the Court, Sir, the primary reason why a parent would be, let us say, unenthusiastic about whether his offspring become educated or not?

Mr. VAN ZYL: Mr. President, could Mr. Gross please repeat his question?

Mr. GROSS: I am sorry. On the basis of your experience as an educator you have testified, Sir, if I understood you, that one problem which accounts for the dropping of attendancy when at this young age is the lack of co-operation of the parents. My question to you, if I may repeat it, Sir, is whether, on the basis of your experience as an educator, you could advise the Court concerning the major reasons why parents in South West Africa, for example, do not tender their co-operation in respect of obtaining an education for their children?

Mr. VAN ZYL: Mr. President, I think I should refer the Court to my main evidence yesterday when I tried to point out that one of the major shortcomings of the older system which previously existed in the Republic and which also, until recently, existed in South West Africa and, even up to this day, in certain areas, the schools were educational institutions which the parental communities did not consider institutions of their own. They were regarded as foreign institutions established by foreigners, by strangers, offering an education of which they themselves did not understand much and if the children cared to go there they could, to acquire an education just for the sake of acquiring an education. If the children chose to remain at school for one, two, three or four years, they were free to do so. Their parents did not bother because the schools did not belong to them, they had no responsibility and they virtually did not understand what was going on.

Mr. GROSS: Now, Sir, would you say, on the basis of your experience, that one of the primary reasons why the parents would be less than enthusiastic in respect of their children becoming educated is that they themselves are uneducated—the parents?

Mr. VAN ZYL: I would not say that, Mr. President. I think generally the Bantu people of South West Africa, as also in the Republic of South Africa, are keen to secure as much education as possible for their children. These people are proud people; they have been independent for many generations and they are used to caring for their children themselves. They were used to providing whatever primitive facilities there were in the traditional Bantu society for their children themselves and now a situation is brought into their community where strangers become the benefactors of their children, strangers coming from remote places would bring these facilities for them and the children soon come to realize that there are certain good things in life which their parents are unable to provide for them. The parents, on their part, seem to be reluctant to receive these good things which are brought by strangers. It does create the impression that they become the receivers of dole and charity and they assume the image of a miserable beggar in the eyes of their children whose affection and admiration they are supposed to command.

I think that mainly, Mr. President, would create a feeling of repugnance in the hearts and minds of the parental communities because they were used to providing whatever facilities were needed by their community and, more particularly, by their children and now, all of a sudden, this privilege is being taken out of their hands. As I say, they just become the receivers of these good things.

Mr. GROSS: Sir, when you say "all of a sudden", would you mind indicating to the Court what time period you have in mind? The Mandate was, I believe, undertaken in 1920. When were the first efforts made to overcome this pride, or whatever expression you used, with respect to the parents' attitude toward education of their children?

Mr. VAN ZYL: Mr. President, I do not think any effort was made until the system of community schools was recommended by the 1958 Commission. Prior to that the missionaries came along with their school facilities and offered them to the parents and the parents never had a share in the management and control of the schools.

Mr. GROSS: What, incidentally, Sir, if you know, is the rate of literacy in South West Africa among the Native population?

Mr. VAN ZYL: Mr. President, I had the figure but it just slipped my memory. I could look it up.

Mr. GROSS: Would you have the figure in mind, to help refresh your memory, Sir, with respect to, let us say, the literacy rate in the southern sector, let us say, outside the Reserves, if there is such a figure?

Mr. VAN ZYL: Mr. President, here again, I had the figure in mind, but it just slipped my memory. I am sorry. I would not like to guess and give a silly answer because we can look it up if necessary.

Mr. GROSS: Well, we might come back to that if it seems necessary. The question I should like to turn to is whether the answer you gave to my question with regard to the attitude of the parents applies equally with respect to the urban areas of the Police Zone outside the Reserves?

Mr. VAN ZYL: To a certain extent, yes, Mr. President.

Mr. GROSS: What would be the major differences of the attitude of parents in that sector from that which you described as a generality?

Mr. VAN ZYL: Well, in the urban centres I should say the parents would make use of the school as a useful place where they can send their children while they themselves go to work, so as to keep them out of mischief. So without having due regard for the education that children

will receive at the school, they are eager to let them go to school and they command them to remain there for the whole school day because there is nobody at home and there is nothing else for them to do.

Mr. GROSS: You would ascribe that part of their motivation is the desire to see their children educated? Would you include that in your explanation?

Mr. VAN ZYL: Yes. At the same time they achieve that end also.

Mr. GROSS: Now, Sir, to the extent that that enters into the motivation, generally speaking, of the parents' attitude toward education, would you indicate to the Court what, on the basis of your knowledge and expert opinion, would be the objective which the parents normally seek for their children's education—objectives in terms of accomplishment?

Mr. VAN ZYL: Primarily, Mr. President, the objective is to acquire literacy. All parents, as also the children, have a definite desire to become literate, that is to be able to read at least one language, maybe their own vernacular, and to write that language. And, of course, together with this literacy they also acquire a fair knowledge of arithmetic and a few other things that may be taught at school, but they mainly go to school in the first instance for the sake of literacy.

Mr. GROSS: And then, beyond that, is that a means to an end or is literacy an end in itself in the attitude of the parents with whom you have conferred on this matter?

Mr. VAN ZYL: In a certain respect it is an end in itself because adults in these territories are very often confronted with the problem that they are unable to conduct their own correspondence. They go out to work and, if they are not literate, they will have to secure the services of some person who is literate to write their letters home for them and also, when the letters return, to read them for them. Of course, this, to say the least, is an incursion on their privacy, so most of the parents feel that once they can acquire that amount of literacy, so that they are able to do their own correspondence, they have already achieved something worthwhile.

Mr. GROSS: Sir, if I understood you correctly, you were referring, I believe, to why the parents wish to be literate—is that correct?

Mr. VAN ZYL: Yes.

Mr. GROSS: I was referring to why the parents wished their children to be literate.

Mr. VAN ZYL: Well, I should say in the first instance, they are also thinking of their children becoming literate for its practical value but, of course, some parents have much higher ambitions for their children and they would like them to remain at school for a longer period and to get a more advanced education.

Mr. GROSS: So that, Sir, the falling off of enrolment, which is reflected in these global figures, the table to which I have called your attention, is not due entirely is it to the lack of co-operation or interest on the part of parents?

Mr. VAN ZYL: No, I would not say entirely, Mr. President, but I was trying to point out that the lack of co-operation from the parents was one of the main reasons.

Mr. GROSS: Could you explain, Sir, what one or two other main reasons are?

Mr. VAN ZYL: Well, it is also known that the children do not like school. It is like that even with White children in South Africa.

Mr. GROSS: And everywhere else.

Mr. VAN ZYL: And everywhere else. Perhaps they become bored and simply leave the school because they prefer to do so. Their parents have not reached that stage of development where they would compel them to remain at school unless they are properly organized in bodies where they can help one another in this respect.

Mr. GROSS: Is there a system of compulsory education in the Territory of South West Africa for Natives?

Mr. VAN ZYL: So far as I know there is not, Mr. President.

Mr. GROSS: Is there a system of compulsory education in South West Africa for Coloureds?

Mr. VAN ZYL: I think so, Mr. President, but I am not sure . . .

Mr. GROSS: If you do not know, Sir, the record . . .

Mr. VAN ZYL: It has been recommended . . .

Mr. GROSS: The record indicates otherwise, Sir, I do not want to mislead you. I just wanted to know whether you had the information, Sir, I gather you do not. Is there a system of compulsory education in the Territory for Whites?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: Would you explain, if you will Sir, why compulsory education at any level is not introduced in the Territory with respect to Natives?

Mr. VAN ZYL: Mr. President, I think mainly because the Bantu communities have not reached that stage of development where it would be feasible to make education compulsory. We should not lose sight of the fact that the introduction of compulsory education in any country or in any community implies legislation by which the parents are compelled by law to send their children to school and should they fail to do so, they are liable to be prosecuted for not having observed the laws in connection with compulsory education. We have consulted the Bantu communities in South West Africa as well as in the Republic of South Africa, whether they would like such legislation by which they would be compelled to send their children to school every day and consistently up to a particular age or up to a particular standard. All the communities and leaders whom we have consulted on this matter have indicated that they are not ready for such a thing.

Mr. GROSS: Now, Sir, you have referred generally to Native communities?

Mr. VAN ZYL: Yes.

Mr. GROSS: I would invite your attention here again to the southern sector, the modern economy in the areas outside the Reserves, and I should like to introduce into the record here, just for the sake of the convenience of the Court, that Professor Logan at X, page 480, testified that the following non-Europeans were "domiciled"—that is the expression used—in the southern sector as follows: home areas or Reserves—38,648; urban areas—59,073 and rural areas—68,334. Lest there be any confusion in your mind, Sir, about the meaning of the phrase "domiciled", he testified at page 480, in response to a question, that this referred to whether or not there was a permanent place of residence. So taking the figure for the moment, for the purpose of my question, of the 59,000 non-Europeans domiciled or permanently resident in the urban areas of the southern sector, outside the Reserves, would you say, Sir, that with respect to the educational system envisaged for them, the

principles and policies which you have expressed with respect to the development of Bantu communities in the northern areas, for example, would be the same principles and the same policies with respect to these individuals in the modern economy?

Mr. VAN ZYL: To a certain extent, yes, Mr. President, but of course, as I have said also in my main evidence yesterday that different educational principles have to be applied in different areas and where you have people at different stages of development. Now, by and large, the principles would be the same but there will necessarily have to be certain adaptations in regard to approach, method and other such matters.

Mr. GROSS: In following that up for clearer understanding of the policy with respect to the educational system in this area of which I speak, the urban areas outside the Reserves, I am thinking now of the Natives therein who total incidentally 49,000 approximately because 10,000 of the non-Europeans are Coloured according to the Odendaal Commission report—thinking of these approximately 49,000 Natives in the urban areas, described in the Odendaal Commission report as the “money economy”, would you indicate to the Court what major differences you would think, as an educator, would be relevant to the education of the Natives living in and working in that sector, differences from the education in the traditional subsistence economy areas elsewhere?

Mr. VAN ZYL: Mr. President, as far as basic principles are concerned, there would be no difference whatsoever but Mr. Gross would like to know what differences there would actually be. I should say, in the first place, there is an educational principle which has to be applied in all cases that a teacher, in instructing his pupils, in conducting his lessons, must proceed from the known to the unknown. And it stands to reason that the pre-school knowledge of children living in urban Bantu residential areas will necessarily differ from the pre-school knowledge of children living in rural areas. So that will have to be taken into account by the teacher. Also one subject, environmental studies, is a subject which has to be adapted according to the locality of the school, so it stands to reason that, in the subject of environmental studies and later also the subject of social studies, there will have to be an adaptation because of the locality of an urban school and the surroundings.

Mr. GROSS: Sir, would it be the policy that in that adaptation to which you refer in the social and environmental studies that the Native population would be accorded the same opportunities for instruction in accordance with their individual capacity as the White population?

Mr. VAN ZYL: Definitely yes, Mr. President.

Mr. GROSS: Then, Sir, suppose that an individual Native comes to the authorities and says “I love my parents and appreciate my tribal background but I would not like to study in vernacular, I would prefer to study in Afrikaans or English and I would like, if possible, then to prepare for a university life and perhaps go abroad to the university”—let us say, such a hypothetical individual should come to the authorities—this is a possibility is it, Sir, that this would happen?

Mr. VAN ZYL: Yes, to a certain extent, Mr. President.

Mr. GROSS: Well, let us take just one case—may I? What would the response be to him by the authorities?

Mr. VAN ZYL: Mr. President, the position would be that he would be informed that no exceptions could be made. He will have to study his vernacular whether he is particularly interested in it or not. It is a rule

of the country and the school has got to go through with it and it is the same with White children. One could easily find an Afrikaans-speaking pupil, who might not have sufficient interest in the English language, to say he would rather not study English, he thinks that Afrikaans is sufficient for the purpose of a career that he has in mind. He will not be allowed to take Afrikaans only, he has got to take both languages, so it is the same in Bantu schools, it is laid down that the vernacular must be taken as a subject and he will simply have to go through with it.

I have to point out, Mr. President, that it is not as though he is deprived of the opportunity of learning the official languages. In the Republic they are taught the official languages right from the first year of their schooling. If I remember well, in South West Africa they have decided to introduce the second language, or the official languages, in the second year of the school, and by the time they reach the end of the primary school or, say, the junior certificate course, they are normally thoroughly conversant with these languages. So if he then chooses to drop his mother tongue, he can do so, but so long as he attends school, he has got to abide by the rules of the school.

Mr. GROSS: Now, Sir, I think that it would be a matter of common knowledge, of which the Court should take sufficient notice, no doubt, that, with respect, Mr. President, in educational systems throughout the world, language instruction is compulsory, so that this would not be an unusual phenomenon, is that correct? My question was not directed toward the compulsory nature of the curriculum. My question is directed to the point—perhaps you can answer it positively or negatively—is there any facility in the Territory in which the person I described hypothetically could learn in the medium of Afrikaans or English if he was anxious to, and his parents also were anxious for him to, let us say?

Mr. VAN ZYL: Mr. President, incidentally there would be a few schools in South West Africa where the medium might be Afrikaans particularly, because, I should say there are small communities of Bantu people who have adopted Afrikaans as their home language. I am speaking under correction, but I think there may be one or two such communities in South West Africa. In the Republic of South Africa there are definitely such communities, where Bantu people have adopted Afrikaans as their mother tongue. In such cases, of course, the medium of instruction in their particular school becomes Afrikaans and, if there is an individual in a particular area where Afrikaans is not used as a medium and provided it is also his own language, he can make arrangements and attend a distant school where Afrikaans is used as a medium.

Mr. GROSS: With respect to the territory of South West Africa, there are, you say, one or two schools?

Mr. VAN ZYL: There could be, Mr. President. I am not sure.

Mr. GROSS: They would be exceptional, in any event, or would they?

Mr. VAN ZYL: Exactly.

Mr. GROSS: Do you happen to know, Sir, whether either one is in the urban areas in the southern sector?

Mr. VAN ZYL: If there are any such communities they would be in the southern sector, Mr. President.

Mr. GROSS: We are not clear where. The objective of the system, then, would it be fair to say, is to deprive the individual Native in such case, or to make it difficult for him, to learn in a medium which he, personally, or his parents if he is too young to decide, consider would be more

advantageous to him from the standpoint of pursuing his economic livelihood, would that be a correct statement, Sir?

Mr. VAN ZYL: May we put it this way, Mr. President, no child in South West Africa or in the Republic of South Africa will be allowed, in a public school, or government subsidized school, to be taught through a medium which is not his mother tongue.

Mr. GROSS: His mother tongue being that established by his parentage?

Mr. VAN ZYL: It can be established by his parents.

Mr. GROSS: Would that be the normal method by which it would be established?

Mr. VAN ZYL: Yes. Mr. President, I believe it will also be subject to control by some departmental official.

Mr. GROSS: To the extent that it would generally be controlled by the parentage, would you say, Sir, then, that the medium of instruction normally available to him depends entirely upon his ethnic background without regard to the economic or social consequences of the educational system?

Mr. VAN ZYL: Mr. President, it has a bearing on the economic system. I think I should try to make it understood that we believe that you cannot take a pupil anywhere by trying to teach him right from the beginning in a language which is not his mother tongue. You will appreciate that when these young children come to school and enter for the first year, it is quite possible that they do not know anything of an official language or any other language except their mother tongue. So that there would be no point in trying to teach them through another medium. The teacher would definitely have no success in trying to achieve his goal. So, if the mother tongue is not used as a medium of instruction, the future of that pupil, economically or otherwise, is virtually doomed.

Mr. GROSS: In the answer you just gave, were you referring to the modern economy in which the Native is employed, or as well as the northern areas of the traditional subsistence economy? Were you referring to both in your terms of your response, Sir?

Mr. VAN ZYL: Yes, Mr. President, to both.

Mr. GROSS: With reference to the group, which is whatever word one chooses (the Odendaal Commission reference is to "absorb", but I will not insist upon that word), the individuals, the Natives who are at work in the economy and who live in that economy, in that area, would the system of which you speak, take into account the fact that their parents and, in certain cases, grandparents, had been born and had lived in that area?

Mr. VAN ZYL: If it is necessary, Mr. President, for any particular reason, it will be taken into account. I cannot think of any particular reason at the moment why it should be taken into account.

Mr. GROSS: In connection with that response (you are dealing here, I take it, are you not, Sir, with the rather fundamental question of the relationship between the educational policy, concerning which you are testifying and the society in which the individual lives—that generally is what we are speaking of, is it not, Sir), do you regard, just by way not of argument, but of clarification of your perspective on this matter, the 49,000 Natives as an insignificant, marginal element, as sometimes has been testified in these proceedings? You do not need to answer that question if you do not wish to, I just wondered about the impor-

tance which you attach to that number of Natives in these urban areas.

Mr. VAN ZYL: Mr. President, they could be of importance. We should not lose sight of the fact that they are spread over many different places.

Mr. GROSS: The urban areas?

Mr. VAN ZYL: The urban areas—yes, Sir.

Mr. GROSS: With respect to these persons—as you say, they could be of some importance—I would call to your attention the discussion in the Odendaal Commission report (I will not burden the record of the Court with extensive readings), page 427, under the paragraph (c), headed “Protection of Traditional Groups” and, in particular, to paragraphs 1431 and thereafter on that page. I will not tax you with the necessity of reading that in full, but the question I should like to ask you is whether, in the development of the educational system in the modern or exchange economy with respect to the Natives, the consequences of social change, brought about by the modern or exchange economy, are given special consideration with respect to the educational system for Natives in this modern or exchange sector? Is the phenomenon of social change brought about by the economy taken into consideration in the development of the educational system?

Mr. VAN ZYL: Yes, to a certain extent, Mr. President, as I have pointed out already.

Mr. GROSS: Now, Sir, when you say “to a certain extent”, and this is why I wanted to come back to your previous testimony on this point—it is designed to elucidate for the Court the impact of the policy upon the individual—what would be the reason for any difference in the courses available to Natives, as distinguished from Whites, in this sector?

Mr. VAN ZYL: Mr. President, the courses are basically the same, and in many instances they differ very little as far as contents are concerned. One would expect that the subject-matter in certain subjects would differ slightly and the approach of teaching a particular subject might differ considerably. For instance, the approach in the teaching of English to Bantu pupils will, of necessity, have to differ from the approach in teaching White children, or English-speaking children, or for that matter even Afrikaans-speaking children, but otherwise there is not such a vast difference. I would almost say that there is hardly sufficient difference between these syllabuses for it to be worth while mentioning.

Mr. GROSS: Well, Sir, in terms of your response, is the educational system in the southern sector, to which you have just referred, an exception to the general policy announced, among others, by the Prime Minister, that the Native is to be educated? I shall read an excerpt just to see whether the southern sector is an exception or not. I read from the Rejoinder, VI, page 41, in which the present Prime Minister said:

“The Bantu must be guided to serve his own community in all respects. There is no place for him in the European community above the level of certain forms of labour. Within his own community however all doors are open. For that reason it is of no avail for him to receive a training which has as its aim absorption in the European community while he cannot and will not be absorbed there. Up till now he has been subjected to a school system which drew him away from his own community and practically misled him by showing him the green pastures of the European but still did not allow him to graze there.”



Now, Sir, would the policies which you describe generally, with respect to the urban area educational system in the southern sector, be an exception to the statement that "there is no place for the Bantu in the European community above the level of certain forms of labour" and that "for that reason it is of no avail for him to receive a training which has as its aim absorption in the European community"? Would that policy apply to the southern sector in the urban areas in a modern economy, Sir?

Mr. VAN ZYL: Mr. President, we will have to differentiate between what I call a general education, extending over the usual primary school course and the junior certificate course, which does not prepare a pupil for a particular specialized task: it is a general education preparing him for specialization in later life. So as far as the first eight or even the first nine school years are concerned, I should say that the present system has no bearing on what Mr. Gross has quoted from the Rejoinder, because we must understand that all these years of education should be considered as a preparatory training for more specialized work in later life, or for more specialized training at a later stage. I think I have made it clear that as far as the ordinary general education is concerned, the system has no bearing on that statement by the Prime Minister.

So we must come to specialized forms of training, if Mr. Gross was thinking of that.

Mr. GROSS: Well, Sir, I was just requesting your understanding, in the context of your responsibilities, of the policy as enunciated by the Prime Minister; at the time he was, I believe Minister of Native Affairs. Now, in connection with the same foundation of the education policy, in terms of the policy as you apply it, would you explain the following quotation, which also appears on the same page of the Rejoinder, VI, in which Prime Minister Verwoerd, among other things, in that quoted paragraph, discussing the evils of the education system as it existed prior to the Education Act of 1953, says (beginning near the top of page 41):

"It [that is, the education system] prepares them not for life within the community which would gradually be uplifted by it, but for a life outside the community and for situations which in fact do not exist. In other words the community has not benefited from this to such an extent that because of the general progress of its sons and daughters who have won pretty examination certificates it could absorb them in a suitable manner. [And then I call your attention particularly to the following two or three sentences.] A considerable number of those who were trained in this way were taken up again in the education machine which created a cycle of its own and of the evils in isolation of the Bantu community."

Pausing there for a moment, would you have any explanation, Sir, of what the policy is with respect to the creating of a cycle, in this term, by taking up persons who were trained and putting them again in the education machine?

The PRESIDENT: Mr. Rabie.

Mr. RABIE: Sir, I am sorry to interfere but I would submit, with respect, that this is being unfair to the witness. He has been asked five or six questions rolled up into one statement. I would suggest that the witness be given an opportunity of reading what has just been put to him. To me it seemed like a considerably long passage, and it is not clear

to me, I do not know whether it is clear to the witness, I should think not, just what the question is.

The PRESIDENT: It is advisable if the witness is going to be asked what he thinks of the words used by somebody else—if that is what he is going to be asked—that he should have a copy of the document in front of him. In any event I think he should have a copy of the document in front of him, and so that might be provided to him, Mr. Rabie.

If you could, Mr. Gross, it would assist if you could break the question down. It is a little difficult for anyone to answer a question when you quote at length what somebody else has said, as I have drawn attention before, and then ask a question generally about that. That is particularly so if the witness does not have the document in front of him.

I think Mr. Gross will break the question down, Mr. Rabie. In the meantime, I think it would be a good idea if a copy of the Rejoinder, VI, if that is the one you refer to, Mr. Gross, was given to the witness. Would you provide him with one: have you got a copy there?

Mr. RABIE: Yes, Sir: I could, Mr. President . . .

The PRESIDENT: Oh, it's your own copy, is it?

Mr. RABIE: The Court might not wish him to see what is contained in the rest of the Rejoinder . . .

The PRESIDENT: Counsel's observations on the side!

Mr. RABIE: I do not know how we can avoid that at this stage.

Mr. GROSS: I would be glad to supply . . .

The PRESIDENT: There is no objection to this [President's own] copy; it is not marked at all.

Mr. GROSS: I am sorry, Sir, do you wish me to continue?

Dr. Van Zyl, before we revert to this quotation on VI, page 41 of the Rejoinder, may I just ask one question, Sir, to place into the record at this point: Did you testify yesterday that the Administrator of Education for South West Africa reports to the Office of the Prime Minister of the Republic?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: It would follow, would it, Sir, that the Prime Minister and his Office would fix the policies by which the Administrator for South West Africa is controlled?

Mr. VAN ZYL: Mr. President, if I remember correctly, I said that the Administrator had to report to the Government of South Africa, and, when I was asked to which department, I said I believed it could be to the Prime Minister's Department.

The PRESIDENT: That I thought was your reply.

Mr. GROSS: Have you confirmed overnight your understanding in this respect?

Mr. VAN ZYL: Yes, I have, Mr. President.

Mr. GROSS: Can you tell the Court whether or not your guess was correct?

Mr. VAN ZYL: I am sorry, I did not understand Mr. Gross correctly, Mr. President. I did not ascertain which was the correct department.

Mr. GROSS: Yes, Sir. This was just for information, Sir. I had recalled your testimony yesterday, but I recall it was a guess and I wanted to know whether you had taken the opportunity to verify it.

Now, Sir, if I may, then, turn back to the quotation—have you had an opportunity to read it?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: I had just read the following sentence from Prime Minister Verwoerd's quotation: "A considerable number of those who were trained in this way were taken up again in the education machine which created a cycle of its own and of the evils in isolation of the Bantu community." I ask you, Sir, as Deputy-Director of Bantu Education, whether you could elucidate for the Court, you have an opinion on the subject, what the significance of the reference to "education machine" would be in that context?

Mr. VAN ZYL: Mr. President, I do not fully understand what the Prime Minister meant by that particular quotation.

Mr. GROSS: Now, Sir, coming to the next sentence: "In this way Native education served to create a class of educated and semi-educated persons without corresponding national development", and, then, finally, if I may bracket this with the last sentence: "This is the class which has learned that it is above its own people and feels that its spiritual, economic and political home is among the civilized community of South Africa, namely the Europeans, and feels frustrated that their wishes have not been complied with." Without asking you too general a question about that, would you, Sir, in the application of the educational policy with respect to the Native (again referring to those, as the Prime Minister said, "absorbed in the economy"), explain whether you feel that you believe that the Natives in that sector, in that modern economy, represent a community which could be fairly called "uncivilized"?

Mr. VAN ZYL: I would not say they were uncivilized, Mr. President.

Mr. GROSS: Would you say, Sir, that, from the standpoint of the application of the educational policy in that sector, the White population there would be a "civilized community" in a sense different from the way you would describe the degree of civilization obtained by the Natives?

Mr. VAN ZYL: Yes, there will be a difference of degree, Mr. President.

Mr. GROSS: What, Sir, would be the standards—objective standards—if any, by which you would determine, if you could, whether a particular Native had reached a degree of civilization corresponding, let us say, to that generally prevailing among the White members of that sector?

Mr. VAN ZYL: Mr. President, I am afraid I will not be able to answer that question satisfactorily.

Mr. GROSS: Sir, finally on this point, I would refer to the statement by the Respondent in the Rejoinder, VI, at page 41, not quoted from the Prime Minister but set forth in paragraph 8, in which the Respondent, among other things, seeks to explain the statement quoted from the Prime Minister, and I would invite your attention to paragraph 8 on page 41, where it is stated as follows: "Education provided in the aforementioned form, Dr. Verwoerd stated, 'must stand isolated from the life of the Bantu society' and did not uplift the community." I invite your attention to the following sentence:

"It served, at most, to create a small class of educated or semi-educated persons who considered themselves elevated above their own people and who sought to enter the ranks of the Europeans, only to become dissatisfied and frustrated when they found that the Europeans were not prepared to admit them to their society."

Then follows the elaboration from his speech which we have discussed. Now, with respect to the statement in the Rejoinder which I have quoted,

is it, Sir, or is it not a point underlying the educational system with respect to the Natives of South West Africa, that no Native should be educated on a basis which would lead to his considering himself "elevated above" his own people? Would that be a fair characterization, in your understanding, of one of the foundations of the Native education policy in the Territory?

Mr. VAN ZYL: Mr. President, no. For all practical purposes, the Bantu in South West Africa can get exactly the same education as Whites, with necessary modifications along the lines we have discussed this morning. But, otherwise, there need be no difference. As I pointed out in my main evidence yesterday also, the general education given to Bantu pupils and White pupils culminates in the same standards, the same examination requirements, at the end of the full school career when they all have to write the same matriculation examination.

Mr. GROSS: And you have also testified, have you not, that there is no compulsory education for Natives in the Territory?

Mr. VAN ZYL: I have, Mr. President.

Mr. GROSS: And the figures on the enrolment have already been placed in the record from the relevant table, have they not?

Mr. VAN ZYL: Yes.

Mr. GROSS: With respect, therefore, to the availability of education to both, what inference would you draw, if any, with respect to the fact that there are less than 4 per cent. of the Natives enrolled from Standard IV onward?

Mr. VAN ZYL: Mr. President, does Mr. Gross want me to clarify that position?

Mr. GROSS: Do you wish me to clarify the question, Sir?

The PRESIDENT: He wants you to draw an inference, if you have any inference to draw from the figures. Is that table XXXI? I think the witness might just have the table in front of him.

Mr. GROSS: That is table LXXXXVI on page 255. That table, as has already been demonstrated, shows the percentage of the total of indigent language groups of the population enrolled in the Fourth Standard as 2.38 per cent., and my question was whether you, as an educator and an expert, draw any inference with regard to the, shall we say, low number of Natives being educated beyond that level with respect to this standing in the community as a whole, the social and economic welfare?

Mr. VAN ZYL: If I understand the question correctly, I can only repeat what I have said this morning, that because there is no compulsory education, and because the parents have not in the past or up to now felt that it is part of their responsibility to see that their children remain at school long enough to proceed to Standard IV or even beyond, it has resulted in this considerable drop in enrolment.

The PRESIDENT: Doctor, does that explanation apply also to the diminution in figures of numbers enrolled from Standard V to Standard X, where it drops from 630 to 3?

Mr. VAN ZYL: Perhaps to a lesser extent, Mr. President. Of course, the higher the pupils go at school the more satisfied they become with what they have achieved, and they themselves just leave the school, or they may even persuade their parents, if their parents would insist on their remaining at school any longer, to let them go out and work; but those who are more ambitious, of course, can carry on. I would like to make it clear that there is no reason to believe that the drop is due to the in-

adequacy of facilities, because facilities are provided as they become necessary.

The PRESIDENT: Might it be due to the absence of opportunities when they leave school?

Mr. VAN ZYL: You mean opportunities of work?

The PRESIDENT: Outside, yes, of work.

Mr. VAN ZYL: Of course, a person who leaves school at the Standard IV level is not suitable for any other type of work than just that of an ordinary labourer. The Court will agree that a man who has gone as far as Standard IV cannot be considered a highly educated person.

Mr. GROSS: In the context of your reply to the honourable President's question, have you testified—my memory fails on this—with respect to your knowledge or lack thereof with respect to job restrictions and reservations in the Territory?

Mr. VAN ZYL: No, I have not gone into that aspect.

Mr. GROSS: Are you aware of the policies pertaining to job reservations and restrictions, for example, on apprenticeship contracts of Natives in certain industries—are you familiar with those?

Mr. VAN ZYL: Not very familiar, although I have a general knowledge of it, I am aware of certain conditions.

Mr. GROSS: Would you say, in elaboration of your response to the question of the honourable President, whether the lack of opportunities would be attributable to such restrictions and reservations, among other things?

Mr. VAN ZYL: No, not at all.

Mr. GROSS: Would you explain in what respect the denial of the opportunity or limitations upon freedom of promotion in certain industries would not restrict economic opportunity?

Mr. VAN ZYL: There may be restrictions in the White areas for Bantu, but the Prime Minister and everybody else in the Government today is thinking in terms of the development of our Bantu homelands, and the Education Department is geared to supply whatever trained persons are needed for the further development of those Bantu homelands. In the Bantu homelands and in the development schemes which we find there, there are no restrictions whatsoever for the Bantu.

Mr. GROSS: Would you say, then, that the primary objective of the educational system is to prepare and educate the Bantu for life and work in, shall we say, Black areas?

Mr. VAN ZYL: That may be the primary objective, but it does not exclude them from finding employment also in White areas, if work is available and if there are no restrictions.

Mr. GROSS: The testimony to which I should now like to turn is your testimony yesterday with respect to vocational and teacher training in South West Africa; I believe you testified, did you not, that this is within the responsibility of your Department?

Mr. VAN ZYL: Yes, of the South West African Education Department; you mean the training of—technical training . . . ?

Mr. GROSS: Vocational and teacher training schools in South West Africa—does your Department have any responsibility with respect to those institutions?

Mr. VAN ZYL: Only in the sense that they follow the syllabuses issued by my Department, but for administrative purposes and local control teacher training institutions and whatever vocational training facilities

there are come under the Education Department of South West Africa itself.

Mr. GROSS: Would it be within the function of your Department to decide, in the last analysis, whether or not additional institutions should be established in the Territory?

Mr. VAN ZYL: No.

Mr. GROSS: Whose decision would that be, in the last analysis?

Mr. VAN ZYL: I believe it would rest finally with the South African Government, but matters of this nature surely need not be taken to such high authorities. It rests, I should say, with the Director of Education in South West Africa.

Mr. GROSS: The final authority would be, you testified, in the South African Government; are you familiar, in this respect, with which division or department of the South African Government would have the final say in this matter?

The PRESIDENT: I think the witness is in a difficulty in respect of this. In one sense all policy finally has its repository in the Government, and it might be said in the Minister of State, whether it be the Prime Minister or anybody else, under whose authority that particular department functions, but many things do not of course go to the top. The question is, who would be responsible for making a decision in respect of the subject-matter you are asking about?

Mr. GROSS: Yes, Sir. Who would be responsible for making a decision in respect of whether or not a new training institution should be established in South West Africa?

Mr. VAN ZYL: Well, normally, Mr. President, the local director of education would take that decision.

Mr. GROSS: The South West Africa director?

Mr. VAN ZYL: The South West Africa director, yes.

Mr. GROSS: And would he provide his own budget in the event that he decided to do so?

Mr. VAN ZYL: I should think so, Mr. President.

Mr. GROSS: He would not, in that case, be required by procedure or regulation to request authority from the South African Government itself?

Mr. VAN ZYL: I do not think so, Mr. President. Of course, I assume that even the director will have to get approval for extensive new schemes from the local political authorities, such as the Executive Committee, the Administrator, acting on behalf of the South African Government.

Mr. GROSS: Now, with respect to the facilities themselves: according to the information in the Pleadings, I refer specifically to the Counter-Memorial, III, page 467, there are at present in the Territory four vocational and teacher training schools. Does that correspond to your information, Sir? That is at III, page 467, of the Counter-Memorial, paragraph 4, if I may save the Court's time. As stated in Chapter V there are four institutions at which teacher training facilities are provided for Natives in South West Africa. Do you accept that figure, Sir?

Mr. VAN ZYL: I accept it as being so, yes, Mr. President.

Mr. GROSS: And with respect to the vocational training as distinguished from teacher training, is it not a fact, Sir, that the Augustineum is the only institution in the Territory which gives courses in vocational training as distinguished from teacher training?

Mr. VAN ZYL: According to information at my disposal, Mr. President, industrial training, or vocational training, has also been instituted in Ovamboland.

Mr. GROSS: At an institution, Sir?

Mr. VAN ZYL: At an institution. I would not be able to say at which one, Mr. President.

Mr. GROSS: Well, I will not press you on that point. I would, however, refer you to the table on page 467—the same page of III—which lists the number of pupils enrolled from 1956 year by year to 1963. Do you notice that table, Sir?

Mr. VAN ZYL: Yes.

Mr. GROSS: You will notice, for example, Sir, that in 1961 there were a total of 43 pupils enrolled in a course of training for carpentry and tailoring and masonry combined. That is correct, Sir?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: In 1963 there were, in the same three courses of training, only 33 pupils enrolled. Can you express an opinion, Sir, as to the reason for the falling off in enrolment, if I interpret the figures correctly?

Mr. VAN ZYL: It is difficult to say why this has happened, Mr. President, because normally the enrolment grows very rapidly and I can only ascribe this to a lack of interest on the part of the South West Natives.

Mr. GROSS: And would that lack of interest possibly be attributable, in whole or in part, to lack of economic opportunity?

Mr. VAN ZYL: By no means, Mr. President.

Mr. GROSS: Would you in your further response indicate whether in this context the job reservations and restrictions might have a discouraging effect upon enrolment in this school?

Mr. VAN ZYL: Not at all, Mr. President. Perhaps I should point out that judging from the table that we are studying here, in masonry, for instance, for the years 1961, 1962 and 1963 there were no students at all and at the present moment, and I should say for the past few years, a large number of masons, builders, are needed for the new development schemes in that area. They are needed to such an extent that many builders have to be sent there from the Republic of South Africa to assist in the building schemes in the northern territories as well as in the Police Zone. So this could not possibly reflect a lack of opportunity for employment.

Mr. GROSS: Do you say that there could be no relevance between these two phenomena, the falling off of enrolment and the job restrictions or reservations?

Mr. VAN ZYL: Definitely not, Mr. President.

Mr. GROSS: Would that be on the basis of any knowledge concerning the actual motives impelling the individuals not to apply? Have you any concrete basis for your opinion in this regard?

Mr. VAN ZYL: Well, I can only repeat what I have said, Mr. President, that there are opportunities, for instance, for builders. There are many opportunities for employment and people are simply not available. They have to be recruited from a neighbouring country and everybody in South West Africa knew that there were always building schemes going on and these youngsters should have known that their services would have been in demand.

Mr. GROSS: Did you say, Sir, in the northern areas?

Mr. VAN ZYL: As well as in the southern areas.

Mr. GROSS: Now, with respect to the southern area, are you familiar, Sir, with the restrictions placed upon apprenticeship contracts on the part of Natives in the building industry?

Mr. VAN ZYL: I know of it, Mr. President.

Mr. GROSS: And do you know, Sir, that that has been made effective with respect to a number of occupations within the building industry?

Mr. VAN ZYL: As far as the training of apprentices is concerned, yes, Mr. President.

Mr. GROSS: Would you regard this restriction as relevant to the limitation of opportunity?

Mr. VAN ZYL: No, Mr. President, because special facilities for the training of Bantu tradesmen or artisans are provided; whereas Whites have to be trained as apprentices, the Bantu pupils get their industrial training in institutions. They get a formal training in these courses and they are trained by well-qualified instructors and I believe that everything is done to facilitate their training in this respect.

Mr. GROSS: Sir, with respect to mining, for example, are you aware whether or not mining is a relatively large employer of labour in the Territory?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: Now, in respect of the mining regulations restricting certain posts to Europeans in the case of European-owned mines which are the substantial portion of the mines, what, if any, limitation of economic opportunity would you consider from the educational point of view—stimulation of interest in education—what effect would that have upon the discouragement of enrolment in training courses?

Mr. VAN ZYL: I should not think that it would have any bearing on it, Mr. President.

Mr. GROSS: Now, Sir, in considering the development of the educational policy, is attention given by your Department, or by any department so far as you are aware, to the factual situation as described by the Respondent in its Pleadings—I will take as an example the Counter-Memorial, III, page 55, paragraph 30, in which reference is made to the employment within the mining enterprises and the restrictions on a racial basis which prohibit certain posts from being filled by non-Europeans. I read the following sentence, beginning near the bottom of page 55—perhaps I had better read the sentence before in order to make myself clear:

“In the history of the Territory there has at all times been social separation between these groups [to wit, European and Native], and experience has shown that members of each group prefer to associate with members of their own group, and that certain kinds of contact between members of these groups tend to create friction. [Then, skipping a sentence, the following statement is made] In this factual situation, most Europeans would refuse to serve in positions where Natives might be placed in authority over them. Although very few, if any, Natives in the Territory would at present be able to hold any of the posts mentioned in the foregoing paragraph, Respondent was nevertheless obliged to take cognizance of the factual situation, and, for the considerations aforesaid, to adopt measures which would prevent Natives employed in European-owned mining enterprises from being appointed to technical and responsible posts in which they would exercise authority over European co-employees.”



Now, I have quoted this rather lengthy excerpt to give the setting. I would like, with the President's permission to go back and ask one or two questions of a specific nature.

In respect of the development of the Native educational policy in the Territory, is the unwillingness, in terms of the statement, of most Europeans to serve in positions where Natives might be placed in authority over them regarded by the education authorities as a factor in the development of the educational system itself, in any respect?

Mr. VAN ZYL: I will have to think about this, Mr. President. I do not think a problem of that nature will necessarily arise in the educational system. At this moment I cannot think of any instance.

Mr. GROSS: Now, specifically, in the context of the discussion of the questions and answers relating to vocational training, focusing on that, would the policy, or rather the factual situation described in the excerpt from the Counter-Memorial enter into the nature of the courses or into the number of facilities available in the Territory for vocational training, or would it be irrelevant to such a consideration?

Mr. VAN ZYL: I think it would be irrelevant, Mr. President.

Mr. GROSS: In other words, Sir, so far as your understanding is concerned, the fact that Natives are, if I paraphrase correctly, closed from positions in which they would have authority over Europeans as a general policy of separate development—that would not have any bearing on a decision with respect to the nature or number of vocational institutions or courses offered?

Mr. VAN ZYL: Nothing whatsoever, Mr. President.

Mr. GROSS: Would it, however, not bear upon the question of limitation of opportunity open to the Native on account of his race?

Mr. VAN ZYL: I do not think so, Mr. President.

Mr. GROSS: Do you mean that the Native is presumed not to wish to aspire to positions in which he might be given authority over Whites?

Mr. VAN ZYL: Mr. President, I would not like to claim to be an authority in this particular field but I cannot see in what way a position of authority over a White person could be of economic significance to any Native.

Mr. GROSS: Would it help you, Sir, to analyse the question, if it were to be pointed out that the posts from which Natives are precluded, for example in the mining industry, do involve authority over Whites and this is a reason assigned for their exclusion from those posts?

Mr. VAN ZYL: Well, Mr. President, I should say that similar posts could be laid on for non-Whites also.

Mr. GROSS: In what areas, Sir?

Mr. VAN ZYL: I would not know, Mr. President, that is if Mr. Gross is referring to the mining industry.

Mr. GROSS: Yes.

Mr. VAN ZYL: I would not know.

Mr. GROSS: The fact is, is it not Sir, as has been testified, that the heavily preponderant proportion, both of output and employment in the mines, is in the southern sector in the European-owned mines—are you familiar with that situation, Sir.

Mr. VAN ZYL: Yes.

Mr. GROSS: Now, with respect to those mines located in those areas, by which I mean the southern sector, is it your testimony, Sir, that the denial of opportunity to achieve certain posts in that industry in those

areas does not discourage aspirations for education in vocational training relevant to the mining industry?

Mr. VAN ZYL: I cannot see how it can possibly be so, Sir, because I do not know of any industrial school in the Republic, both for Whites and non-Whites, where people are specifically trained for occupations in the mining industry.

Mr. GROSS: The fact, Sir, as set forth in the Counter-Memorial, III, at page 57, to which I draw your and the honourable Court's attention, is summarized in the following sentence on that page:

"It is hoped that the Natives will in time show increased interest in the mining industry, and establish mining enterprises which will accommodate such Natives as aspire to the technical and higher posts in the industry."

On your understanding of separate development in the education field, which is one of the points to which your testimony has been directed, do you understand this statement in the Counter-Memorial as meaning that when and if mining enterprises are established in Native areas or in the Reserves that then such Natives, as aspire to the technical and higher posts in the industry, will have an opportunity which is now denied to them?

Mr. VAN ZYL: I can see it that way, yes.

Mr. GROSS: Sir, I would like to discuss very briefly the problem of teacher training as distinguished from vocational training. With respect to teacher training, the Odendaal report, page 257, paragraph 1066, indicates that in 1962, there are 143 candidates in teacher training in the Territory—do you have that figure before you, Sir?

Mr. VAN ZYL: Yes.

Mr. GROSS: Now Sir, would you regard this as an adequate number of candidates considering the educational needs of the Territory—as you understand them?

Mr. VAN ZYL: I should say, Mr. President, taking into account that the full teaching establishment at the present moment constitutes about 1,400 teachers, it is not clear from what I have gathered so far whether this figure is indicative of the number of teachers that will qualify in 1962 or whether this is the total number which are in training.

Mr. GROSS: Sir, would it help to read the introductory paragraph 1066, may I insert it into the record, Mr. President?

"One of the most important factors hampering the expansion of educational services for these population groups [which refers to non-White] has always been the lack of well-trained staff. The present admission requirement for teacher training is Std VI, and during 1962 the following number of candidates were in training."

It then sets forth the number at each institution and the total is 143. Having read that, Sir, could you respond to my question, whether you regard the total of 143 candidates in training as adequate to the educational needs of the Territory from a standpoint of accomplishing your policy?

Mr. VAN ZYL: Mr. President, I am trying to determine how many of these students will qualify in one particular year. Taking into account the normal position, there would probably be about 70 teachers who would qualify in one particular year and in 1962, when there was a teaching establishment of something in the neighbourhood of a thousand

teachers, an addition of 70 to the establishment would not be quite what is required for an establishment of that size. It should be at least 10 per cent. according to our experience.

Mr. GROSS: Thank you, Sir. Now that would bear, would it not, on the first sentence of paragraph 1067 following the one we have just read from page 257.

The PRESIDENT: It supports that paragraph.

Mr. GROSS: Yes, Sir. I wanted in fairness to the witness to point that out in the context of his response.

“Although the present teacher-pupil ratio of 1 : 37 is exceptionally favourable, the numbers of teachers now being trained will hardly be sufficient to meet the increasing demand for educational services.”

I take it, on the basis of your testimony, that you would agree to that conclusion of the Odendaal Commission?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: Now, Sir, could you explain to the Court why there is not a greater enrolment of teachers, if there is a greater need and demand?

Mr. VAN ZYL: Mr. President, I think that the main reason, judging from the figures that we saw on page 255 of the Odendaal Commission report, is that too few children stay at school long enough to complete the pre-training for a teachers' course, and I believe what the Education Department in South Africa will have to do now is to step up the production of Standard VI pupils in the first instance and see that more of them go through to the junior certificate level.

The PRESIDENT: How will they do that?

Mr. VAN ZYL: Here again, Mr. President, I would like to point out that, having secured the co-operation of the parental communities through a new system of community schools, they will be able to keep the children at a school for a longer period than they did in the past. So I think they are well on their way to produce more Standard VI pupils and also to encourage them to go further—everything for their training is made possible for them: the facilities are expanded as soon as it becomes necessary and I believe that at the Augustineum for instance, a large majority of the pupils are boarders and they get full bursaries, which comes to free boarding and lodging while they are attending that secondary course. So it cannot be said that the administration and in particular the Education Department does not go out of its way to make it possible for these youngsters to achieve as high an education as possible.

Mr. GROSS: Would it be going out of the way, as you put it, to have a compulsory educational system in the Territory with respect to Natives? Do you have an opinion with regard to the desirability or otherwise of the introduction of compulsory education for Natives in the Territory?

The PRESIDENT: Is this, do you think, relevant to any issue in this case, Mr. Gross?

Mr. GROSS: Compulsory education?

The PRESIDENT: Yes, compulsory education as a matter of policy to be introduced into any particular country. In many countries throughout the world, there is no compulsory education and in many countries it has only been introduced recently.

Mr. GROSS: Yes, Sir. The Applicants, with respect, for response would

say it is of extreme importance to their contention of the allocation of rights, privileges and burdens on the basis of race, in view of the fact that within the Territory of South West Africa, as the undisputed facts show, there is a compulsory system of education on a racial basis for Whites and no compulsory educational system for Natives or Coloureds, Sir, and this is the essence of apartheid policy as applied to the Territory in the educational field and it is in that context, Sir, that I am attempting to extract from the witness his expert opinion concerning separate development and its essentiality, according to his testimony with respect to this differentiation on a racial basis, Sir.

The PRESIDENT: I see.

Mr. GROSS: Now with regard to the question I asked you—what in your opinion is the reason . . . I think I asked you in these terms—what is your expert opinion regarding the desirability or otherwise of a compulsory educational system for the Natives in the Territory under the prevailing circumstances?

Mr. VAN ZYL: Mr. President, I do not think that it would be feasible for the simple reason that the administration will not have the co-operation of the Bantu people. They have not reached that stage where you can expect them to accept a drastic system like that. At the present moment, they still need their children for domestic purposes; they need them sometimes to look after the cattle or to help in the home, to look after the children and so on and they will not be satisfied with a scheme whereby they would be punished by law should they not observe the requirements of the law. I think otherwise if the administration could secure their co-operation, it would be a good thing and I believe the administration would not be reluctant to introduce it, but at the present moment I do not think it is a scheme that can be introduced.

Mr. GROSS: Sir, with respect again to the urban areas, which are the areas, I take it, of rapid social change—that is correct, is it not?

Mr. VAN ZYL: Yes.

Mr. GROSS: With respect to that area, I suppose there are no cattle in the urban areas. With respect to the introduction of a compulsory education system in the modern economy—specifically in the urban areas—would you express your opinion as to whether a compulsory system would be desirable or undesirable in that sector?

Mr. VAN ZYL: I think, Mr. President, that a compulsory system can be introduced with greater ease in the urban areas and I believe that the administration has made partial provision for that by encouraging the school boards concerned to introduce compulsory education within their particular area, and I think, for all practical purposes, that there is compulsory education in these urban areas. I should say a very large percentage of the children of school-going age attend school already.

Mr. GROSS: Do I understand you to say that it is your impression, or is it your knowledge that there is a system of compulsory education in the urban areas in the southern sector?

Mr. VAN ZYL: Mr. President, I said, for all practical purposes, and in the ordinary sense of the word. It is not a system of compulsory education in the ordinary sense of the word. I would like to repeat that the administration has made it possible for school boards in a particular centre to introduce compulsory education within its area, but it is not enforced through legislation—it is only an agreement amongst the parents themselves that children should come to school and that it would be compulsory and they

might even have a little fine of their own for defaulters, I should say.

Mr. GROSS: But there is not governmental policy and law comparable in any respect to that applicable to the White population, which applies to Natives?

Mr. VAN ZYL: No, Mr. President.

Mr. GROSS: It is a correct statement, is it, Sir?

Mr. VAN ZYL: That's right.

Mr. GROSS: I would call your attention in this connection, to page 261 of the Odendaal Commission report, in which the following statement appears in paragraph 1097. I will read the paragraph so that you have the full, force sense of it:

"At present there is no statutory provision for compulsory education among these population groups. Their customs and traditions, and the fact that their educational tradition is not yet long established, hamper the introduction of compulsory education; nor does the Commission consider that compulsory education can simply be imposed from above with any measure of success, unless the communities themselves take the initiative."

Pausing there, Sir, on the basis of your inquiries in 1958 and your expert knowledge generally with regard to education in the Territory, do you consider this finding of the Odendaal Commission, which I have just read, to be applicable to the urban areas of the southern sector?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: The educational tradition in that sector, according to the language, is not yet long established, is that true, Sir, in that sector in the urban areas?

Mr. VAN ZYL: Yes, Mr. President, it is.

Mr. GROSS: Do you know how long Natives have resided and had their permanent residence in that sector?

Mr. VAN ZYL: It would differ from place to place, Mr. President. I should say the first settlers from outside came to Windhoek about 60 years ago.

Mr. GROSS: That is at the time of the aftermath, was it not, of the so-called "rebellion" at the time of the German Occupation?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: So that it is true, is it not, Sir, that there are some (I will not ask the number) Natives who have resided in Windhoek for several generations?

Mr. VAN ZYL: Yes, some of them, Mr. President.

Mr. GROSS: In respect of those, the modern or exchange economy has been developing for how long, Sir, in that sector?

Mr. VAN ZYL: Mr. President, are we referring to the White economy?

Mr. GROSS: I am referring to the economy in which you have Whites on the one hand and Natives at work on the other hand in the same economy. Referring to that economy, I ask you, Sir, if you know approximately how long this modern economy—this exchange economy—has been in the course of development in the sector?

Mr. VAN ZYL: Mr. President, as I have said, for about 60 years.

Mr. GROSS: In other words, the period during which the Natives have resided there permanently and successive generations thereof, has also been a period during which the sector has become a money or exchange sector, is that not correct, Sir?

The PRESIDENT: There are a number of facts alleged in your question, Mr. GROSS, such as, for example, successive generations have lived there. I do not know what the witness knows about that as a factual position, but if he is not asked to answer to the fact then he can proceed to answer the question.

Mr. VAN ZYL: Mr. President, I was just going to say that. Those living there now would not all have gone there 60 years ago. Some have spent lesser time than others, so it would be difficult to single out those who have been there for 60 years and make special provision for them, and those who came later to have a different scheme for them.

Mr. GROSS: Did you consider, Sir, in the course of your inquiry concerning the Native education system in South West Africa, the population patterns in terms of permanent residence versus migratory labour, for example, in certain areas?

Mr. VAN ZYL: Yes, we did, Mr. President.

Mr. GROSS: Now, with respect to those persons which the Odendaal Commission report refers to as settled communities and which Mr. Logan referred to as domiciled, did you, in the course of your enquiries concerning the educational system, ascertain the approximate numbers of persons who had been there all their lives, let us say?

Mr. VAN ZYL: Yes, we did, Mr. President.

Mr. GROSS: Can you give the Court an approximation of the number in the urban areas?

Mr. VAN ZYL: If I remember well, Mr. President, I worked it out once and it came to about 60,000 out of the total population.

Mr. GROSS: Had been born in the urban sector?

Mr. VAN ZYL: I would not be able to say whether they were actually born there, but they were settled there and they found employment, of course, in many different urban centres taken together.

Mr. GROSS: There are, however, according to your inquiries, a certain number of persons in this category, Sir?

Mr. VAN ZYL: Yes, Mr. President.

Mr. GROSS: And did you also ascertain whether or not there had been a succession of two or more generations of Native inhabitants in that area?

Mr. VAN ZYL: No, we did not, Mr. President.

Mr. GROSS: Do you regard that as a relevant question in connection with the education tradition which you were examining?

Mr. VAN ZYL: Mr. President, no. We took these people who had settled in urban areas at the time still to be part and parcel of their respective national groups pertaining to different homelands. We were informed, for instance, that the Hereros staying in urban centres have all retained their connections with their homelands and their national groups in the Reserves. So we took all the others still to have the affiliation with their homelands and their national groups, irrespective of the fact that they were living in these urban areas.

Mr. GROSS: Would it be a fair inference from that response that the education policy and system reflects that premise, or point of departure, which you have just described?

Mr. VAN ZYL: I did not get that . . .

Mr. GROSS: Would it follow from your testimony that the educational system which you recommended as a result of your inquiries in 1958, proceeds from the point of departure of considering the Native in the

urban areas as . . . I think you used the expression . . . What expression did you use, Sir? You considered him what with respect to the homeland or northern areas, did you say, "affiliated with", or some such expression?

Mr. VAN ZYL: Affiliated—I said, part and parcel, Mr. President.

Mr. GROSS: Part and parcel—that was the expression, I can remember. In your recommendations with respect to the educational policies concerning the Natives in the urban areas, you proceeded from the point of departure that they were part and parcel of a territory or area outside their place of permanent residence, is that correct, Sir?

Mr. VAN ZYL: More particularly of a special national group, Mr. President.

Mr. GROSS: And, Sir, with further reference to the compulsory education point which is in respect of the Territory of South West Africa, I refer again to paragraph 1097, and the sentence following that which I had previously quoted, on page 261:

"The Commission did, however, receive evidence from teachers and others to the effect that compulsory education is essential, but this is not yet the opinion of the population in general."

Now with reference to that sentence, would you now state whether you agree or disagree with the opinion of the teachers and others who have testified before the Commission that compulsory education is essential?

Mr. VAN ZYL: I would not know, Mr. President, why they claimed that it was essential. It would have been better understood if they said it was advisable—why essential, I could not tell—and I do not think I would agree with the teachers if that were their view.

Mr. GROSS: Now, secondly, Sir, with respect to the reference to the statement that this is not yet the opinion of the population in general, would you have any basis for judgment as to whether or not the population in general refers to the territory as a whole, or does it refer to, let us say, the southern sector outside the Reserves as well?

Mr. VAN ZYL: I think it refers to the territory as a whole.

Mr. GROSS: One final line of questions, Mr. President, if I may, with respect to the matter of teacher differential in salaries, which you covered in your testimony yesterday. You have testified with respect to the number of teachers enrolled in the three teacher training schools in the Territory, if I understood you correctly, that the number is not adequate to meet the projected needs in accordance with your calculations. That is a correct version of your testimony, Sir?

Mr. VAN ZYL: Yes.

Mr. GROSS: Among the reasons for the inadequate (in that sense) enrolment in teacher training, would you, Sir, express an opinion concerning the discouraging effect, if any, of the differential between salaries paid to White and Native teachers, respectively?

Mr. VAN ZYL: No. As I indicated in my main evidence yesterday, there is no reason to believe that the teachers are dissatisfied with the existing differentiation between salaries payable to Whites and salaries paid to Bantu. They all clamour for higher salaries, but so far we have not come across any complaint that there is this differentiation.

Mr. GROSS: In connection with this response—first, however, may I cite for the record here, from the Rejoinder; I do not have the citation, so I will not cite it; I will, however, refer in connection with your response

to the paragraph on page 43 of the Rejoinder (II), if you can find it, in which the following statement is quoted—this is a further quotation by the Respondent from a statement by Dr. Verwoerd:

*“Thirdly, the Bantu teacher must be utilized as an active factor in this process of development of the Bantu community to serve his community and build it up and learn not to feel above his community so that he wants to become integrated into the life of the European community and becomes frustrated and rebellious when this does not happen and he tries to make his community dissatisfied because of such misdirected and alien ambitions.”*

Have you in your experience encountered teachers who you regarded as frustrated and rebellious because they could not become integrated into the life of the European community?

Mr. VAN ZYL: I think this should be taken to mean that it might be possible for a situation like this to arise. Up to the present moment I do not know of any situation of this kind that exists.

The PRESIDENT: Except by them speaking to you, how would you know whether they were frustrated or rebellious, by their conduct—have you ever noticed any frustration in terms of conduct or rebellious attitude towards their position and the Whites?

Mr. VAN ZYL: Not among the teachers, Mr. President.

Mr. GROSS: Would you agree or disagree with the characterization of the desire of a Native teacher to become integrated into the life of the European community as an “alien ambition”—would you agree with that formulation of his aspiration, his ambition?

Mr. VAN ZYL: Yes, I think that can be accepted as a possibility.

Mr. GROSS: With regard to your testimony concerning principals—there are Native principals of Native schools, are there, and White principals of White schools? Can you state to the Court whether there is a differential in salaries paid to White and Native principals respectively, doing the same work?

Mr. VAN ZYL: I thought it was generally known that the Whites are paid more than the Bantu teachers; it also applies to the principals.

Mr. GROSS: Could you explain to the Court why such a differential exists in the case of principals?

Mr. VAN ZYL: I should say that the principal's allowance, if it is a principal's allowance, has a bearing on the basic salary which he gets. If a teacher gets a comparatively lower basic salary he would also get a principal's allowance which is in a reasonable relation to that basic salary; if the salary is higher, then the principal's allowance automatically becomes higher.

Mr. GROSS: So that the principal's salary differential is a reflection or consequence, is it, of the differential of salary at the teacher's level, is that correct?

Mr. VAN ZYL: Yes.

Mr. GROSS: And therefore that differential remains, if not a constant factor, at least a factor during the career of the White and Native teachers respectively, is that so?

Mr. VAN ZYL: Yes. Of course, we never think of comparing the position of Bantu teachers with the position of White teachers because, as I have indicated before, the Bantu have a lower standard of living, and economically they have not advanced as far as the Whites; but this is not a



static position—we firmly believe that ultimately there will be no differentiation, depending on the progress which the Bantu make.

Mr. GROSS: You regard the differential, therefore, if I understand you correctly, as unfortunate; in principle would you regard the differential as a fair or as an undesirable phenomenon?

The PRESIDENT: In what respect?

Mr. GROSS: In any respect, Sir, relevant to . . .

The PRESIDENT: In any respect whatever, then.

Mr. GROSS: In any respect whatever.

Mr. VAN ZYL: I would not consider it as undesirable and bad, in principle.

Mr. GROSS: But nevertheless you stated the objective would be to eliminate it, is that so?

Mr. VAN ZYL: Well, depending on the economic development of the Bantu teacher.

Mr. GROSS: That is what I understood you to mean. Now, I presume, would it not be fair to say that if the objective, depending on the economic development, is to eliminate it, that would bear upon the question of whether it is a fair or just discrimination or differentiation, in principle?

Mr. VAN ZYL: No, I cannot see any unfairness in it at this stage.

Mr. GROSS: For the sake of the record at this point, I would place into the record, if I may, the undisputed figures from the Reply at IV, page 395, which is as follows:

“The commencing salary of a married male ‘European’ teacher in the lowest category, including a special allowance, is R1,406. The commencing salary of a married male ‘Native’ teacher with comparable qualifications, together with his cost-of-living allowance, is R696.”

First, do you know whether the cost-of-living allowance in the case of the Native and the special allowance in the case of the White is a comparable figure?

Mr. VAN ZYL: I am a bit uncertain as to what the position in South West Africa was but, of course, at the present moment these cost-of-living allowances no longer exist; it has been abolished in the Republic, and I think also in South West Africa; but at that time at certain levels, at the top level, it was exactly the same for Whites and non-Whites.

Mr. GROSS: The allowance?

Mr. VAN ZYL: The cost-of-living allowance.

Mr. GROSS: That is our understanding as well. Therefore, with respect to the salary, the discrepancy would be of the order of the ratio established by the figure 1,406 to 696—that is something more than 50 per cent., is it not? In any event, I will not tax you—my mathematical mind does not work that far. But the differential is a substantial one, of course, is it not, you would agree?

Mr. VAN ZYL: Yes, but there are also other economic factors that one has to take into account. I would not like to repeat too often the fact that the Bantu teacher has a much lower standard of living which he has to finance, but it might be enlightening to tell the Court that, for instance as far as housing is concerned, a Bantu teacher living in the Bantu residential area of Windhoek would get an apartment consisting of the normal three or four rooms—kitchen, bathroom, with water on the tap, with all electricity laid on—for something like 6 rand a month, while

the White teacher who lives in the White area of the same town has to pay ten times as much for his apartment of perhaps lesser accommodation.

Mr. GROSS: So that the salary differential reflects the difference in the economic environment—that would be correct?

Mr. VAN ZYL: That is right.

Mr. GROSS: With respect to the system described as “separate development” in your testimony and in the record, are there any White teachers teaching in non-White schools?

Mr. VAN ZYL: Yes.

Mr. GROSS: Are there any non-White teachers teaching in White schools?

Mr. VAN ZYL: No.

Mr. GROSS: From your experience in the Territory, and on the basis of your inquiry, would you state whether or not there are non-White teachers who have the qualifications and competence to teach anywhere in the Territory at commensurate level—at a level, that is to say, commensurate with that of a White teacher doing the same work?

Mr. VAN ZYL: I cannot think I can deny that; there might be teachers who would be suitable to teach in White schools.

Mr. GROSS: Is the reason why no non-White teachers teach in White schools a matter of policy, of apartheid or separate development—is that the sole reason for this phenomenon?

Mr. VAN ZYL: I would like to give the main reason for that, and that is that the Bantu teacher, with his good qualifications, is needed for the upliftment of his own people; his services are not necessary in a White school, where we have got an adequately qualified White staff to carry on with the work; and this is also what the Prime Minister has referred to when he said that educated Bantu should not think that they should offer their services in a White community; by implication it means that the good services of an adequately trained Bantu teacher or technician would virtually be wasted in White society, because his services are not really needed, whereas his services are very badly needed in his own homelands and for the upliftment of a backward people.

Mr. GROSS: Would you say that in the southern sector—this will be my final question, Mr. President, if I may—outside the Reserves there is a perfect balance between the supply of White teachers available and the requirements of White education in that sector?

Mr. VAN ZYL: I would not be able to say whether the teachers are all recruited from the Territory itself, but if there should be a shortage of White teachers it is not a difficult matter to secure their services from the Republic; many of them are prepared to go there and teach.

Mr. GROSS: So that would it be fair to say, in conclusion, that with respect to both White and non-White teachers in the Territory, there is a need for both—is that correct?

Mr. VAN ZYL: Yes.

Mr. GROSS: With respect to the education of both White and non-White in the Territory?

Mr. VAN ZYL: Yes.

Mr. GROSS: I think, Sir, that concludes my questions.

The PRESIDENT: That does not conclude your cross-examination, I assume, Mr. Gross, does it?

Mr. GROSS: I think I will rest there, Sir.

The PRESIDENT: Very well, thank you.

Mr. GROSS: Thank you, Sir.

The PRESIDENT: Does any Member of the Court desire to put a question to the witness? (A Member of the Court having indicated his desire so to do, the President continued.) Then I am afraid we will have to adjourn at this particular stage; you will be in attendance on Monday afternoon, Doctor. But before we adjourn, Mr. Gross, thank you for your explanation as to the relevance of your cross-examination in relation to compulsory education, but do I understand the proposition correctly when I state it thus: there is compulsory education of the White people in what we call the White sector in the southern zone?

Mr. GROSS: Yes, Sir.

The PRESIDENT: There is no compulsory education elsewhere. Do I understand that if there is no compulsory education imposed upon the peoples, take for example of the north, irrespective of the difficulty of policing it, irrespective of the question whether it is acceptable to the people, irrespective of any other circumstances, that is inherently inconsistent with Article 2 of the Mandate and *per se* a breach of the Mandate?

Mr. GROSS: No, Sir, that would not be the Applicants' contention. The Applicants' contention in respect of the difference, standard or requirement of compulsory education on a strictly racial basis would be that that, standing alone, unsupported and unexplained, would violate the duty to allot rights and burdens, privileges and so forth on the basis of promotion of welfare and progress of all the inhabitants to the fullest practicable extent, and that it would seem to the Applicants that a system in which no compulsory education in any part of the Territory, irrespective of its economic development, is a practice or a policy, that this would be a factor relevant for the Court's consideration in connection with the significance of the educational aspect of apartheid seen in relation to all other aspects of the apartheid policy of which this forms a part.

The PRESIDENT: Well, then, we will come to the consideration in those circumstances whether that is consistent with the case which you put before the Court at the time you made your Final Submissions, Mr. Gross; but we will not discuss it here now.

Mr. GROSS: Yes, Sir.

The PRESIDENT: The Court will adjourn.

Mr. GROSS: May I say, Sir, that I hope that there will be an opportunity to elaborate on the answer to this question at some appropriate time?

The PRESIDENT: By all means.

*[Public hearing of 4 October 1965]*

The PRESIDENT: Will you come to the podium, Doctor?

Sir Louis Mbanefo desires to ask certain questions of the witness. Sir Louis?

Judge Sir Louis MBANEFO: The first question I would like to ask is about the Bantu Education Act. Has it actually been applied to South West Africa?

The PRESIDENT: The question is: has the Bantu Education Act been applied to South West Africa?

Mr. VAN ZYL: No, Mr. President.

Judge Sir Louis MBANEFO: You stated on page 259, *supra*, of the verbatim record of 30 September that "since the passing of the Bantu Education Act in 1953, the Bantu have been given an active share in the education of their children". Then you continued, in the next paragraph but one:

"The ultimate aim is to enable Bantu groups to assume full responsibility for their own educational service, as is already the position in the Transkei today."

And further down you mentioned the advantages and finally you said that:

"Now that the schools have become part and parcel of the Bantu community, and now that the parents have a share in their management and take an active interest in what is going on, they urge their children to go to school . . ."

In another part of your evidence you spoke of using the mother tongue as a medium of instruction and said that the whole purpose was to get the people interested in their homelands so that they can go back to their homelands and become useful to their community. Am I right in stating that this was what you said in your evidence?

Mr. VAN ZYL: Mr. President, I would not say that the whole purpose is to let the people go back to their homelands. The idea is that as many educated and skilled persons as possible should go back there to help with the upliftment and development of the homeland, but others, who find employment in the White homelands and who prefer to stay there for the time being, I should say are, of course, free to do so.

Judge Sir Louis MBANEFO: Now, if you look at the Odendaal report on page 41, you will see table XIX and table XX. Have you got the page?

Mr. VAN ZYL: Yes, Mr. President.

Judge Sir Louis MBANEFO: Now, if you look at table XIX you will find that in the homeland of the Damaras—have you got that—the northern homeland, you will find Sesfontein with 300 people.

The PRESIDENT: That is in table XX is it?

Mr. VAN ZYL: Mr. President, I do not know if I am still with the Judge. It is table XIX?

Judge Sir Louis MBANEFO: Yes.

Mr. VAN ZYL: And the Damara people are concerned?

Judge Sir Louis MBANEFO: Yes.

Mr. VAN ZYL: Sesfontein?

Judge Sir Louis MBANEFO: Yes.

Mr. VAN ZYL: Sesfontein, yes. There are 309. Yes, Mr. President, I have got it.

Judge Sir Louis MBANEFO: You will see that they do not exist anywhere else in the homeland. I have not asked my question yet, but I just want to get the facts established.

Mr. VAN ZYL: Yes, Mr. President, it is not quite correct. There are Damara homelands in the southern sector . . .

Judge Sir Louis MBANEFO: I am coming to that. I am now talking about table XIX.

Mr. VAN ZYL: Yes.

Judge Sir Louis MBANEFO: Now, you will see that in the southern sector you have 18,000 Damaras in urban areas, 18,499.

The PRESIDENT: Do you see that?

Mr. VAN ZYL: I have got it, Mr. President.

Judge Sir Louis MBANEFO: And in the rural areas, 20,260.

Mr. VAN ZYL: Yes, Mr. President, I have got that.

Judge Sir Louis MBANEFO: Now, is the purpose of the new scheme to educate these roughly 40,000 people so that they can go and be useful in a community different from where they live?

Mr. VAN ZYL: No, Mr. President, that is what I was trying to point out. The 309 people who are given under the heading Northern Home Areas are not actually living in Damara homeland. The Damara homelands are under the rural areas in the first section of the table under "Southern Sector". There are many Bantu homelands in the southern sector which we should not forget.

Judge Sir Louis MBANEFO: Yes. If you come to the southern sector the total people living in the home area is roughly: Damaras, 3,624.

Mr. VAN ZYL: Mr. President, as I see it, there are 18,499 Damaras in urban areas and 20,260 in rural areas and in home areas—is that what the honourable Judge is referring to, the 5,285 perhaps?

Judge Sir Louis MBANEFO: Which table are you looking at?

The PRESIDENT: Table XIX.

Judge Sir Louis MBANEFO: Table XIX, yes. Now you have got your rural and your urban areas in the southern sector?

Mr. VAN ZYL: Yes.

Judge Sir Louis MBANEFO: And then you have the northern homelands—northern home areas?

Mr. VAN ZYL: Yes, Mr. President.

Judge Sir Louis MBANEFO: Now, as to the southern sector in table XIX, if you want to deal mainly with the southern areas, you would have to relate to the southern home area in table XX, and if you look under Damaras there are 3,624.

The PRESIDENT: Firstly, do you agree with the learned Judge's statement that you have to relate certain figures? Did you catch what Sir Louis said?

Mr. VAN ZYL: Not quite, Mr. President.

The PRESIDENT: Perhaps, Sir Louis, you will put that in the form of a question, then the witness will understand it?

Judge Sir Louis MBANEFO: I want to get the facts established that is why I am just reading from the table. If you look first of all at table XIX you will see "Southern Sector—Urban area—Damara 18,499".

Mr. VAN ZYL: That is right, Mr. President.

Judge Sir Louis MBANEFO: "Rural area—Damara 20,260."

Mr. VAN ZYL: That is right.

Judge Sir Louis MBANEFO: Those two figures add up to roughly 39,000. Now, it is part of the purpose of the education scheme that these people would be educated in their Native or mother tongue, and that the curriculum and syllabus would be related to their institutions.

Mr. VAN ZYL: Would the Judge mean, Mr. President, to their cultural institutions?

Judge Sir Louis MBANEFO: Well, I will read from your statement on pages 258-259, *supra*, of the verbatim record of 30 September.

"Secondly, increased emphasis was to be placed on the education of the masses, so as to enable them to co-operate in the evolution of new social patterns.

Further, that schools should be linked as closely as possible with existing Bantu social institutions; and further, that active steps should be taken to produce literature of a functional value in the Bantu languages . . . and that schools should provide for a maximum development of the Bantu individual, mentally, morally and spiritually."

Mr. VAN ZYL: Yes, Mr. President, I said that.

Judge Sir Louis MBANEFO: The education of these 39,000 people would be reorientated to the needs of their home area?

Mr. VAN ZYL: To a certain extent, yes. I have to point out that in the first instance the children will get a general education for general development, and as from a certain stage they will have to start specializing in different directions, and they will then be trained to undertake certain development schemes, mainly in their homelands, but they are still free to offer their services outside the homelands if they care to do so; but the idea is that as soon as they are ready, and as soon as they are prepared, they should take the acquired skills and knowledge back to their homelands to assist with the development of those areas.

Judge Sir Louis MBANEFO: That is in respect of Sesfontein—that will be the place where 300 people live?

Mr. VAN ZYL: Yes. I think we should not take Sesfontein very seriously as a homeland of the Damara people. It is not an area where they normally live, or where they mostly live. That is just a small group who must have emigrated there, and who live there now. I am not sure whether with the new homelands which have been proposed by the Odendaal Commission, Sesfontein will fall within the Damara homeland—I have not gone into details, but I would not be surprised if it falls outside the new Damara homeland.

Judge Sir Louis MBANEFO: And the same, to a large extent, is true of the Namas?

Mr. VAN ZYL: It is also true of the Namas. The Nama, as we will see from this table, live largely in the southern areas of the southern sector, much more towards the south. Sesfontein should actually be taken just as a small community which has settled there; it is not as though they occupy a vast area; it is just a concentrated community.

Judge Sir Louis MBANEFO: Could you tell the Court how many Bantu languages are officially recognized as media for instruction in South West Africa?

Mr. VAN ZYL: The proposal was that six of the existing languages should be recognized as school languages.

Judge Sir Louis MBANEFO: And are you in a position to tell the Court how many people in the smallest of the language groups would use one language?

Mr. VAN ZYL: If I remember well, I think the Hereros would be the smallest single language group. The Namas constitute the smallest national group of people, but then we have the position that Namas and Damaras both speak the same language; but the Hereros constitute the smallest language group, if I remember well.

Judge Sir Louis MBANEFO: What would you give their population as?

Mr. VAN ZYL: The Hereros? 35,000.

The PRESIDENT: As shown at table XIX, 35,354 in the southern sector? That's the total?

Mr. VAN ZYL: That is right.

Judge Sir Louis MBANEFO: And they have no other homelands outside the southern sector?

Mr. VAN ZYL: No, they have no other homeland. Of course, the Hereros never lived in the northern areas; they are at present occupying their traditional homeland, which has been enlarged and which, I believe, will still be enlarged after the new recommendations of the Odendaal Commission.

Judge Sir Louis MBANEFO: And in their home areas they have 15,000?

Mr. VAN ZYL: In their home areas?

The PRESIDENT: In the southern sector.

Judge Sir Louis MBANEFO: In the southern sector—table XIX.

Mr. VAN ZYL: According to this table, yes.

Judge Sir Louis MBANEFO: What opportunity would there be for an educated person to find a living amongst a community of 15,000 people, if a large number of them get educated?

Mr. VAN ZYL: I think that there would be ample opportunity, if we take into consideration that a centre which is taken to be a large urban centre like Windhoek itself has a population not much bigger than 35,000, including all population groups, and I think everybody would agree that in Windhoek, for instance, there are numerous opportunities for people to make a living and to contribute towards the welfare of that centre.

Judge Sir Louis MBANEFO: Then you would not be talking about him going back to develop his institutions in his home area?

Mr. VAN ZYL: Yes, but I was trying to point out that an area which is in itself, geographically, a very vast area occupied by a potential population of 35,000 would need the services of many people to develop it to the fullest.

Judge Sir Louis MBANEFO: Of the 35,000, 9,000 live in urban areas, you say?

Mr. VAN ZYL: At the present moment, yes.

Judge Sir Louis MBANEFO: And 10,000 in rural areas?

Mr. VAN ZYL: Yes.

Judge Sir Louis MBANEFO: And the remaining 15,000 in the home areas?

Mr. VAN ZYL: Yes.

Judge Sir Louis MBANEFO: And I take it that these areas are scattered over a large area?

Mr. VAN ZYL: I would not say the homeland consists of various areas scattered over a much larger area; it is one big consolidated area, and if there are smaller Reserves not consolidated into the main homeland of the Hereros, it will soon be done.

Judge Sir Louis MBANEFO: Yes, but within that consolidated piece of land you probably have about 100 settlements or villages?

Mr. VAN ZYL: I would not say as many as that, but there could be a fair number.

Judge Sir Louis MBANEFO: 50?

Mr. VAN ZYL: 50, or perhaps less.

Judge Sir Louis MBANEFO: And you have got 15,000 people spread over 50 villages?

Mr. VAN ZYL: Yes, it could be; of course, they would not be all of the same size, there would be bigger centres and smaller centres.

Judge Sir Louis MBANEFO: Yes, but they couldn't be much if the total

population is 15,000. What I am getting at, and I am going to lead on to it later on in my questioning, is: these educated people are people who are being educated so that they can go back and help their people. I just want to get an idea of what sort of help they can give to their community.

Mr. VAN ZYL: In the first instance they can go there as teachers; they can go there as artisans, to erect buildings which may be needed for public services; they can go there as agricultural instructors; they can go there as doctors, even, when the time comes; girls can go there as nurses; they can go there as merchants.

Judge Sir Louis MBANEFO: You can't be much of a merchant in a community of 15,000 people.

The PRESIDENT: Is that a question or is it a statement?

Judge Sir Louis MBANEFO: One wants to get the impression, because we have had statements of opportunities being opened for them in their home areas, and one wants to get clear in one's mind the type of opportunity that they have.

Mr. VAN ZYL: I would not like to argue the point, but if I have to give my opinion I should say that there will ultimately be big concentrations of people and the others may be scattered over the whole of the homeland as farmers living apart on separate farms or in very small communities, and these very small communities will have to be served from the bigger centres that will be established and that will grow in the homeland.

Judge Sir Louis MBANEFO: Until then, of course, there will be very little or no opportunity?

Mr. VAN ZYL: No, the opportunities will be there right from the beginning—not for all types of people, but right from the beginning there will be certain opportunities, and as the development will gain in momentum there will be more and more opportunities.

Judge Sir Louis MBANEFO: You said that the people are being taught through the medium of their mother tongue, and in respect of South West Africa up to Standard II, and in the north up to Standard III; and I believe you said that it has been recommended to raise it to Standard VI?

Mr. VAN ZYL: Yes.

Judge Sir Louis MBANEFO: Could you tell us what subjects are taught in the Native languages in primary schools?

Mr. VAN ZYL: In South West Africa only?

Judge Sir Louis MBANEFO: I will deal with South West Africa.

Mr. VAN ZYL: The usual subjects on the curriculum of the primary school, and they include arithmetic, environment studies in the lower primary school, nature study, health education; of course, then there are the three languages that have to be taught; I think those are about all the subjects.

Judge Sir Louis MBANEFO: And with respect, for instance, to arithmetic: do you take them up to things like, for instance, compound interest?

Mr. VAN ZYL: Not in South West Africa, because compound interest only comes into the picture towards the Fourth or Fifth Standard, not in the lower primary school up to Standard II.

Judge Sir Louis MBANEFO: If you took it up to Standard VI, you would then have to instruct them through that medium, wouldn't you?

Mr. VAN ZYL: That is right. It has been done in the Republic of South Africa, up to Standard VI.



Judge Sir Louis MBANEFO: I notice you said that you had in fact taken a Standard VI examination in Bantu languages in South Africa?

Mr. VAN ZYL: Yes, Mr. President in the Republic of South Africa.

Judge Sir Louis MBANEFO: Now when you get to the complicated level of arithmetic for instance—what do you do?

Mr. VAN ZYL: Mr. President, we have managed to overcome whatever problems there were. As I have pointed out before, the majority of the terms that we need for the primary school were already in existence in these Bantu languages and those words which were lacking were made—we formed them. I think it happens in any language which has to develop and which has to be adapted to new needs and requirements and perhaps I should mention, Mr. President, in the Republic of South Africa, we already have several series of graded arithmetic books in all our Bantu languages and in those books all the necessary terms appear because they cover all the standards of the primary school. I can testify that the system works well.

Judge Sir Louis MBANEFO: You said I believe, on the subject, that primary education only makes them fit to work as labourers, nothing more than labourers?

Mr. VAN ZYL: I think so, Mr. President.

Judge Sir Louis MBANEFO: And in that case, there will be no need for maintaining a high level or improving this standard.

Mr. VAN ZYL: Now, it should be understood, Mr. President, that after the Standard VI level, we use English or Afrikaans as the medium of instruction. So for more advanced education, we do not use the Bantu languages as medium at the present time.

Judge Sir Louis MBANEFO: Now, in South West Africa, the educational facilities that exist for the Natives is up to Standard X.

Mr. VAN ZYL: That is right, Mr. President.

Judge Sir Louis MBANEFO: And that is the level at which they matriculate?

Mr. VAN ZYL: That is when they matriculate, yes.

Judge Sir Louis MBANEFO: And I gather that at that level you say that they take the same examination as White pupils?

Mr. VAN ZYL: It is so, Mr. President.

Judge Sir Louis MBANEFO: But that papers are separately marked?

Mr. VAN ZYL: I pointed out on the first day in my main evidence that there are two examining bodies which conduct the examination for Bantu pupils; there is the Joint Matriculation Board itself, which also serves as a controlling body and conducts an examination of its own—candidates who write that examination are thrown in with all the other candidates and the papers are marked by the same examiners and moderated by the same moderators. I should also say that those who write the examination under the Department of Education, Arts and Science, are treated in the same way—the same examiners for Whites and non-Whites and the same moderators.

Judge Sir Louis MBANEFO: Could you tell us roughly about how many people in the last five years—you can take any year in the last five years or you can take the whole five years together—have gone through Standard X in South West Africa?

Mr. VAN ZYL: I am not certain about the figure, Mr. President, but it is a very low figure.

Judge Sir Louis MBANEFO: As low as it would be . . . ?

Mr. VAN ZYL: It would be extremely difficult to say, but I would not say more than 20 passed the matriculation examination during the past five years.

Judge Sir Louis MBANEFO: Are you in a position to tell the Court what the 20 people, who passed the matriculation, did after that?

Mr. VAN ZYL: No, I cannot, Mr. President. I know of a few. I know that there are two or three studying for the B.A. degree at the University College of the North and I know that there are a few teaching in South West Africa and there may be a few clerks serving in some or other public office. Of course, altogether there may be many more than 20 matriculated Bantu people in South West Africa, but they could have matriculated before the period mentioned by the honourable Judge.

Judge Sir Louis MBANEFO: I appreciate that it is not your problem to speak about higher education, I was going to ask about how many have had higher education but perhaps you would get that for me later.

Mr. VAN ZYL: I think that would be best.

Judge Sir Louis MBANEFO: Now, you said in answer to the question that if there is any sizable minority needing instruction and living in a remote area arrangements could be made for them to receive instructions in their own language.

Mr. VAN ZYL: I did, yes, Mr. President.

Judge Sir Louis MBANEFO: They would be either given a separate school or they would be taught in separate classes in an existing school?

Mr. VAN ZYL: That is right, Mr. President.

Judge Sir Louis MBANEFO: How many people do you normally envisage to qualify for starting a community school?

Mr. VAN ZYL: From what I have been told, Mr. President, in South West Africa, they are prepared in some of these remote areas to start a school with 15 pupils.

The PRESIDENT: Fifteen?

Mr. VAN ZYL: Fifteen.

Judge Sir Louis MBANEFO: And taken up to Standard VI if they continue?

Mr. VAN ZYL: No, I would not say that, I think they would take them up to Standard II perhaps or a little further depending upon the ability of the teacher but once they reach the higher classes of the higher primary school, they would probably be taken to central schools, where provision is made for hostel facilities.

Judge Sir Louis MBANEFO: Would you think that accounts for the large drop off from Standard II in the number of pupils who continue at school?

Mr. VAN ZYL: Yes, Mr. President, I think it can be ascribed to that to a certain extent but I should say there are other more important reasons for the sharp drop after the Standard II level.

Judge Sir Louis MBANEFO: I believe the important reasons you gave were that the parents had not appreciated the need of compelling the children to continue at school?

Mr. VAN ZYL: That was my impression, Mr. President.

Judge Sir Louis MBANEFO: And that is being taken care of, as you say, by forming community schools?

Mr. VAN ZYL: Yes, Mr. President.

Judge Sir Louis MBANEFO: Would you explain more what you meant by community schools—does it mean that schools that are run by

missions are taken over by the community or what—could you tell us exactly what?

Mr. VAN ZYL: Well, in the first place, Mr. President, a community school could be described as a school managed by a local parental committee, and which for further administration comes under a school board which assumes responsibility for the administration of a number of schools in a particular area where common interests result in their forming a unit or where they geographically form a unit, but mainly a community school is a school which belongs to the parental community, the local parental community, and a school for which that community assumes local responsibility.

Judge Sir Louis MBANEFO: Just a point of information on existing mission schools, is the proprietorship transferred to the community?

Mr. VAN ZYL: Yes, Mr. President. The missions were not compelled to hand over their schools. The system which was introduced in the Republic was also offered in South West Africa and the missions were asked to surrender control of the schools which they had established so that they could become community schools, and the missionary bodies which were prepared to do so did hand over their schools and they were subsequently made community schools; others have kept them and they are still receiving full State subsidy but I believe they will reach a point where they will have to choose between running these schools at their own cost or handing them over for the purposes of making them community schools.

Judge Sir Louis MBANEFO: These mission schools are run by Native headmasters and teachers?

Mr. VAN ZYL: Yes, Mr. President, provisionally.

Judge Sir Louis MBANEFO: And the parents, most of whom I assume would be uneducated—illiterate?

Mr. VAN ZYL: There may be some uneducated parents, others may have little education and admittedly much less than the teachers.

Judge Sir Louis MBANEFO: And you said that they regard these schools run by Native headmasters, Native masters, as foreign schools?

Mr. VAN ZYL: No, not that, Mr. President. The schools or does the honourable Judge refer to mission schools run by . . . ?

Judge Sir Louis MBANEFO: Mission schools, yes. I will repeat my question—mission schools run by Native headmasters and staffed by Native teachers.

Mr. VAN ZYL: Yes, Mr. President, that is the impression that we got. They do not consider the schools their schools, they belong to the missionary bodies.

Judge Sir Louis MBANEFO: And if I understand you correctly, the fact that they form these community schools, makes the people feel that the schools belong to them and that encourages the parents to encourage their children to remain at school.

Mr. VAN ZYL: Well, I would not say to encourage the children, but to compel them to go to school and also to make it possible for the children to remain at school for a considerable period.

Judge Sir Louis MBANEFO: Does that mean that the parents have not yet appreciated the value of education?

Mr. VAN ZYL: I would not say that they have not appreciated the value of education but seeing that it was not a service that they themselves provided and for which they had to assume responsibility, they

did not take it very seriously; they admired a child who wanted to go to school and who remained at school for a long time and who proceeded nicely with his lessons, but if the child cared to leave the school they seldom insisted on his staying on for a longer period, because in most cases, it involved a certain amount of expense for the parents and some of them gladly withdrew the child or allowed the child to leave school so as to save the money which he otherwise would have had to pay.

Judge Sir Louis MBANEFO: If a parent knows that if his son continues at school he will be better equipped for a better position and higher pay in the future, do you not think that will make him keep the child at school?

Mr. VAN ZYL: Certainly, yes, Mr. President.

Judge Sir Louis MBANEFO: More than the fact that he was made a member of the school board?

Mr. VAN ZYL: Yes. Mr. President, I should point out that all the parents are not serving on the school committees or on school boards. There are many who do not serve on those bodies, but those bodies are representative of all the parents and there is a common feeling of interest in the school in the whole community and they work together for the advancement of that school and for the betterment of the position of their children. It is better now. Formerly, they did not take as much interest and they did not seem to realize the benefits to which the honourable Judge has just referred.

Judge Sir Louis MBANEFO: You said that the purpose of primary education is to acquire literacy?

Mr. VAN ZYL: The purpose of the lower primary course is, in the first instance, to acquire literacy, Mr. President.

Judge Sir Louis MBANEFO: And that leads you on to the . . . ?

Mr. VAN ZYL: The higher primary course.

Judge Sir Louis MBANEFO: And education really becomes purposeful at the higher level than the primary level?

Mr. VAN ZYL: Mr. President, I would not say that the lower primary education is not purposeful. It also serves a very good purpose. I think I have pointed out—last time, when I gave evidence—that the fact that they become literate is of very great importance for them, for one reason which I gave, is that they can conduct their own correspondence and they can read their Bible and other suitable literature and, by reading, of course, they can expand their knowledge and their education virtually on a private basis.

Judge Sir Louis MBANEFO: Another thing I would like to ask you, Dr. Van Zyl, do you have the experience of the phenomenon of boys educated up to Standard VI and beyond not wanting to be labourers?

Mr. VAN ZYL: I would not say that I know of individuals, Mr. President, and I would not know exactly what the position is in South West Africa, but in the Republic—if that could be taken as an example—many of those who reached the Standard VI level will still become labourers.

Judge Sir Louis MBANEFO: I know, but they do not like it.

Mr. VAN ZYL: No, they will still become labourers because they are not equipped for anything else. They can become messengers in offices and, indeed, many of them do become messengers, but they cannot become clerks, Mr. President, or be employed in any other posts where considerable education or skill is required.

Judge Sir Louis MBANEFO: In this respect, have you any knowledge of other African territories where you have a similar situation?

Mr. VAN ZYL: Similar education, Mr. President?

Judge Sir Louis MBANEFO: Similar, yes, where people are educated up to primary school level.

The PRESIDENT: Do you have any personal knowledge of other African countries with educational problems . . . ?

Mr. VAN ZYL: Yes. I happen to know something of the Rhodesias, the former Federation of Rhodesia and Nyasaland.

Judge Sir Louis MBANEFO: Do you know, for instance, that in many places clerks are recruited from Standard VI?

Mr. VAN ZYL: Mr. President, I did not know that, but I would not be surprised that in certain underdeveloped parts of Africa people with as little education as that are employed as clerks, but in South Africa it is not necessary because there are a great many who have advanced beyond that stage. In the Republic, for instance, there will be 12,000 candidates writing the junior certificate examination this year and about 7,000 or 8,000 will pass the examination, and if clerks are needed they will be recruited from amongst that group, or even those who pass the matriculation examination. There will probably be about 800 passing the matriculation examination this year. There will be others offering even higher education, and those who have Standard VI have not got a chance against these people.

Judge Sir Louis MBANEFO: Would that be the position in South West Africa?

Mr. VAN ZYL: The position would be more or less the same in South West Africa, although the numbers are, of course, comparatively smaller.

Judge Sir Louis MBANEFO: Lastly, I want to ask you, how many secondary schools, or how many schools, go up to Standard X in South West Africa, I mean schools for Natives?

Mr. VAN ZYL: At the present time, Mr. President, there is only one, which goes as far as Standard X and I believe steps are being taken to offer the matriculation courses also at other centres, but for the present people are recruited from all over the Territory to this one centre.

Mr. President, of course, we should not lose sight of the fact that the total population of that vast country is just over half-a-million and, so far, it did not seem necessary to have more than one centre, because all those who wanted the secondary education could have gone there; their facilities were adequate.

The PRESIDENT: Does any other Member of the Court desire to put a question to the witness?

I only have one question to put to you, Doctor. In the examinations—the matriculant standard—is there any reason to believe that if a non-White candidate is competent and answers his papers correctly he is down-graded because of his race?

Mr. VAN ZYL: No, it is not possible, Mr. President, because their names do not appear on their examination papers. They write under numbers. So the examiner will, for all practical purposes, not know whether a candidate is White or non-White.

The PRESIDENT: That is all I wanted to ask you, Doctor. Mr. Rabie, do you wish to put any questions in re-examination?

Mr. RABIE: I have no re-examination, Mr. President and, with your leave, the Respondent's next witness will be Professor Rautenbach. He will be led by my learned friend, Mr. Grosskopf.

The PRESIDENT: Doctor, you are released there from further attendance. Is there any objection from Mr. Gross?

Mr. GROSS: No, Sir.

The PRESIDENT: You will be released from further attendance, Sir. Mr. Rabie, will you call your next witness?

Mr. GROSSKOPF: May it please the Court, Mr. President, Professor Rautenbach is the next witness. His evidence relates to Applicants' Submissions 3 and 4 and as set out in a letter to the Agent for Applicants, of which a copy has been sent to the Deputy-Registrar on 30 September. Professor Rautenbach's evidence will be directed to the following points, and I quote, he will testify on "higher education, and the consequences of applying a policy involving an absence of separation in the said sphere". He will also make "a comparison between policies regarding higher education in South Africa and recent trends elsewhere". May I ask, Mr. President, that Professor Rautenbach be allowed to make both the declarations provided for in the rules, that is, both as witness and as expert.

The PRESIDENT: Let the witness make the declarations.

Mr. RAUTENBACH: In my capacity as a witness, I solemnly declare upon my own conscience that I will speak the truth, the whole truth and nothing but the truth. In my capacity as an expert, I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

Mr. GROSSKOPF: Professor Rautenbach, your full names are Caspar Hendrik Rautenbach?

Mr. RAUTENBACH: That is so.

Mr. GROSSKOPF: You hold the following degrees: the degree of B.A., which you attained in 1921. Is that correct?

Mr. RAUTENBACH: That is correct.

Mr. GROSSKOPF: B.D., in 1923?

Mr. RAUTENBACH: That is correct—in November 1923.

Mr. GROSSKOPF: M.A., also in 1923?

Mr. RAUTENBACH: July 1923.

Mr. GROSSKOPF: Then you hold a Doctorate in Philosophy, which you attained at Victoria in 1932?

Mr. RAUTENBACH: That is correct.

Mr. GROSSKOPF: And you have an Honorary Doctorate of the University of Montreal?

Mr. RAUTENBACH: Yes. I received that in 1958.

Mr. GROSSKOPF: What is your present occupation?

Mr. RAUTENBACH: My present occupation—my major office—is that of Rector and Vice-Chancellor of the University of Pretoria, and outside of that another office which I hold is that of Chairman of the National Advisory Education Council of the Republic of South Africa, and another office I hold is that of Chairman of the Council for the Governing Body of the University College of the North.

Mr. GROSSKOPF: Before we go over to that Professor, will you tell the Court something about the University of Pretoria? What is its medium of instruction?

Mr. RAUTENBACH: The medium of instruction of the University of Pretoria is Afrikaans. It has been that since 1932.

Mr. GROSSKOPF: And what is the size of the University?

Mr. RAUTENBACH: The number of students now is 10,200, and the

staff (the whole staff, including administrative staff) is just over 1,000, with close on 700 members of teaching staff, 117 departments and 11 faculties.

Mr. GROSSKOPF: How long have you been on the staff of the University of Pretoria?

Mr. RAUTENBACH: My first appointment was in August 1923—that means, 42 years.

Mr. GROSSKOPF: And what was the nature of that appointment?

Mr. RAUTENBACH: I was appointed a part-time lecturer in philosophy in 1923 and from 1924 onwards I had a full-time appointment.

Mr. GROSSKOPF: And what other offices did you hold on the academic staff of the University?

Mr. RAUTENBACH: On the academic staff of the University, I became Professor of Moral Philosophy and also Professor in the Faculty of Education, for philosophy of education, and also lecturer in the Faculty of Divinity on Christian Ethics. Later on, I became Dean of the Faculty of Arts and after that I was appointed, on 9 April 1948, to my present office of Principal, or Rector, as the Afrikaans name is—the old Latin name—and Vice-Chancellor of the same University.

Mr. GROSSKOPF: Now, are you also a member of the Council of the University of South Africa?

Mr. RAUTENBACH: I have been a member of the Council of the University of South Africa—I was a member for a number of years but under the Act I can send an Alternate and for the last two years I have been sending an Alternate, but I was a member for about 12 to 14 years.

Mr. GROSSKOPF: Will you just tell the Court briefly—you will be coming to it later—what exactly the University of South Africa is?

Mr. RAUTENBACH: The University of South Africa is an examining and degree-granting University in the first place, but in the middle forties, the division for teaching by medium of the post or by correspondence was instituted and that has now become the so-called division of teaching. It is also the university in which all the students of the State colleges are registered, because that at the present moment is the University which is their degree-granting institution.

Mr. GROSSKOPF: You have also told the Court that you are the Chairman of the Council of the University College of the North. Will you just tell the Court briefly what that college is? You will also be coming to that later.

Mr. RAUTENBACH: The University College of the North is one of five State colleges established under the Act of 1959. It opened its doors in early March 1960. It is the University College which, according to the decision of the Minister of Bantu Education, is the college for the Sotho-speaking communities, also the smaller Venda and Tsonga groups. It is situated 180 miles north of Pretoria, where I reside, it is 18 miles from Pietersburg, it is just over the border of one of the Bantu homelands.

Mr. GROSSKOPF: Are you also a member of certain inter-university associations, such as the Statutory Committee of Principals?

Mr. RAUTENBACH: Yes, by the Act I have got to be a member of the Committee of Principals. I was its first elected chairman in the early fifties and . . .

Mr. GROSSKOPF: . . . and were you a member of the Executive Committee of the Association of Universities of the British Commonwealth?

Mr. RAUTENBACH: Yes, I was a member of the Executive Committee of the Association of Universities of the British Commonwealth, as it was then called—it has since become Commonwealth without the British—for five years.

Mr. GROSSKOPF: Are you a member of any scientific bodies?

Mr. RAUTENBACH: Yes, I am a member of the Scientific Advisory Council to the Prime Minister of the Republic of South Africa. I have been a member of the Council for Educational and Social Research since 1948 and since 1954 I have been Chairman appointed by the Minister of Education, Art and Science of its General Purposes Committee. I am also a full member of the South African Academy of Arts and Science and various other bodies.

Mr. GROSSKOPF: Now dealing specifically with educational bodies, are you a member of the National Advisory Council for Adult Education?

Mr. RAUTENBACH: Yes, I have been a member for many years.

Mr. GROSSKOPF: Are you Chairman of the National Advisory Educational Council?

Mr. RAUTENBACH: Yes, I have been Chairman of the National Advisory Educational Council since its inception in 1963.

Mr. GROSSKOPF: What are the functions of this Council?

Mr. RAUTENBACH: The functions of this Council are to advise the Minister of Education or, through him, other Ministers, on the broad general principles of education for the country as a whole—to co-ordinate education in the country as a whole in the sphere of primary and secondary education and tertiary education outside the university sphere. The university sphere is excluded from that Council.

Mr. GROSSKOPF: Are you also the Chairman of the National Committee for the Co-ordination of Education of all Race Groups with the Changing Economy?

Mr. RAUTENBACH: Yes, that is an *ad hoc* committee which was appointed after October 1963 and it is still functioning and will still function for some years. I am chairman of that committee also.

Mr. GROSSKOPF: Are you the author of any books or publications?

Mr. RAUTENBACH: Yes, I am the author of some books, one book on moral philosophy and one on the epistemology of microphysics—of all things—and then I am the author of about 35 articles on various aspects of university—its organization, the organization of teaching, the functions of the various bodies—faculty, executive committee of senate, senate council—on the access to higher education, more or less the major facets of the university as such. Outside of that, I was also the author of a pamphlet on the struggle for the mother tongue.

Mr. GROSSKOPF: Now, dealing specifically with South West Africa, do you have any expert knowledge about circumstances in that Territory?

Mr. RAUTENBACH: As far as I could obtain knowledge from reading and studying, I gained some knowledge of South West Africa.

Mr. GROSSKOPF: Do you have sufficient knowledge to express an opinion as to whether it would be practical to start a university college or university or some similar institution in South West Africa?

The PRESIDENT: I do not think that is a question you can put to the witness. He cannot answer to that, the Court must answer to that. The witness gives evidence of his expert experience and the Court is the judge of his degree of expert knowledge.

Mr. GROSSKOPF: As you please, Sir.



Mr. RAUTENBACH: Must I reply to the question?

The PRESIDENT: No, the question will be put in another form.

Mr. GROSSKOPF: Do you know what the population of South West Africa is?

Mr. RAUTENBACH: Yes, Mr. President, it is just over half a million.

Mr. GROSSKOPF: Do you think that it would be practical to establish a university institution in that Territory?

Mr. RAUTENBACH: Well, it is not practical at the present moment I should think, but it is a possibility in the future. At a certain stage of development, I hold that half a million people could have a university, but at a later stage of development, not at the present stage.

Mr. GROSSKOPF: Do you know what facilities are provided for higher education of students coming from the Territory?

Mr. RAUTENBACH: For higher education of students coming from the Territory, as far as White students, or European students, are concerned, they can come to any university in the Republic itself because there is no institution for higher education of that type in the Territory. As far as other students are concerned, they can attend the various colleges—State colleges—and the Bantu in whom I am particularly interested can, with the permission of the Minister, enter one of the three. I think at the present moment that the Minister is inclined to send them to the Bantu college of the North.

Mr. GROSSKOPF: Now, you have referred to various institutions for higher learning in the Republic of South Africa; could you give the Court a brief summary of the history of institutions for higher education in South Africa?

Mr. RAUTENBACH: The first significant Act was that of the British Parliament in 1873 establishing the first university institution in South Africa. That was the old University of the Cape of Good Hope. It was a purely examining and degree-granting institution. Out of that body grew various universities under the Act of 1916. Under the Act of 1916, fully fledged universities emerged, those of Stellenbosch and Cape Town and the third federal university of South Africa, which, at that time, had, I think, seven constituent colleges. Again, these constituent colleges, when they came to maturity, became full-fledged universities in turn and by 1953, more or less, there had been eight fully fledged residential universities and the University of South Africa as a degree-granting and examining body. That is as far as higher education in general is concerned as regards the Whites.

In 1915, a start was made with the Native college at Fort Hare. It actually opened its doors on 8 March 1916 and, as the name signifies, the word "Native" was used in those days, it was a college which was supposed to serve the Bantu. That college actually, that is in sections, served both secondary and tertiary education, secondary and higher education.

In 1923, under the Act, it was declared to be an institution for higher education. In the middle thirties it dropped the secondary part and by 1936 it only retained the university part. Now, this College also prepared students for the examinations and degrees and diplomas of the University of South Africa. Shall I carry on about the history of this College?

Mr. GROSSKOPF: Yes, if you please.

Mr. RAUTENBACH: The College retained that status and in any case special relations emerged in the long run between that College and the

University of South Africa, even as some universities in Africa had special relations with the University of London and still have up to the present moment. This remained up to 1951 when the College was transferred to Rhodes University, situated in Grahamstown, 60 miles away, as a constituent college, *pro tem*, and under the Act of 1959 (a special act) it was changed and became one of the three colleges for Bantu students as from the beginning of 1960. That is the history of the Native College of Fort Hare.

Mr. GROSSKOPF: Were there any other university institutions providing higher education for Bantu students prior to 1959?

Mr. RAUTENBACH: Yes. Up to 1959 all the universities in South Africa were open universities, which means to say that with the approval of Council and subject to the applicant having the necessary entrance qualifications, he or she could enter any one of the universities. There had also been established a private institution of a university type in the vicinity of Pretoria under the name of Kolege ya Bana ba Afrika, which means College of the Children of Africa. That private institution, of which I was a supporter, prepared students for the examinations of the University of South Africa and it was merged into the Bantu College of the North as from 1 January 1960.

Mr. GROSSKOPF: Do you know of any facilities specifically for medical training?

Mr. RAUTENBACH: Yes. In the early fifties a medical school, or a medical faculty, had been established as a faculty of the University of Natal and it was a closed faculty providing for the training of Indian, Coloured and Bantu students in medicine. It is still a closed faculty and it is still part of the University of Natal up to the present moment.

Mr. GROSSKOPF: Now, taking the position as at 1959, could you tell the Court how many Bantu students were enrolled at these various institutions in that year?

Mr. RAUTENBACH: In 1959 the exact number of 300. 300 were enrolled at the Universities of Witwatersrand, Johannesburg, the University of Cape Town and the University of Natal. 491 were enrolled in the Bantu College at Fort Hare and a small number were enrolled in the private institution called Kolege ya Bana ba Afrika.

Mr. GROSSKOPF: Now, Professor Rautenbach, would you express your views as to the merits or demerits of the system and the facilities of university education for the Bantu as they existed prior to 1959? First I should like you to comment, if you will, on the extent of the facilities available.

Mr. RAUTENBACH: The facilities available, as I have already testified, were the facilities of the open university, plus the Bantu College at Fort Hare, plus the University of South Africa, on the purely academic side. But outside of the Bantu College at Fort Hare there were, in 1959, few, if any, residential facilities. In any case, if there were residential facilities these were apart or separate. The state of affairs prior to 1959, or up to 1959, was as follows: in the case of the Bantu College at Fort Hare the student had a complete opportunity of being a student, there only being Bantu, Coloured and Indians so there were no restrictions. In the case of the Universities of Cape Town and Witwatersrand the classes were integrated classes, but outside of that, as regards athletics, social amenities, these were separate. The University of Natal had its own arrangement. This University had internal separation and had separate classes

for its White students, for its Bantu students and for its Indian and Coloured students as a third group.

Mr. GROSSKOPF: To what extent would you say that the Bantu took advantage of, or were admitted to, those facilities?

Mr. RAUTENBACH: They were admitted under certain limitations. In the case of the University of Natal they were not admitted to the Faculty of Science and Mathematics because there were too few places to accommodate students outside the White group. In the case of the other universities, they were admitted subject to certain limitations.

Now, in the case of the Medical Faculty, University of Natal again, Bantu students were then and are still admitted on the basis of, firstly, their matriculation result, their matriculation aggregate; secondly, the points scored in mathematics; and thirdly in English, which is the medium of instruction, and fourthly as a result of an interview to which all students are subjected. So that, subject to there being student places or vacancies, there was a fairly wide range of admission prior to 1959. The limitations were imposed in each case by the university itself, subject to the number of student places and in the post-war period, Mr. President, great pressure was exerted on the universities, as in all countries. After the ex-servicemen had gone through university, by 1953 or 1954, we became aware of the fact that the numbers had not been going down but a new generation had arrived and the result is that great pressure was exerted on the facilities at the universities in the late fifties.

Mr. GROSSKOPF: What influence, if any, did this pressure have on the admission of the number of Bantu students admitted to the universities?

Mr. RAUTENBACH: I certainly think that this pressure limited the number of students admitted to the Medical Faculty at the University of Witwatersrand and the Dental Faculty, because there is a *numerus clausus* as regards these faculties. They can only train a certain number of medical students and dentists in the clinical years.

Mr. GROSSKOPF: Do you think that these limitations affected all students on a basis of equality or not?

Mr. RAUTENBACH: I am not quite clear in my mind as to what you mean.

Mr. GROSSKOPF: As between the Bantu students and the White students for instance?

Mr. RAUTENBACH: Yes, I think that the situation in the open universities was detrimental to the best interests of the Bantu students and I give the following reasons for that.

In the University of Natal where, up to the present moment, Indian, Coloured and Bantu are trained in medicine, the training covers seven years and not six years as in the case of other universities. The University of Natal gives as its reasons the following: the low aggregate for matriculation, the cultural lag, the language lag as regards the medium of instruction, the low marks obtained in mathematics in matriculation and some other related reasons. The result is that in the University of Natal the first year of study is not, as in other universities, devoted to physical science, physics and chemistry and botany and zoology, but the first year is devoted more to what we call "remedial work".

Mr. GROSSKOPF: Now, why is this remedial work necessary?

Mr. RAUTENBACH: The remedial work, according to the view expressed by the committee for selecting students at the University of Natal, must be done because there is a cultural lag, that is the word used there, and a language handicap.

Mr. GROSSKOPF: Now, what do you mean by "cultural lag" and to what do you ascribe it?

Mr. RAUTENBACH: That in general means that in the case of the Bantu he has, as a rule, not yet come from a home where books are often seen or read or from where there is a library, or participation in intellectual life to any great extent. That is a cultural lag—one cultural lag in this respect.

Mr. GROSSKOPF: Mr. Rautenbach, you were commenting on the system of university education, particularly for Bantus, as it existed prior to 1959. Could you tell the Court to what extent did the so-called "open" universities provide facilities for extra-curricular activities of the Bantu students attending them?

Mr. RAUTENBACH: The extra-curricular activities, referring in this case to sport and athletics, social amenities, if there were any, were provided separately. They were not allowed to become members of the various athletic associations—football and tennis, etc.; they were not allowed to participate in inter-university activities of that kind; so that outside of the purely academic there was separation on these campuses.

Mr. GROSSKOPF: Could you tell the Court whether attendance at the open universities had any effects, and if so what effects, on the relationship between the Bantu students attending these universities and their respective communities?

Mr. RAUTENBACH: In general the impression was that attendance at open universities tended towards creating a gap between their own communities and themselves, taking them out of their own sphere and bringing them into a sphere which in many respects was foreign to their own people.

Mr. GROSSKOPF: These various factors you have mentioned, Professor—what effects, do you think, did they have on the number of Bantu graduates produced by these universities?

Mr. RAUTENBACH: The following factors I think limited the number of Bantu students attending the universities: firstly, the number of places at the universities; secondly, the relatively high expense at these universities. I should mention here that in 1959 the Bantu College of Fort Hare, which was a separate institution, had more students than the open universities combined; in other words, the Bantu availed themselves more of the separate opportunity in a separate institution than the opportunities on the open campuses.

Mr. GROSSKOPF: You mentioned the expense; were there any other factors of relevance, you think, as regards the number of Bantu graduates at the open universities, or from the open universities?

Mr. RAUTENBACH: You say the number of Bantu graduates?

Mr. GROSSKOPF: Yes.

Mr. RAUTENBACH: Those actually obtaining degrees?

Mr. GROSSKOPF: Yes.

Mr. RAUTENBACH: No, I cannot think of other relevant matters here at the present moment.

Mr. GROSSKOPF: What demand was there for Bantu graduates?

Mr. RAUTENBACH: There was an ever-increasing demand for Bantu graduates, particularly since more or less 1953, a need so far exceeding the provision and so far exceeding the numbers coming forward that I think educational leaders by the late fifties had realized some other new type of provision should be made. May I mention here that after the

Bantu Education Act of 1953 was implemented as from 1954 onwards, it became clear that no great breakthrough could be made in the sphere of secondary education unless more graduates were coming forward or more teachers trained for teaching on the secondary level, and that was one of the very important matters, one of the very important reasons, why serious effort had to be made to extend the facilities for the training of Bantu, Coloured and Indian, but particularly the Bantu. Secondly, with the implementation of the new dynamic policy for the development of Bantu homelands, economic development, etc., more top-level administrative officials were needed, and these also had to be supplied by the universities. It is generally taken that the universities provide for leadership.

Mr. GROSSKOPF: The comments you passed on the provisions prior to 1959—what solution was proposed for these various criticisms you have mentioned?

Mr. RAUTENBACH: The reply to criticisms and the plan to meet the difficulties are to be found in the University Extension Act, Act No. 45 of 1959, and that is the Act through which the State university colleges were created as from 1960 onwards.

Mr. GROSSKOPF: Which university colleges were created in terms of this Act?

Mr. RAUTENBACH: Four university colleges were created in terms of this Act: the Bantu University College of the North, No. 1; the University College at Ngoye, in Zululand, No. 2; the University College of Natal for Indians; the University College of the Western Cape for Coloureds; and what I mentioned already in my evidence today, the Bantu College of Fort Hare became then the University College of Fort Hare.

Mr. GROSSKOPF: How is the administration of these university colleges organized?

Mr. RAUTENBACH: I take it that by the word "administration" you mean how are these governed, what is the form of governance? According to the Act the university consists of (1) the Council, which is a body corporate; secondly, an Advisory Council, the Advisory Council consisting of at least eight members drawn from the ethnic groups who have an interest in that university college; thirdly, a University Senate advising on instruction and the discipline of students, with its committees, generally called faculties or by other names; fourthly, an Advisory Senate consisting of the Heads of Departments belonging to those ethnic groups and such other lecturers as the Minister appointed to the Advisory Senate; then the Rector as the chief executive officer of the university, and in the Act, as in all Acts pertaining to universities, all the professors and lecturers and members of the teaching staff and students are mentioned as components of such a university college.

Mr. GROSSKOPF: Which students attend these various university colleges? Could you just tell the Court?

Mr. RAUTENBACH: According to the Act, the Minister can determine which ethnic groups shall attend the various university colleges. The University College at Durban is reserved for Indians; the Western Cape for Coloureds; the medical faculty of the University of Natal for Indians, Coloureds and Bantu; the former University College of Fort Hare for Xhosa-speaking people; the University College at Ngoye for Zulu and Swazi and the University College of the North for Sotho-speaking peoples, for Venda and Tsonga.

Mr. GROSSKOPF: Now in addition to those colleges, what other university institutions may be attended by Bantu particularly or other non-Whites?

Mr. RAUTENBACH: All universities may be attended by non-Whites, subject to firstly, the Minister granting permission; secondly, their qualifying for entrance; thirdly, the council of that university allowing them to register and there are at present still, I think, 181 registered at three or four of the full universities.

Mr. GROSSKOPF: Now dealing particularly with the university colleges established particularly for the Bantu people—what is the language of instruction?

Mr. RAUTENBACH: The language of instruction outside of the Bantu languages is English at the present time. In the case of the college for the Coloured, the language is Afrikaans; in the case of the college for the Indians—English.

Mr. GROSSKOPF: Could you tell the Court what the nature and quality of the material facilities at these colleges are?

Mr. RAUTENBACH: The material facilities at the College of the North are excellent—the lecture rooms which I have seen and have often inspected; the laboratories, in fact my university people acted as advisers to the architect in the case of the laboratories; the new library is good. In the case of Ngoye, there are also new buildings; in the case of the College at Fort Hare buildings have been added; in the case of the Indians, they are still housed on Salisbury Island but a beautiful site has been selected in Durban of some 450 acres and they will be getting their new buildings there and they could come in there by 1967; in the case of the Western Cape College, these are also new buildings—the first buildings were erected for teaching up to the first degree, but with the development of the post-graduate level the laboratories had to be extended.

Mr. GROSSKOPF: How would you say these various facilities compare with those of the older universities in South Africa?

Mr. RAUTENBACH: They compare very well, of course, because they are new and when the laboratories were erected, the architect and his advisers visited all the universities to get the latest ideas as regards equipment and building of laboratories, etc.

Mr. GROSSKOPF: What courses are offered at these university colleges?

Mr. RAUTENBACH: The university colleges started off chiefly with courses in the faculty of letters and philosophy, the faculty of arts as it is also known, the faculty of pure science and mathematics and the faculty of education. Although in the case of Ngoye there were only two faculties at the outset, letters and arts, and education, a third has been added. In the case of Fort Hare, divinity has been added and a full legal faculty has been established leading up to the LL.B. degree—that is the degree taken after the first degree. All in all, I think there are about 58 subjects taught at these colleges, all subjects, taught anything from one to three years, so that student courses I suppose would amount to something like 240 or 250. Now in my own university there are just over 925 student courses, but, of course, this is very much older, and courses are being added from year to year.

Mr. GROSSKOPF: Now, there has been reference from time to time to the training of engineers—could you tell the Court what facilities are available for training of Bantu engineers?

Mr. RAUTENBACH: The facilities available in South Africa at present

are the facilities attached to the White universities at Cape Town, Witwatersrand, Natal, Pretoria and Stellenbosch. These are the only facilities for graduate training in engineering, for training of engineers to acquire a degree, and students could attend these if the Minister were to allow them to do so. According to the statistics I obtained, the Minister did give permission to one student in 1962, and I made further enquiries and it became clear it was a post-graduate course he intended attending. There were a number of applications for attendance at open universities, and where the science faculties of the Bantu colleges provide the training for the first year of engineering, physics, chemistry, applied mathematics, etc., the Minister referred these applicants to these various colleges. A survey was made at one time as to the need for instituting training for engineers at the Bantu colleges. It was found that five Bantu students intended taking up engineering as a career but before any real serious preparations could be made as from the second year onwards, these applicants had already selected other professions. I only know of one trained civil engineer, a Bantu, in South Africa and he has left South Africa for Swaziland recently.

Mr. GROSSKOPF: Now proceeding to the staff of the university colleges, could you first tell the Court how the staff is appointed?

Mr. RAUTENBACH: The staff is appointed, Mr. President, after applications have been solicited and these are advertised in many papers for some time, perhaps a month. Then a selection committee is appointed by the principal, consisting of the head of that department or a closely related department, the head of the opposite number in the University of South Africa, one or two experts drawn from other universities. This committee for selection then lays its report before the senate of the university college concerned. The senate then makes a recommendation to the university council and the council then makes a recommendation to the Minister. The process then is—the post is advertised, the committee of experts is appointed, the committee of experts recommends to senate, senate to council, council to the Minister, and the Minister makes the appointment.

Mr. GROSSKOPF: Now what is the quality of the staff that has been obtained?

Mr. RAUTENBACH: The quality of the staff is excellent. Many of the members of staff hold doctorates of universities of the Continent, American universities, British universities, South African universities. I have even found that in one department, there are three out of five members of the teaching staff holding doctorates, others hold master's degrees or honours degrees, more than one master's degree and others hold bachelor's degrees, but these are usually appointed to junior lecturships until they improve their qualifications and then they are promoted to higher posts.

Mr. GROSSKOPF: To what extent has it been possible to make use of Bantu intellectuals in staffing these university colleges?

Mr. RAUTENBACH: At the outset, we refer to 1960, a survey was made of the available Bantu academics, or men and women of promise, and a number were selected, but none was appointed to a higher post than a senior lecturer and none was appointed at that time to the headship of a department. Since then, the following has happened. In the Bantu College at Ngoye, of the 50 members of staff, nine are now Bantu, one holds the rank of professor and head of a department. Of the 69 members

of the teaching staff at the University College of the North, 12 are Bantu and, of these, two are heads of departments, one with a rank of professor and the other senior lecturer and, in the case of Fort Hare, of the 89 members of staff, 15 Bantu have been appointed and, of these, one is professor and I think there are a number who are heads of departments with the rank of senior lecturer.

Mr. GROSSKOPF: Now, Professor Rautenbach, you have testified about the cultural life that influences the performance and admission of students at the old open universities. To what extent is attention given to that in these new colleges?

Mr. RAUTENBACH: Attention is given to that in these new colleges at the present juncture, by the very fact that the numbers are small and, in dealing with small numbers of students (comparatively small numbers) and with a very favourable staff-student ratio, it is possible to give more personal and individual attention to students than where you have large numbers, such as at my own university. Secondly, the men and the women who teach in these universities get to know how to present the material or the subject-matter in such a way that learning becomes more efficient. One should bear in mind, Mr. President, that these students are still prepared for an external examination and the external examination is the same as that taken by thousands of White students, and the teacher, lecturer, or professor has to keep on his toes in order to get a fair number of passes in his class, so he has got to adjust his teaching to that kind of lag, and may I qualify "cultural lag" by saying that it is the intellectual cultural lag, it is not a lag in other spheres. Cultural lag does not mean an inferiority, by the way, it simply means that owing to environment there will be less advantages accruing to that individual than to others.

Mr. GROSSKOPF: Will you tell the Court what attention is given to these students? How do the pass rates compare, in fact, with those elsewhere?

Mr. RAUTENBACH: They compare very favourably. The first year is regarded as the most difficult year in South Africa and all over the world. In 1961, 1962, 1963 and 1964, in only one year was the first year pass rate under 60 per cent. The average is slightly above 60 per cent., which is the same as at my university. At my university it is a steady 62 per cent. It is just over that, I think. It is just about that—the average over the first five years.

As regards the second and third years, I can also give you the statistics. It is the same. Now degrees in South Africa, Mr. President, are three-year degrees—the first degrees, B.A. and B.Sc.—not four years as in the case of America. It is very much the same as at my own university—75, 76 per cent. in the second year and over 80 in the third year.

Mr. GROSSKOPF: Professor Rautenbach, how do the fees at the university colleges compare with those in the other universities?

Mr. RAUTENBACH: In no case does the composite fee (the composite fee in this case meaning a fee including both residential facilities and teaching) exceed £100 (the equivalent of £100 English). In the case of the European universities, both board and lodging itself is about £150 to £160 English and the tuition fees apart may be anything up to over 100 guineas each per annum. As regards other African States, in Liberia, or I think, Nigeria and others, the composite fee there is the equivalent of £165 English and upwards. It is, thus, half of that in most African countries.



Mr. GROSSKOPF: What facilities are available for financial assistance or scholarships, or things of that sort?

Mr. RAUTENBACH: Government bursaries and government loans are provided. Besides, private firms, municipalities and other bodies, such as the Shell Oil Company, have come forward with loans, scholarships, bursaries and prizes and, in the case of some of the colleges, the number of bursaries and loans available exceed the number of students and that is, of course, a very favourable situation.

Mr. GROSSKOPF: You told the Court that, prior to 1959, in the open universities there were few facilities for extra-curricular activities of Bantu students. Could you compare the position with the new Bantu university colleges in that respect?

Mr. RAUTENBACH: Yes. In the new Bantu colleges, the student is in the same privileged position as the White students are in their universities and university colleges, enjoying a full life, enjoying a full academic life and also in the extra-curricular and co-curricular sphere—debating societies, literary societies, scientific associations, sport and athletics, a student is a whole man or a whole woman on his own campus.

Mr. GROSSKOPF: How does the number of students in the new Bantu colleges compare with the number of students previously enrolled at the open universities?

Mr. RAUTENBACH: As I testified earlier this afternoon, the number at the open universities in 1959 was precisely 300. The number at the colleges today is 1,107, minus 181—that is, somewhat over 900—940 or 950. There are 950 students more or less at these three colleges for the Bantu ethnic groups.

Mr. GROSSKOPF: And how many Bantu students are there at other university institutions?

Mr. RAUTENBACH: As I just mentioned, there are still at the present moment 181 in the three universities Johannesburg, Cape Town, and Natal, and the Natal students, of course, include the 80 students in the medical faculty. Then, the number is given in the statistics of the University of South Africa as being 1,500—just over 1,500 this year, but I think that includes the degree students at the Bantu university colleges, who would probably be in the neighbourhood of 700-800, the others being diploma students.

Mr. GROSSKOPF: What would your projection be of the number of students in these institutions over the next number of years?

Mr. RAUTENBACH: The projections which have been made so far are as follows for the Bantu. That, in the case of the Bantu College of the North, in Ngoye and Fort Hare the expected increase is somewhat more than double the present number in the first five years and, with the doubling of the numbers again to 1975, and again doubling the numbers to 1980. So that by 1970 the projection there will then be close on 2,000 students; by 1975, 4,000 and, by 1980, 8,000.

Mr. GROSSKOPF: On what is this projection based?

Mr. RAUTENBACH: In one case a mathematical formula was used. In the other cases, I think commonsense was used and a study of the number of secondary school pupils, the gradual increase in the number of primary school pupils, these going on to secondary schools and then the steep rise, which is now taking place in the number of matriculants. There has been a sudden, steep rise in the number of matriculants. The matriculation is the entrance examination to universities and in 1964

the indications are that we have this steep rise continuing for many years to come.

Mr. GROSSKOPF: You have already testified that by 1959 there was a substantial demand for Bantu graduates. What is the position at the moment?

Mr. RAUTENBACH: There is an ever-increasing demand for Bantu graduates in every sphere.

Mr. GROSSKOPF: Do you know whether those who have been graduated have succeeded in obtaining gainful employment?

Mr. RAUTENBACH: Yes. Every one of these has succeeded in obtaining gainful employment. Of course, the Bantu colleges have selected the best of these to appoint them to posts in the colleges themselves because they are the future academics.

Mr. GROSSKOPF: Professor, what role do these colleges play in the community life of the various communities?

Mr. RAUTENBACH: Mr. President, I am best acquainted with the Bantu College of the North, which I visit, as Chairman of the Council, from time to time. I also attend public events there, graduation ceremonies, visitors' days, prize-giving days and occasions of that nature on that campus, and these events are attended by the Bantu from the neighbouring township, from Pietersberg and from the Bantu area in which it stands. The University College is next door to the headquarters of the Commissioner-General, and when the headmen or Bantu leaders come for a meeting there, as a rule they also visit the College. It is near one of the main roads in the Transvaal and it is visited by many people. Recently we had a visit there of, I think, 76 Bantu headmen, coming from South West Africa.

Mr. GROSSKOPF: To what extent do you think these colleges are being accepted by the various communities?

Mr. RAUTENBACH: To my surprise and gratitude, they have already been accepted. In this respect, that the students are regarding this particular college as their college, or identifying themselves with that, their college, the Bantu College of the North. The Advisory Council has already shown that they accept it as their college. The Advisory Council consists of Bantu intellectuals, of Bantu chiefs or leaders, and some of the members of the Advisory Council have given gifts in kind to University College. One man, Lekhanjane, has donated a scholarship, or at least a sum of money of 1,000 rand, which is the equivalent of £500 English, for Bantu students.

Mr. GROSSKOPF: Have any other gifts been received?

Mr. RAUTENBACH: Yes, from the Johannesburg municipality, from the Pietersburg municipality, the local governments, from the Shell Oil Company, from Von Schaik's bookstore in Pretoria and a number of other private undertakings of an industrial or commercial nature.

Mr. GROSSKOPF: Professor, do you see any value in the intellectual contacts on the staffs of these Bantu university colleges between the various groups represented there?

Mr. RAUTENBACH: Yes, on the campus of the Bantu College of the North there is association as between the White members of staff and the Bantu members of staff. There is intellectual association. They meet. They come to know each other. They come to appreciate each other. I think they come to know each other's problems. I think there is great advantage in this association. In fact, Mr. President, I have, myself,

gained a good deal of knowledge for my own work in advising the government on education from association with the Professor of Practical Education at the Bantu College of the North, Professor Kgnari, whom I have often<sup>1</sup> met in his office.

Mr. GROSSKOPF: Professor Rautenbach, could you tell the Court whether the principles applied in these Bantu colleges correspond with principles advocated in other parts of the world?

Mr. RAUTENBACH: May I have some clarity on that question? What do you mean by principles? Principles of teaching or training or . . . ?

Mr. GROSSKOPF: You have explained to the Court that at these universities attention is given to the particular attributes of the students and the particular association with their communities. To what extent are these factors also recognized in other parts of the world?

Mr. RAUTENBACH: I think it is part, although every university has something of a local or national character, there is something which every university has in common with every other university in the world and these broad general principles are accepted and applied at Turfloop and at the other colleges, the broad general principles.

Mr. GROSSKOPF: And as far as their specific implementation is concerned in an African context?

Mr. RAUTENBACH: As far as their specific implementation is concerned in an African context, I think that is also done there. There is a strong department of Bantu languages and with the exception of the Professor—Professor Endemann—the other four members of his staff are Bantu from the various ethnic groups. So that on the staff itself something of the best, I think, in Bantu life in these ethnic groups is present on that campus and these gentlemen, these members of staff, act as a kind of go-between as between the Rector, Professor Potgieter, and the Bantu students. It is of great assistance to Professor Potgieter, in guiding his university, to have at his elbow Bantu intellectuals, who can interpret many problems of the Bantu and can make him acquainted with their particular angle or their usage, or their custom, although Professor Potgieter himself is a trained social anthropologist. But after all it requires a man from that very group to bring forward the finesse of that group.

Mr. GROSSKOPF: Do you know, Professor, whether any other authorities have emphasized the importance of attuning university education to the needs of African societies?

Mr. RAUTENBACH: Mr. President, yes. Since round about 1962, the middle African States started studying higher education with a view to the future. A first meeting was held in Addis Ababa, in Ethiopia, and the next meeting was arranged for Madagascar, Tananarive; but in between, as a preparation for this further meeting on higher education in the African States, a Committee was appointed to prepare a report. The leader of this committee was Professor Carr-Saunders of London University; President Weeks of the University of Liberia was one of the people to assist him and help him and also Monsieur Capelle of the French Ministry of Education. These three gentlemen prepared a report for the meeting at Tananarive in Madagascar and in an article written after the meeting, making reference to what happened at that meeting, we find that Carr-Saunders writes as follows on this subject . . . May I read that?

<sup>1</sup> See p. 396, *infra*.

The PRESIDENT: Is it a particular excerpt with which you agree, Professor?

Mr. RAUTENBACH: Yes, it is an excerpt with which I agree.

The PRESIDENT: And which your experience qualifies you to express an opinion upon as to whether it is correct or not?

Mr. RAUTENBACH: Yes, it is correct. I agree entirely with this statement. Shall I read it, Mr. President?

The PRESIDENT: Please do.

Mr. RAUTENBACH: May I just look for it for a moment? One of the statements is the following:

"African universities are still small with consequential high overhead costs and a policy which diverts students . . ."

The PRESIDENT: Yes, Mr. Gross?

Mr. GROSS: May I ask what page the witness is reading from?

The PRESIDENT: Yes, certainly. What particular page is it that you are reading from?

Mr. RAUTENBACH: I think there is a photostatic copy which has been made which could be handed in, or I could use that. That was the original.

The PRESIDENT: If you would give the pagination from the original. Perhaps you could do so, Mr. Grosskopf, yourself, can you?

Mr. GROSSKOPF: If I could just pass the pamphlet?

The PRESIDENT: Very well, let the witness see the original and give the pagination.

Mr. RAUTENBACH: First, it is page 12 of this brochure, *Starting African Universities* by A. M. Carr-Saunders.

The PRESIDENT: You have that, Mr. Gross?

Mr. GROSS: Yes, sir.

Mr. RAUTENBACH: And the first reads as follows:

"The calculations made in the previous section were based on the assumption that so far as African students studying overseas were concerned there would be no increase in their number. Why was this assumption made? It was not because overseas countries have shown any reluctance to take more African students; indeed, the United States is disposed towards generous help for them. It is because of the attitude taken by the African States as set out in the resolution adopted at the Tananarive conference. That resolution stated that: 'There is a strong feeling in favour of students' completing their undergraduate studies in their home countries. It is essential for young Africans to acquire deep enough roots in their own cultural and social environment during their formative years before coming into contact with strong outside influences.'"

That is one quotation, and the other is on page 23. This relates to the difference in salaries, but the reason advanced here is this:

"The principle that children and adolescents are best educated in their own country has been discussed in relation to Africans. It also applies to expatriates."

The PRESIDENT: It also applies to what?

Mr. RAUTENBACH: To expatriates. That is a new name which has been given, Mr. President, to people sojourning for the time being in African countries in a teaching capacity and who have no tenure but are expected to stay there at the present time for not more than seven years. There is also another quotation coming from this pamphlet:

"African universities are still small with consequential highoverhead costs, and a policy which diverts students to other countries and so slows down the growth of African progress is disadvantageous. Again, overseas scholarships are likely to fall to the abler students to the impoverishment of the student body at home. More generally, it can be said that the urgent task is to build up African universities with all speed, for on them so much depends. [And then just to have the whole argument] Universities in other countries cannot be substitutes for home universities."

The PRESIDENT: Mr. Gross?

Mr. GROSS: Could I just have the page of that, Sir?

The PRESIDENT: Yes, certainly; just give the page of that, please, Professor.

Mr. GROSSKOPF: Perhaps, Mr. President, we could give the page number in a minute and Professor Rautenbach could continue his evidence in the meanwhile.

Mr. RAUTENBACH: I marked it, Mr. President, in the other publication, *Minerva*, of 1963. I marked it in that and not in this.

The PRESIDENT: If Mr. Grosskopf undertakes to let Mr. Gross know the pagination before we leave at 6 o'clock, you may continue with the Professor's evidence.

Mr. GROSSKOPF: I will do that, Mr. President. That was then the opinion of Carr-Saunders and you have indicated that you agree with it in its entirety—with the views expressed there?

Mr. RAUTENBACH: That was the opinion of Carr-Saunders, substantiated by the resolution of the African States at Tananarive.

Mr. GROSSKOPF: Now, have similar views been expressed by other persons?

Mr. RAUTENBACH: Yes. The first time I met these views was in the *British Universities' Quarterly* of September 1958. An article was written there under the title "The Idea of an African University" by Hodgkin—that is T. Hodgkin. He expressed the following . . . Mr. President?

The PRESIDENT: Have you got the document, Mr. Gross?

Mr. GROSSKOPF: Could you give the reference to that, Professor?

The PRESIDENT: Have you got the document, Mr. Gross?

Mr. RAUTENBACH: If you could pass on one of these things, where I could find that? I have brought along the whole of the article which I quoted in one of my articles. I did not note the page.

The PRESIDENT: Mr. Gross? Pardon me, Professor, Mr. Gross?

Mr. GROSS: In order to save the Court's time, Mr. President, if it could be made available at the conclusion of the session . . .

The PRESIDENT: Yes, certainly, that could be done, could it not, Mr. Grosskopf?

Mr. GROSSKOPF: That could be done. Will you continue please, Professor Rautenbach?

Mr. RAUTENBACH: There, Hodgkin writes as follows:

"I could argue that the question, what can Africans reasonably demand of their universities, can no longer be answered by saying, quite simply, an education of essentially the same type and standard as is provided in those European universities which have been accepted as models. This is principally because the climate of African opinion on such matters has changed and is changing. In a

variety of fields, the policy of identity, or, as it is sometimes termed, assimilation has been rejected. The attitude of many, probably most, African intellectuals, North of the Equator at any rate, is that where institutions have been borrowed from Europe, they must in the nature of things develop specifically African characteristics."

And then, shall I continue?

Mr. GROSSKOPF: If you please.

Mr. RAUTENBACH: I also quote here, Mr. President, from Sir Eric Ashby's opening address on the occasion of the Commonwealth Universities Conference, London, 15 July 1963, which I attended myself. It is to be found in the Report of the Commonwealth Universities Conference, 1963. It is also to be found in *Minerva*. Sir Eric Ashby said the following: "The Asquith Commission, which laid down in 1945 . . ."

The PRESIDENT: Mr. Gross?

Mr. GROSS: I am sorry, Mr. President, but these quotes apparently are regarded as of sufficient value to be put into the record. I wonder whether I could have the citation and page—where it is published and any other information?

The PRESIDENT: Where was it published and who is Sir Eric Ashby so that we may know something about the person whose views you are quoting?

Mr. RAUTENBACH: Mr. President, must I tell the Court who Sir Eric Ashby is?

The PRESIDENT: Well, I think it would be useful.

Mr. RAUTENBACH: Sir Eric Ashby is at present Master of Clare College, Cambridge. Sir Eric was Professor at London University, then went to Australia. After his war service in World War Two he was appointed Scientific Attaché in Moscow. He returned from Moscow and he became Principal and Vice-Chancellor of the University of Belfast, Northern Ireland and now, for about six years, has been Master of Clare College, Cambridge.

The PRESIDENT: That will be enough I think. Perhaps you might now give Mr. Gross the actual title of the pamphlet you are quoting from, or the address that he made and the page so that Mr. Gross may have occasion to be able to refer to it overnight.

Mr. RAUTENBACH: The title is "The Diversity of Universities" and, as I say, it is in the Report of the Congress and it is also to be found in *Minerva*, but I could not quote that, Mr. President.

Mr. GROSSKOPF: Perhaps we could follow the same course, Mr. President, and give the references to Mr. Gross.

The PRESIDENT: The page number will be given to Mr. Gross. Very well. Have you completed your quotation yet, Professor?

Mr. RAUTENBACH: Thank you, Mr. President.

Mr. GROSSKOPF: Have you read your quotation yet, Professor?

Mr. RAUTENBACH: Yes, I am through with that.

Mr. GROSSKOPF: Good. Are there any other similar views that you could refer the Court to?

Mr. RAUTENBACH: No. These views are of such importance coming from Africa, from the people who are involved with us in this matter, that I would hardly go outside Africa for opinions of this kind.

I can also quote, if necessary, a meeting of the United Nations Organization.

Mr. GROSSKOPF: Which one is that?

Mr. RAUTENBACH: That is the one held in Geneva and the date, I think, was 1963. I have the text before me: it is General Session K, Training of Scientific and Technical Personnel.

Mr. GROSSKOPF: And what is the publication from which you are quoting?

Mr. RAUTENBACH: I found it in one of the university publications from overseas—the whole was quoted in this and it is a United Nations publication. I have the whole thing before me. The extract was made as a whole and there is some reference here. It can be obtained in The Hague.

Mr. GROSSKOPF: If you have the text before you, Professor, perhaps you could just quote the passage you wanted to quote and give the page of that publication from which you are quoting?

The PRESIDENT: So long as you let Mr. Gross know precisely where the document is to be found, whether it is this document or the original or a copy of the original I should say.

Mr. RAUTENBACH: Yes, well all I can add is that there is a footnote here to the effect that this can be obtained in The Hague and is on page 356 of this booklet I have before me.

The PRESIDENT: What is the name of the booklet?

Mr. RAUTENBACH: The name of the booklet is *Universiteit en Hogeschool*, which is Dutch for "University and High School" and is the official publication of the Netherlands Universities—the universities of this country.

The PRESIDENT: You may as well give us the quotation now.

Mr. RAUTENBACH: The quotation here is on this page and there is this Committee of the United Nations, Special Session K/23, Specialized Programming for Training at Higher Technical Institutes and Universities. This refers to developing countries.

"By attending the good universities of more advanced countries, etc., the students can acquire the necessary knowledge. The main disadvantage of such a programme is that a rather long stay in countries with a different way of life, different possibilities of work and different available means, will instil them with ideas and habits which will not let them readjust themselves to their original social environment."

The PRESIDENT: Mr. Gross?

Mr. GROSS: Mr. President, is the witness, may I inquire, reading an English translation of the original Dutch work?

Mr. RAUTENBACH: No. According to this publication, it is the original English.

Mr. GROSS: Thank you.

Mr. RAUTENBACH: The introduction is written in Dutch, but the rest is quoted from the English.

The PRESIDENT: Yes, Mr. Grosskopf?

Mr. GROSSKOPF: Now, Professor, I just want to make it clear that these various passages you have read are in addition to similar ones which are found in the Counter-Memorial. Is that so?

Mr. RAUTENBACH: That is so, Mr. President.

Mr. GROSSKOPF: And do you agree, in general, with the views expressed in them?

Mr. RAUTENBACH: I agree completely with the views expressed, yes.

Mr. GROSSKOPF: Finally, Professor, I should like to ask you your opinion as to what would happen if the present differentiated provisions for university education were abolished. Firstly, I would ask you what your views would be as to what would the results be if there were no institutions specially attuned to the needs of the Bantu?

Mr. RAUTENBACH: If the policy were to be reversed, in other words, the old type of open university would become open again in that sense, we would not only be back where we were in 1958, but we would be saddled with a number of new problems. Since 1960 the students on these various campuses and, I think, the members of the staff, Bantu, Indian, Coloured, have led a much fuller life than was possible prior to 1959, both in the purely academic, in the co-curricular and in the extra-curricular. They have become aware of their rights, they have become more acutely conscious of their aspirations and the only alternative to the present would be not to return to 1959 but an entirely new set-up and that is the completely integrated university. And with a completely integrated university more problems will arise than we have ever had before.

Mr. GROSSKOPF: Why do you say that, Professor?

Mr. RAUTENBACH: Because the cultural lag, and it is the intellectual part of the cultural, and the language lag has not changed considerably. The handicap will still be present there. If Bantu students were now to enter the medical faculties at other universities they would have to compete for the places there, unless you have a *numerus clausus*, with White students because it is a matter of entering on merit. The experience in Natal has been, and is at the present moment, an unfair type of competition, and whereas the seven years' training in Natal has proved to be very satisfactory, at the end of that period the external examiners for the medical students of Natal University come from the White universities, from their own universities, and they have found that they apply the same standard in the final examinations that they use in Cape Town, Johannesburg, Pretoria or Stellenbosch. They pass on the same standard and are registered with the same Medical Council.

Now, if we were to return to what we had before 1959, and if every university became an open university, that one special provision, which has been made to overcome this temporary cultural lag, will fall to the ground with all its results.

Furthermore, groups, who have become more group-conscious in the meantime, and they have a right to become more conscious, on the same terms will create a number of new problems for any chief executive officer of a university.

Mr. GROSSKOPF: Now, that is your view as to what would happen if the differential universities were entirely abolished. Could you express a view as to what would probably happen if the present university colleges were retained, but if students were permitted an unfettered choice of attending any university they liked?

Mr. RAUTENBACH: Mr. President, that is a matter of opinion, but the climate—the whole intellectual climate of the world—has changed to such an extent that these things no longer happen in the ordinary, natural way that every man follows his own bent. There is so much provocation from the outside, so much organization, that a number of problems would be created. These institutions for the Bantu, which we are trying to build up in every respect to be the equal of university in-



stitutions elsewhere, will no longer have the sole right to get the best of the Bantu intelligentsia and the result is, I am afraid, that we would no longer be able to have what we had in 1959 where the majority, even with the open universities at that time, went to the Bantu College at Fort Hare. I am afraid that if we were to reverse the policy these Bantu colleges would survive, but without this dynamic growth, this vigour, which they display at the present moment, particularly if scholarships and bursaries are offered to withdraw the able students from those university colleges.

Secondly, you could not retain the best staff if the best type of student does his post-graduate work elsewhere. It is one of the attractions in a university to be able to teach and train men and women at the post-graduate level. So I am afraid we will get very few advantages and we will solve fewer problems than we create and I do not think that the Bantu communities which are being served by their own men and women will be as well served by those who, to some extent, cut loose from their own communities. As the representatives of the African States said at Tananarive two or three years ago, one can substitute the word "overseas" for White, Bantu for African and then you get the same picture.

Mr. GROSSKOPF: I have no further questions.

The PRESIDENT: Mr. Gross?

Mr. GROSS: Yes, Mr. President, I would like to cross-examine, Sir.

The PRESIDENT: Certainly, please do so.

Mr. GROSS: Yes, Sir. Dr. Rautenbach, I will question you for the remaining portion of this session from my notes and if I unwittingly misquote you or distort what you have said, please correct me if you will, Sir.

You testified, I believe, Dr. Rautenbach, that your knowledge of circumstances in South West Africa was obtained by reading and study. Is that correct, Sir?

Mr. RAUTENBACH: That is correct, Mr. President.

Mr. GROSS: Could you cite any authorities on whom you relied in reaching your conclusions with respect to the educational problems of the Territory, Sir?

Mr. RAUTENBACH: As regards the educational problems of the Territory, I read the report submitted by Dr. Van Zyl who headed that Commission in 1958 or 1959; I have read the Odendaal Commission's report, I have read Professor Wellington's survey of the whole South West African situation, as published in *Optima* . . .

Mr. GROSS: What was that name, Sir?

Mr. RAUTENBACH: Wellington. Professor Wellington of the University of Witwatersrand. He wrote an article in *Optima* with a view to this court case at The Hague, just to give general background information on South West Africa.

Mr. GROSS: In your testimony with respect to the situation in higher level education in South Africa, I take it that the undisputed facts of record are familiar to you with respect, for example, to the number of students enrolled in South West Africa at various levels of the secondary school—are you familiar with those figures?

Mr. RAUTENBACH: Yes, I am familiar with the percentage and some of the figures, in a general way.

Mr. GROSS: I was referring, among other things, specifically to the table LXXXXVI which is on page 255 of the Odendaal Commission report.

Mr. RAUTENBACH: I have it before me.

Mr. GROSS: You will note at table LXXXXVI the Standard IX—this is for the year 1962, as you will note—has four persons enrolled, and Standard X three persons enrolled—this is for the year 1962 in all of the Territory of South West Africa?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Do you have any question about the accuracy of that figure?

Mr. RAUTENBACH: No.

Mr. GROSS: It is true, is it not, that the completion of Standard X is a necessary prerequisite for admission to university in South Africa?

Mr. RAUTENBACH: It is partly true, in so far as Standard X by itself does not give access, but the Standard X which provides matriculation—there are two examinations; the one is a school-leaving, not providing access, and the other is a matriculation, which does provide access.

Mr. GROSS: So that if I understand you correctly two examinations are required, but completion of Standard X is a requirement in itself, is that right?

Mr. RAUTENBACH: Yes, it is after the twelfth year of schooling, which means Standard X, one does go on to university.

Mr. GROSS: And with respect to the enrolment figures in higher education—I refer to the Counter-Memorial, III, at page 474, which is the Respondent's pleading—and I shall just read these figures across the line, with the introduction as follows in paragraph 21:

“Over the years 1960 to 1962 the number of students who attained the necessary qualifications for admission to a university was as follows:

	1960	1961	1962
Native	1	2	2.”

Finally, just to set the picture, it is true, is it not, as is stated in the first sentence of paragraph 21 on this page: “There are no facilities in South West Africa for higher education”—that is correct?

Mr. RAUTENBACH: That is correct.

Mr. GROSS: Reverting now to the authorities whom you have read and upon whom you have relied in reaching your views with respect to the higher level education problems in the Territory, you referred to Dr. Van Zyl's report—that was, I think, was it not, the 1958 Commission of Enquiry to which Dr. Van Zyl has testified in these proceedings?—and the Odendaal Commission report itself; do you have any other basis of knowledge or expertise of any kind with respect to conditions in the Territory, except for the documents and authorities you have cited?

Mr. RAUTENBACH: No.

Mr. GROSS: Have you ever visited the Territory?

Mr. RAUTENBACH: No.

Mr. GROSS: In connection with the responsibilities of your committee—I refer to you now as Chairman of the National Advisory Committee on Education—I believe you testified, did you not, Dr. Rautenbach, that it was the function of that committee, among other things, to advise regarding education policy and to co-ordinate education policy, excluding higher education—is that correct?

Mr. RAUTENBACH: No, it is not quite correct—I said for the Republic as a whole.

Mr. GROSS: For the Republic as a whole. Does that exclude problems arising in South West Africa?

Mr. RAUTENBACH: It does exclude, by law, problems arising in South West Africa, with this proviso: that for the Director of Education of South West Africa it is an open matter to associate with my council on a voluntary basis; he visits us, and he is a guest, and if he wishes to bring anything forward relating to South West Africa, he may do so; and he is actually a kind of assessor-member of my council, but South West Africa is excluded. We had a ruling laid down by the Minister of Education, Arts and Science that South West Africa is excluded from the sphere on which we advise directly.

Mr. GROSS: With respect to another committee on which you serve, the National Council for Social Research, you are Chairman of its General Purpose Committee, is that correct?

Mr. RAUTENBACH: That is correct.

Mr. GROSS: What function, if any, does that have with respect to affairs or events in South West Africa?

Mr. RAUTENBACH: It may have a relation with South West Africa in so far as this council allots funds for research, and if there is anything in educational or social research especially relating to South West Africa—at least, we allot monies for research in the whole—that includes South West Africa. A student for a Ph.D. Degree, for instance, a Doctor's Degree in Education, may conduct research in South West Africa, and if he applies for a grant to this council, then we may give a grant; so it is only an indirect relation.

Mr. GROSS: How many members are there of the National Advisory Council on Education?

Mr. RAUTENBACH: Twenty-nine, including myself as Chairman.

Mr. GROSS: Are they all classified as White under the South African census?

Mr. RAUTENBACH: They are all classified as White.

Mr. GROSS: How large a staff does that council have?

Mr. RAUTENBACH: The council has a small staff directly available in the form of a Secretary, an Assistant Secretary and three or four others, but the council has at its elbow the services of the whole Department of Education, Arts and Science whenever we need administrative officials, and so on; that is now the National Advisory Education Council.

Mr. GROSS: This is the National Advisory Education Council?

Mr. RAUTENBACH: Yes.

Mr. GROSS: The omission of non-Whites from the membership on the council is a matter of policy, is it—State policy, or council policy, or both?

Mr. RAUTENBACH: It is a matter of State policy, but may I complete the picture?

Mr. GROSS: With respect to the council itself?

Mr. RAUTENBACH: With respect to the council itself, yes.

Mr. GROSS: If the Court wishes.

Mr. RAUTENBACH: The Act in no way limits the advice given by the council to European education only, and as a matter of fact the Government has asked the council in October 1963 to bring forward recommendations to co-ordinate the education of all national groups with the changing economy, and it was mentioned in my *curriculum vitae* that I also preside over that. And then there is a Bantu Advisory Education

Committee, and there is a Colour Advisory Education Council, and the reports of the Colour Council are sent to us, and also the Bantu Council.

Mr. GROSS: Now, with respect to the council itself, to which I wanted to confine my question for a moment, of which you said there are 29 members, does the function of this council with respect to the Republic as a whole deal with Native or Bantu, Coloured and White education affairs?

Mr. RAUTENBACH: I have already stated that the Act simply states co-ordination—to enunciate the general principles of education for the country as a whole—without mentioning Whites.

Mr. GROSS: And in practice, and in operation, do you deal with all the ethnic groups—Whites, etc.?

Mr. RAUTENBACH: When the Minister concerned, the Minister of Bantu Education, through the Minister of Education, Arts and Science approaches the council, then we deal with that; I have already said that a Committee of Cabinet, which means the Government, did approach this council to deal with all the groups in connection with this matter of the co-ordination of their education with the changing economy and wider provision for technical education for all groups—that was clearly stated in our directive.

Mr. GROSS: So that if I understand the answer correctly, the council does on occasion deal with education problems pertaining to all of the ethnic groups in the Republic?

Mr. RAUTENBACH: In the Republic.

Mr. GROSS: Yes. Could you explain to the Court whether the reason why there are no non-Whites among the 29 is based on anything other than a racial criterion?

Mr. RAUTENBACH: Yes; I do not think it is based on a racial criterion, it is based on the fact of South Africa giving domicile to a collection of communities, and these communities are not simply separated by way of race, they are also separated by way of ethnic group—ethnic group, where people belong more or less to the same race.

Mr. GROSS: Then if I asked you whether the exclusion of non-Whites from membership on the council is based upon ethnic considerations, would you have a different answer to my question?

Mr. RAUTENBACH: I cannot get that quite clearly.

Mr. GROSS: I will state it more simply, if I may, Mr. President. Is there any reason other than an ethnic one why there are no non-Whites on the council?

Mr. RAUTENBACH: Yes, there is this reason, which is part and parcel of the whole policy or programme, and that is the different levels of development.

Mr. GROSS: Do you mean to say that there is no non-White in South Africa who is at a level, culture or language, which would not qualify him as an individual for membership on the council?

Mr. RAUTENBACH: No, I have never said that, suggested that or believed that, but a member of the council has to deal with a group, and Professor Kgnari Turfloop, who is Chairman of the Bantu Council, deals with Bantu education, advises the Minister of Bantu Education; and it is not a matter that he is neither a fit nor suitable nor able person to sit with us—he could sit with us. As regards intellectual equipment he is the equal of many of my colleagues, if not their superior.

[Public hearing of 5 October 1965]

Mr. GROSS: Would you advise the Court what is meant by, in your statement, "Professor Kgnari of Turfloop, who is Chairman of the Bantu Council"—the Bantu Council in this context refers to what?

Mr. RAUTENBACH: The Bantu Council refers to the Bantu Advisory Committee, the Advisory Committee on Bantu Education. It is the opposite number of the body of which I am Chairman; where my council is the National Advisory Education Council, this is a council specifically instituted for a committee or a body to advise the Minister of Bantu Education on Bantu education.

Mr. GROSS: I see. When you say in your testimony that he "could sit with us", what did you mean by that?

Mr. RAUTENBACH: That was in reply to your question whether, in the whole of South Africa, there was no man who had the civilization, the culture, to be able to sit with us—that was my reply to that, in estimate of the man's abilities—his intellectual abilities, his cultural development, etc.

Mr. GROSS: I see. I do not mean to pursue this at too great length, but just for clarification could I refer to page 348, *supra*, of the same verbatim record at which, in response to a question by me whether there was any reason other than an ethnic one why there were no non-Whites on the council, your response was: "Yes, there is this reason, which is part and parcel of the whole policy or programme, and that is the different levels of development"; could I ask you what your reference to "different levels of development" meant in that context?

Mr. RAUTENBACH: The different levels of development in that context meant that the Bantu groups or units or communities had as yet not as communities reached, for instance, the same level of development as the Cape Coloured people, or the Indians, or the Whites. There was still a certain lag in development of the community as a whole.

Mr. GROSS: Then is it correct to interpret your testimony to mean that because of the different levels of development between or among various groups, the capacity of an individual is taken as irrelevant to the question of membership on a council of this sort which deals with all groups?

Mr. RAUTENBACH: I cannot quite follow your question—would you kindly repeat it?

Mr. GROSS: Starting from your reference to the different levels of development and your explanation of what it meant in this context, my question is whether this implies that an individual who is a member of a particular group but individually capable of serving in this capacity, like Professor Kgnari, for example, whom you mentioned—that the individual capacity or ability of that person is considered irrelevant to the question of whether or not he could serve as a member of your council?

Mr. RAUTENBACH: No, it is not irrelevant, but what is really relevant is that Professor Kgnari, with his abilities, his intellectual equipment, is a greater authority on Bantu education than on the education of Europeans, and his best service in South Africa at the present stage can be given to the Bantu community. If he were to help advise on the White community, if that had been the directive for his council, then of course it would be different, but he was appointed specifically as Chairman as an educational leader in the Bantu community to guide and lead this committee to advise the Minister of Bantu Education on Bantu education.

Mr. GROSS: I do not mean to hold you to this particular individual—I take him as an example because you have referred to him in your testimony—but what I am anxious to get at from the standpoint of the Court's fuller understanding of the policy underlying the exclusion of non-Whites from membership in the council of which you are Chairman which deals with problems of all the ethnic groups, Whites and non-Whites alike, is whether the policy of exclusion is based upon anything other than membership of an otherwise gifted individual in a certain ethnic group? This is the point of my question to you.

Mr. RAUTENBACH: I am afraid there is a misapprehension. I said in my testimony yesterday afternoon that there was nothing in the Act, Act 86 of 1962, the Act on the National Advisory Education Council, to prevent any minister from requesting through the Minister of Education, Arts and Science that my council should advise on an educational matter; that is what I said, but we cannot on our own initiative advise the Minister of Bantu Education or, for that matter, the Minister of Coloured Education, Department of Coloured Affairs, or on Indian affairs. I think the record will show that.

Mr. GROSS: I have no doubt it does, and I did not mean to imply anything to the contrary. You say, as I understood, you testified with respect to this matter by qualifying it by the use of the phrase "on your own initiative", did you not, or words to that effect?

Mr. RAUTENBACH: Yes; I did not use the words "on our own initiative", but I used the words another minister may, through the Minister of Education, Arts and Science (and that is the Minister dealing with the education of Whites) request my council to advise, and that has happened once.

Mr. GROSS: Therefore you would have to be prepared to advise, obviously, as effectively as possible if the request were made—this is really the point I am directing your attention to. Now, starting from that point of departure, would you regard it, from the standpoint of an expert in this field, as relevant to a consideration of such a question that there would be direct and continuous participation of representatives of groups who might be affected by your recommendations?

Mr. RAUTENBACH: I think there should be communication, and the Act under which my council works prescribes that our recommendations should be made in consultation with the various education departments, bodies, organizations and persons who have an interest in education.

Mr. GROSS: The communication would be most effectively performed in what manner?

Mr. RAUTENBACH: In this case, on the occasion of a visit to the Bantu College of the North, I visited Professor Kgnari, who is Chairman of the Bantu Education Committee, and mentioned the fact that my council had received a directive from a Cabinet committee including, of course, the minister under whom he and his colleagues work, the Minister of Bantu Education, to the effect that we should bring forward suggestions and plans for the co-ordination of the education of all groups with the changing economy, and for more extensive provision for technical education, and we had a long discussion on this matter.

Mr. GROSS: In connection with the function of assuring co-ordination in the sense you have described, that would involve a continuing problem and a continuing interrelationship, would it not, between the educational policies of the various groups?

Mr. RAUTENBACH: That would depend on the type of directive we received, on the type of recommendations we make at a certain stage. Now it happened in this case that after having gone into the whole matter over the course of 18 months, and consulting with the Department of Bantu Education and its officials, with the various other departments of education and their officials, with the Prime Minister's Economic Advisory Council, with the Department of Labour and all concerned, in May of this year we had a joint meeting to deal with these matters and to formulate our findings, and our findings were that at the present moment the various education departments, and particularly the Department of Bantu Education, were carrying on to the best of their ability that type of work which was mentioned in our directive; and we recommended to the Minister of Bantu Education through the Minister of Education, Arts and Science—that is the prescribed way—that that should be accepted as one of our findings. We also made other recommendations, which I could mention if the Court is interested in those recommendations.

Mr. GROSS: Subject to the wishes of the Court in this matter, if I may refer to the problem that you have just described, I understood you to say that this involved a course of some 18 months of concentration and study?

Mr. RAUTENBACH: Yes.

Mr. GROSS: During that period, Sir, of 18 months, would there be any reason, which you could advise the Court, why it would not have been a feasible and very wise idea to have members of other groups sitting as full members of your Council?

Mr. RAUTENBACH: Yes. After this discussion with Professor Kgnari the leading man, the Chairman, he told me, and I have the statistics to prove that, that at the present juncture the greatest problem in the sphere of Bantu education was to get more pupils to progress beyond the primary stage into the secondary stage because occupational training, and particularly technical training, take place at the level of secondary education, and the greatest problem was not, at this stage, according to him, to make provision for further technical training, further schools, but to try and retain a larger number of pupils or students in the schools, so that we can get more pupils staying in the secondary schools and then, through a process of differentiation, bring them into the various streams, and one of the streams would be the stream of technical education, and he told me that he did not think it was worthwhile pursuing the subject any further with him.

Mr. GROSS: This would be an important problem, no doubt, would it not, Sir, in the general scheme of education in the Republic?

Mr. RAUTENBACH: It is an important problem throughout the whole world, the whole of Africa, and the Republic.

Mr. GROSS: Now, Sir, if I may revert to my question, which perhaps I did not make clear, would it have been feasible and wise, from the point of view of your expertise in the education field, to have had a non-White, or one or more non-Whites, sitting as full members of the Council during, let us say, this period of 18 months, when these problems were under study? May I just ask you, Sir, would it have been feasible?

Mr. RAUTENBACH: No, I do not think it would have been feasible. I could give the reasons why I think it would not have been feasible, and the one is that outside our Professor Kgnari and two other gentlemen who have professorial rank in the Bantu university colleges—in the one

case a Professor of Psychology, in the other a Professor of Education—the highest post held at present by a Bantu is that of a Sub-inspector of Education. The result is that the expertise, as you call it, is to be found at the present moment more amongst the European officials and officers of the Education Department than amongst these, and Professor Kgnari himself is not an expert, neither am I an expert, in the field of occupational education. In fact, I am not an expert outside of university education—I am a generalist outside the field of university education.

Mr. GROSS: The fact is, is it not, Sir, that the reason of policy to which you referred yesterday, which underlies the exclusion of non-Whites from membership on the Council is related to the ethnic origin rather than the individual quality or capacity of the person? Is that not so, Sir?

Mr. RAUTENBACH: That is so, but is only half of the matter. The other half is so closely related to the stage of development of that ethnic group—that is at the background of the whole programme of separate development or separate education.

Mr. GROSS: But you want the Court to understand, Sir, that because of the level of development of the ethnic group to which you refer, that a person who is a member of that group by the classification of the census, but who is above that level, could not, by that very reason, advise you, as a member of the Council, effectively with respect to the problems of his group as a whole?

Mr. RAUTENBACH: He could advise me in that field where he has specialized knowledge. On the Bantu Education Committee there is, to my knowledge, no specialist in that sphere, so why should I get another generalist to advise me where I am also a generalist? I should, in this case, seek the assistance, and, according to the Act we can seek the assistance, of any one of the 30,000 European teachers, or for all that, of the, I suppose, 26,000 Bantu teachers in the country. But it is a matter of the efficiency and the suitability of the man's knowledge on this *ad hoc* Committee, this *ad hoc* problem.

Mr. GROSS: Sir, would there be, so far as you are aware, anything in the governmental policy of the Republic which would preclude full membership of non-Whites on the Advisory Council?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Would you explain to the Court what that governmental policy would be, Sir?

Mr. RAUTENBACH: That governmental policy is the policy of separation, also on this kind of body.

Mr. GROSS: And that would be the underlying reason, would it, Sir, that might, for example, preclude you from making a recommendation to add a non-White to the Council?

Mr. RAUTENBACH: Yes, but that is, as I say again, not the complete story. The complete one is that the underlying reason for that is, again, the different levels of development and then, the *general policy* of the Government at this stage not to pay so much attention to the individual as the development of the community as a whole.

Mr. GROSS: Now, Sir, may I ask you one further question on this line? Perhaps it would lead somewhere else and I might follow it up, but the question I have in mind is, with respect to the function of the Advisory Council regarding "White education", would that not involve and include consideration of the relationship between White education and non-White education as a problem of White education in the area?



Mr. RAUTENBACH: Yes. It certainly would, Mr. President, in this respect, that education has to be co-ordinated with manpower problems and with economic development and the manpower of the Republic of South Africa is not only the White manpower but all the manpower, including the woman-power for all that, and the result is that when one deals with education, all of us should look where the manpower is to be found and the result is that one has to take note in a general way of what is forthcoming from Bantu education, from Coloured education, from Indian education and from European education.

Mr. GROSS: Considering, for example, the problem of segregation or otherwise of universities in South Africa, to which we shall turn our attention shortly, Sir, but in this context, in considering that problem, you would, of course, concede readily, no doubt, that the interests of Whites and non-Whites alike are involved in policy decisions regarding that matter. In respect of the functioning, does the Council have any direct or indirect present or potential responsibility with respect to matters within that area of concern—segregation of university instruction?

Mr. RAUTENBACH: No. My Council is limited by the Act and by the division in the Act to education outside the university sphere—primary education, secondary education and tertiary, non-university education.

Mr. GROSS: So that with regard to the area of concern which you have just clearly described to the Court, in that area the policy underlying the separation or segregation in the secondary sphere, let us say, would be a matter within the present or potential scope of the Advisory Council, would it, Sir?

Mr. RAUTENBACH: No, we are empowered to make recommendations on sound principles of a general nature on education and we had a directive from the Minister to pay attention, in the first instance, to White education and then we have this one directive on the co-ordination of education of the various groups with a changing economy and further provision for technical education.

Mr. GROSS: So that your function—the function of your Council—if I understand you, proceeds from the point of departure of the directive which you described? Is that correct?

Mr. RAUTENBACH: Yes, that is so.

Mr. GROSS: Now, in your consideration of the matters which fall within the scope of your Council, do you, at any time in your deliberations or studies, consider whether the directive itself is well or ill-founded, or should be modified in any respect?

Mr. RAUTENBACH: We could do that. We have not done that so far, we have not found the reason to ask such questions, but if such a matter were to arise I could see no reason why this should not be done or could not be done.

Mr. GROSS: Would it be fair to say that the functioning of your Council then, Sir, and that you as Chairman, are within the four walls of the scheme of the government policy as embodied in the directive? Is that correct?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Could you then, under those circumstances . . . ?

Mr. RAUTENBACH: Now you are bringing forward another point.

Mr. GROSS: I have not finished my question, Sir.

Mr. RAUTENBACH: I am sorry.

Mr. GROSS: I thought you merely answered to my previous question. . .

Mr. RAUTENBACH: No, it is one of your questions in the series.

Mr. GROSS: Yes, I intended it to be so, Sir. I was just on the point of asking you whether following from that you would be good enough to describe to the Court, as briefly as fairly may be done, the nature of the government directive which forms the basis of your function in this respect, that is, with regard to separation or segregation?

Mr. RAUTENBACH: By implication—that was what I wanted to say. By implication, I could note in that directive that government policy had to be borne in mind and by that I mean that part of the directive was that no public declaration should be made by the National Advisory Education Council on this matter, but its decisions should be of a confidential nature and should be transmitted, in each case, to the department concerned, to the Minister concerned; that means to say, our recommendations, if recommendations had been forthcoming on this one matter; but certainly recommendations were forthcoming, one was that as soon as it is practicably feasible, the Government should, or the Department of Bantu Education should, make primary education compulsory, and as soon as possible after that, secondary education. We did not announce that publicly because our directive had been that our recommendations should be transmitted to the Minister concerned.

Mr. GROSS: I would like to pursue that. Perhaps it will give you an opportunity to clarify or add. With respect to the question of the nature of the directive, you have now referred, Sir, to the matter of compulsory education. Leaving that aside for one moment, are there any other substantive aspects of the directives with regard to the policy of separation or apartheid?

Mr. RAUTENBACH: No. There was no clear statement or directive. It was by implication, as I mentioned, Mr. President.

Mr. GROSS: What was by implication?

Mr. RAUTENBACH: That we should report, not directly to the Ministry of Education, Arts or Science or that the Chairman—I am empowered to make public announcements—should make no announcements but each of these recommendations should be sent to the department concerned, in this case the Department of Bantu Education.

Mr. GROSS: Would it be correct to conclude, Sir, that the directives under which you operate do not relate directly to the problem or policy of ethnic, racial or group separation?

Mr. RAUTENBACH: No. I think, Mr. President, I could best describe the whole situation if I were to say that the directive and the Acts are of such a nature that we proceed from that as a premise that there shall be separation or apartheid.

Mr. GROSS: That is the major premise of the Government?

Mr. RAUTENBACH: That is the major premise of the Government and, by implication, it is the major premise for the Council of which I am Chairman.

Mr. GROSS: Now, with respect to the problem of compulsory education to which you referred, there is compulsory education now with respect to Whites, is there not, Sir, in South Africa?

Mr. RAUTENBACH: Yes. In the northern part, in Transvaal, there has been compulsory education since 1907, but not before that date.

Mr. GROSS: And are you aware of the situation in South West Africa? I may say that the record shows that there is compulsory education for the Whites there.

Mr. RAUTENBACH: Yes, I am aware of that.

Mr. GROSS: Now, I understood you to testify that, with respect to the problem of compulsory education, it was a directive that as soon as practicable, or words to that effect . . .

Mr. RAUTENBACH: No, it was not a directive. It was a recommendation. It is one of the recommendations coming from this Joint Committee of the Education Council and various other departmental representatives to the Ministers concerned that, in the case of Bantu, Coloured and Indian education, as soon as it is practically feasible primary education should be made compulsory and afterwards secondary education should be made compulsory and there was a reason for that.

Mr. GROSS: With respect to non-Whites, you were referring to, Sir?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Now, would you explain to the Court what the reason was for the recommendation?

Mr. RAUTENBACH: The reason for the recommendation was what I have already mentioned this morning: that unless more Bantu pupils remained to the end of the primary school, completed the primary school course, entered the secondary school course, did part of it or completed it, we would not be able to attain the other objective of training more Bantu in occupational training or technical training.

Mr. GROSS: Sir, are you, on the basis of your reading of the authorities you have cited with respect to South West Africa, to wit, Dr. Van Zyl and the Odendaal Commission and, I believe, one other, are you sufficiently familiar with the situation in South West Africa to express an opinion as an expert with regard to the problem of compulsory education, let us say, in the urban areas in South West Africa. Do you have any views on that, Sir?

Mr. RAUTENBACH: I am not an expert in that sphere, but I could express a view.

Mr. GROSS: Well, would you please do so, Sir, and specifically with respect to the problem, if any, arising in urban areas as distinguished, let us say, from northern territories or other areas?

Mr. RAUTENBACH: Mr. President, I see what Mr. Gross is aiming at now and he questioned Dr. Van Zyl very closely on these matters, and now that I see what he is getting at I would prefer not to answer those questions. Dr. Van Zyl is an expert on those matters.

Mr. GROSS: Now, Sir, that is with respect to South West Africa. Now, with respect to South Africa itself, would you care to express an opinion with respect to the differences, if any, arising in the field of compulsory education as between the urban areas of South Africa itself and the other areas of South Africa?

Mr. RAUTENBACH: I take it that by that Mr. Gross refers to the Bantu residential areas, the urban areas and the Bantu homelands?

Mr. GROSS: Yes, Sir, to start with.

Mr. RAUTENBACH: And must I take it that you are asking me what reasons I can advance for not, at this stage, making primary education compulsory?

Mr. GROSS: No, Sir. That may enter into your answer, Sir, it is up to you, but my question is whether there are any aspects of the problems underlying compulsory education which arise in the urban areas as distinguished from, or are different from those which arise in other areas?

Mr. RAUTENBACH: Yes, I think it stands to reason, Mr. President, that the urban areas are more densely populated areas, that children are within easier reach of the schools themselves, whereas in the Bantu homelands, outside of those homelands, where the community has a way of living in villages or cities, in many of these homelands they live in family groups, comparatively far removed from each other. Then the third group of Bantu reside on the farms and, excepting for very big farms where the people farm in a big way, these are still more sparsely spread. There is a difference, then, as between the one area and the other.

Mr. GROSS: Now, Sir, with respect to that difference, if I may pursue that for just a moment, you have referred, I understand, to congestion of population as one factor. Are there any elements involved in the problem, let us say, of social change that are peculiar to the environment of the urban areas which may not be found elsewhere?

Mr. RAUTENBACH: Mr. President, investigation has shown that the idea of such a vast difference between the Bantu residing in the urban area and in the more rural areas, if you can call them that, is not what many people thought. I have read an article in the prestigious American journal *Foreign Affairs* by a Bantu journalist, residing outside South Africa, who was born and raised in an urban area. He states that there is a continuity between the Bantu communities in their homelands and those in the urban residential areas like the string of a kite.

That was published in *Foreign Affairs* fairly recently. Then, members of my staff of the Social Anthropology Department had for a number of years received a grant from the Social Research Council to make a study of the so-called urbanized Bantu in the Bantu residential areas of the city of Pretoria, where I reside. They also discovered that in many important respects the so-called urbanized Bantu still has his roots in the rural areas in his own community.

Mr. GROSS: Sir, you have testified, as I have just reminded you, that the Odendaal Commission report was one of those authorities on which you have based your expertise with respect to South West Africa. Now, I should like, in the context of our present exchange, to refer to the Odendaal Commission report, page 425. Have you a copy of the report before you, Sir? If you turn to page 425, Sir, I would call your attention to paragraph 1430 at the bottom of the right-hand column on page 425. Do you find paragraph 1430?

Mr. RAUTENBACH: I have found it.

Mr. GROSS. Now, I should like, in the context of this discussion and adhering as closely as possible to the problem of social change and the rootage of the Bantu—if I may use that phrase—to call your attention to the following several sentences in that paragraph.

Starting with the first sentence, I realize, Sir, that you have stated that you do not wish to testify with respect to South West Africa on this matter. Do I understand you correctly there, Sir, before I read this?

Mr. RAUTENBACH: Yes, unless it is similar to a situation in the Republic.

Mr. GROSS: Well, you have anticipated my point there. Therefore, in that context, which is precisely what I have in mind, I should like to read the following first sentence. This is under the heading, you will notice, Sir, of "Transition from a subsistence economy to a money economy" and it reads as follows:

"Human beings tend to settle in the environment in which they

earn a living. Income and occupational group furthermore determines whether an individual belongs to an economically upper, middle or lower class. There is a correlation between occupation and occupational group, on the one hand, and economic and social status on the other."

Would you have any question of agreeing with that, Sir? Do you agree with that?

Mr. RAUTENBACH: I agree with that.

Mr. GROSS: Then I would like to call your attention—skipping the next sentence or two—to the following language:

"The result is social stratification according to income and level of occupation. A process of Westernization follows, as well as adjustment to the economic, social and spiritual requirements of a different type of community life. In a process of one-sided imitation, the economic standards of living of the Whites are accepted, with a resultant increase in expenditure on the necessities of life, housing, furniture, recreational and transport facilities, education, etc."

Now, keeping in mind the reference to education in that context, if you agree with this general analysis of the Odendaal Commission, would you express an opinion, Sir, regarding the implications, in the field of education, regarding the resultant increased expenditures on education, what specifically would that imply with respect to the object of education for which those expenditures were necessary?

The PRESIDENT: Does the witness, Mr. Gross, first agree with the general statement?

Mr. GROSS: Yes, first do you agree with this statement?

Mr. RAUTENBACH: *With this statement?* Which interpretation do you mean?

Mr. GROSS: Generally do you agree or disagree?

Mr. RAUTENBACH: I agree with this statement as a description of the externals of the situation—the outward, visible things, the economic interdependence which is to be found in such an area. I do not agree that the essential "Africanness" of any individual is changed by these outward changes.

Mr. GROSS: I see, Sir. Now, with respect to the reference to education, and you note the use of the word in that quoted section . . .

Mr. RAUTENBACH: Which are you referring to?

Mr. GROSS: The sentence to which I call your special attention for my question is:

"In a process of one-sided imitation, the economic standards of living of the Whites are accepted, with a resultant increase in expenditure on the necessities of life, housing, furniture, recreational and transport facilities, education, etc."

I focus on the word "education" and ask you, Sir, to restate my earlier questions, whether you will express your opinion concerning the objectives of education in this context, for which increased expenditures become necessary?

Mr. RAUTENBACH: If this is what the question amounts to, whether this outward change also should bring about a change in educational practice, if that is the question, then my reply is yes to a certain extent it should, because education should fit the member of the community for his work and his life in his community.

Mr. GROSS: And the community in this respect is the community in which he lives and works? Is that not so, Sir?

Mr. RAUTENBACH: That is the community in which he lives and works and hopes to live and work.

Mr. GROSS: And hopes to live and work?

Mr. RAUTENBACH: Yes.

Mr. GROSS: And there are persons in that category, so far as you know, in the urban areas of both South Africa and South West Africa who live and work and who hope to live and work in those areas, Sir?

Mr. RAUTENBACH: Yes, they do also live and work in those areas.

Mr. GROSS: Yes, Sir, and there are persons within that category?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Many of them I suppose, Sir?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Now, when you refer to external or outward change or sign, Sir, when the reference is made *à propos* of that statement in your response, when the Odendaal Commission refers to, among other things, "the economic standards of living of the Whites are accepted"—do you mean to say, Sir, there is only a manifestation or externalization of acceptance—is that the way you interpret this?

Mr. RAUTENBACH: Yes, that is in accordance with the authority which I quoted—the Bantu journalist who wrote on the misleading aspects of this external development, where Europeans are inclined to think that the essential man as said, has changed his Africanness, and we regard him as an imitation of the White—I can read that if you want it.

Mr. GROSS: Well, Sir, I won't invite you to—you may if you wish, Sir, if the Court wishes—it is up to you, Sir, in answering my question.

Mr. RAUTENBACH: I think I would like to have that on record.

Mr. GROSS: Will you give the citation please.

Mr. RAUTENBACH: I seem to have left some of my stuff at home.

The PRESIDENT: Do you mean at the hotel or in South Africa?

Mr. RAUTENBACH: I have got it here.

Mr. GROSS: Could you read the most pertinent portion of . . .

Mr. RAUTENBACH: It is very brief. It is written by Mr. Exekiel Mphalale a Bantu writer, born in South Africa and now living in Kenya, raised in the Bantu residential area in Pretoria and this is what he says:

"Any visitor, who sees an urban African smartly dressed in American style of clothes—in short, the visitor who sees him in town like one who is committed to it and lives by its assumptions may think the African has wholly surrendered his traditional values to an urban life that is a bad imitation of the White way of life but there is a definite line of continuity in African cultures which acts in individuals and groups like the string by which the kite is held to the ground." ("The Fabric of African Cultures", *Foreign Affairs*, July 1964.)

Mr. GROSS: Yes, Sir, and that is, if I am not mistaken, Mphalale is it not, Sir?

Mr. RAUTENBACH: Yes.

Mr. GROSS: We are familiar with his works, Sir. Do you happen to have read any of his works in which he expresses an opinion regarding segregation and education?

Mr. RAUTENBACH: No. I receive *Foreign Affairs* and I read *Foreign Affairs*.

Mr. GROSS: Now, to come back for a moment to the question of the "externalization". I was referring, Sir, to the Odendaal Commission statement that the persons, and they referred, Sir, to "human beings" not to Whites or Blacks or anybody else. They referred in the sentence, to which I called your attention, in which education is mentioned, that "the economic standards of living of the Whites are accepted"—and this is where I paused before. Are they accepted, or are they not, so far as your own observation is concerned, in the areas with which you are familiar?

Mr. RAUTENBACH: They are accepted as objectives which must be kept in mind, which must be strived for, and let us say, which must be imitated.

Mr. GROSS: All right, Sir, putting imitation aside, I suppose that imitation could be a form of flattery?

Mr. RAUTENBACH: It is, and it is a very useful way of learning too.

Mr. GROSS: Yes, Sir. And with respect to whether it is imitation, or some original Native genius alongside it as well—let us leave that aside, Sir.

Mr. RAUTENBACH: May I qualify that word? By imitation I mean accepting it from an environment as an example which could be used by oneself.

Mr. GROSS: In the same way, Sir, let us say that a four or five year old White child learns from his environment, would you say?

Mr. RAUTENBACH: Yes, Sir.

Mr. GROSS: Now, with regard to the necessities of life leading to increased expenditure for education, I am still focusing on that because it is, of course, within the field of your expertise, you have mentioned congestion in urban areas, concentration of population, and I think you have mentioned the requirement for learning in order, I am paraphrasing loosely, to improve one's economic welfare—would you accept that, Sir?

Mr. RAUTENBACH: I accept that.

Mr. GROSS: Now would you add to that also, Sir, the requirement or objective in the "White society", as it is called in the Odendaal Commission report, the desirability or otherwise of full self-realization in the modern world, in intellectual as well as economic terms?

Mr. RAUTENBACH: My reply to that is most certainly that I do accept it as a justifiable aspiration, economically, socially, culturally and politically.

Mr. GROSS: With respect to compulsory education, which exists with regard to Whites, are you aware that there are approximately 100 per cent. of the Whites of school age in South West Africa, who are enrolled in the schools there?

Mr. RAUTENBACH: I am aware of that.

Mr. GROSS: Is the same thing true in South Africa, Sir?

Mr. RAUTENBACH: The same is true of South Africa.

Mr. GROSS: Whereas now I will call to your attention the following facts which are undisputed in the record, in order to elicit your opinion with regard to comparable situations in the Republic itself. I call your attention to the enrolment figures in the Odendaal Commission report, page 239, table 87. Incidentally, Mr. President, parenthetically, this has not previously been the subject of examination and is not mere repeti-

tion—I thought I would explain that to avoid any misunderstanding of the tables because there are many tables being cited. This is table 87 on page 239, which refers, as you notice, to distribution of pupils in standards in the southern sector in 1962 and breaks it down, as you can see, both by standards and by sections within the sector. You will notice, Sir, that Standards VII, VIII, IX and X . . .

The PRESIDENT: What page is this?

Mr. GROSS: Page 239, Sir, the bottom of the left-hand column of the Odendaal report.

The PRESIDENT: That is table 87, is it?

Mr. GROSS: Table 87.

The PRESIDENT: Thank you very much.

Mr. GROSS: I was afraid for a moment, I had my roman numerals confused, which often happens, Sir. After Standard VI, that is Standards VII, VIII, IX and X, there are no pupils in the homelands enrolled in those Standards—that is correct, is it not, Sir?

Mr. RAUTENBACH: Yes.

Mr. GROSS: This is, of course, "homelands", I may have mis-spoken, sometimes known as "Reserves" in the southern sector—this is entirely related to the southern sector. Now in the rural areas in the southern sector, outside the Reserves this would be, in the so-called White economy, there are, as you will notice, five pupils enrolled in Standard VIII and none in Standards IX and X—that is correct, Sir, is it not? Now then we come to towns which have otherwise been referred to as urban areas outside the Reserves in the southern sector and we find, Sir, that there are four, in 1962 this is, enrolled in Standard IX and three in Standard X and then finally on the total enrolment in the next column you will find the same figures repeated—that is four and three respectively. So the only pupils, as it appears from this table, enrolled in the school system in South West Africa in Standards IX and X, are in the urban areas outside the Reserves—that is correct Sir, is it not from this table?

Mr. RAUTENBACH: That is correct.

Mr. GROSS: And would you advise the Court whether a comparable situation exists in South Africa?

Mr. RAUTENBACH: Yes, a comparable situation exists in South Africa to the best of my knowledge.

Mr. GROSS: Now, Sir, the figures I suppose would be higher because the population is higher?

Mr. RAUTENBACH: Yes, and the school attendance in the Republic is 83 per cent. between the age of 7 and 14 and in South West Africa it is more or less like 46 per cent.—there is that difference.

Mr. GROSS: Now, would you in terms of the . . . I revert to the excerpt from the Odendaal Commission to which I have been referring earlier, that is to say on page 425, could you please indicate whether the fact that the only enrolments in those Standards, such as they are, are from the urban areas, that this would indicate special problems prevailing in the urban areas with regard to education?

Mr. RAUTENBACH: Yes, I would rather . . .

The PRESIDENT: Mr. Grosskopf.

Mr. GROSSKOPF: If I may just object to the form of that question, there is no evidence that these enrolments are from the urban areas—these are peoples at school in the urban areas and, Mr. President, you will recall the evidence of Dr. Van Zyl that the highest schools are all situated



in the urban areas for students from the whole Territory. So that the form in which the question was put is, with respect, in my submission not an accurate one.

The PRESIDENT: Mr. Gross, would you put the question again so that I can see precisely what the point in issue is.

Mr. GROSS: I think the point, if I may say so, is extremely well taken. I had made an assumption here with respect to the origin of the students, so to speak, enrolled in these Standards. It has been pointed out by my friend that this figure bears no information with respect to whether, for example, these three students enrolled in the urban areas had come from, for example, Ovamboland.

Now Sir, in order to clear that point up, are you aware, Sir, in respect of the situation in South Africa, the Republic itself, whether the enrolment of Bantu students in the, let us say, Standards IX and X, would represent students who come from outside the urban areas and go to school in the urban areas?

Mr. RAUTENBACH: I could not say. In the case of the adults there is an influx control but not in the case of these youngsters under 18 so far as I know, so that it would at the best of times be rather difficult to say where they come from. But I happen to know something about the origin of university students and the university students come from both . . . at least they have their home, their domicile is in many cases in the urban areas and in many cases in the rural areas, but they attended schools where they could find a school and the school is generally situated where there is the greatest density of population.

At the present stage of development, the Bantu child is as often as not brought to the school. There will be reached another stage where the school, as far as possible, will be brought to the child. That is happening on the lower level of the primary school already, in the case of the rural school or farm school. The school is being brought to the child there. At the present time, at secondary level, the child is still being brought to the school.

Mr. GROSS: Before I return to this, may I just ask you, Sir, in connection with the problem of location of schools to which you have referred, from the point of view of education expertise would there be any explanation for the fact that in South West Africa the Standards in question are to be found only in the urban areas?

Mr. RAUTENBACH: Mr. President, I am not an expert on secondary and primary education. I made a declaration here at the beginning to testify as an expert. If I have any expertise, it is in the field of university education. The other, secondary sphere of interest is the White education of primary and secondary schoolchildren and the rest is a third sphere of interest, but I am no expert on these matters.

Mr. GROSS: All right, Sir.

Mr. RAUTENBACH: I do not lay any claim to be an expert. Dr. Van Zyl is the expert.

Mr. GROSS: So you would not seek to draw any inferences from the fact that this is the situation. In other words, you would not have any opinion with respect to why it is that these levels of instruction are to be found in the urban areas?

Mr. RAUTENBACH: I have opinions but I do not claim that they are opinions of an expert.

Mr. GROSS: Well, Sir, I will not press you unless you wish to express the opinion of a witness.

Mr. RAUTENBACH: I would not like to express so many opinions.

Mr. GROSS: All right, Sir, Now, let us continue with the paragraph, if I may, Sir—paragraph 1430—and I would like to draw your attention to the fact that in pursuing this matter—I do so because of your reliance upon the Odendaal Commission for your views with regard to the matter and with regard to the important aspects of the statements as findings by the Odendaal Commission. The top of page 427: “The struggle . . .”, that is to say the struggle referred to in the preceding portion—I have left out a sentence to which I should call your attention.

“As is the case of the Whites, artificial needs are created for them. Family life undergoes a change and imitates the pattern of the Whites. The struggle to live becomes an economic struggle to provide necessities. Their work and occupation [I call your attention to this, Sir], in effect becomes a formative process which helps non-White workers to adjust to and fit in with the requirements of living and economic standards of the changed community life to which they belong and of which they are part.”

First of all, Sir, do you understand the phrase “changed community life” to refer to the sector in which they work and live and in which they hope to work and live?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Now, Sir, with respect to the reference to: “Their work and occupation in effect becomes a formative process” and so forth, would you say that education plays a vital role in the development of that formative process?

Mr. RAUTENBACH: Yes, it is probably the most important.

Mr. GROSS: Now, one final reference in this paragraph, to complete the circle of the thought in this very key paragraph in the Odendaal Report is the following, which is the conclusion of the paragraph itself; I will read it, if I may:

“The result [which, generally speaking, refers to the result of the consequences of everything that has gone before] is a process of Westernization with its typical problems of backwardness, deterioration of family life, etc., but in many cases also successful adjustment.”

Pausing there, would you say, Sir, from your experience, that there are many cases of successful adjustment in the sense of this report?

Mr. RAUTENBACH: Yes, as far as my knowledge goes—which is limited—I would say that there are cases of successful adjustment.

Mr. GROSS: Would you say that it is one objective of education to facilitate and expedite that type of adjustment?

Mr. RAUTENBACH: Yes, if it does not include indoctrination; if it does not include the one idea and ideal that the only form of civilization and culture is to become Western in every respect, but if the man chooses to become Western, it is also up to him through self-determination, or freedom, to become that, but I have no right to impress that on that man. Nobody has the right to do it.

Mr. GROSS: “The goal [it says] is always better-paid employment, especially for the . . .”

Mr. RAUTENBACH: I beg your pardon, where is this?

Mr. GROSS: This is the last few sentences at the top . . .

The PRESIDENT: This is the next sentence to the one Mr. Gross was reading.

Mr. GROSS: The next sentence to the one I just read.

Mr. RAUTENBACH: Which paragraph, please?

Mr. GROSS: Paragraph 1430, which continues at the top of page 427, in the left-hand column, Sir.

Mr. RAUTENBACH: Yes, I have found it, thank you.

Mr. GROSS: I just read the paragraph which ended with the phrase "successful adjustment". Now the next sentence. I was starting to read, or have read, I am not sure which:

"The goal is always better-paid employment, especially for the children. A striking feature [and I call this to your attention, Sir] is the value attached to school attendance, education and scholastic achievement. A new type of man emerges: a Westernized non-White side by side with the Western White."

With respect to the "striking feature" which attends this situation of social change to which we are addressing ourselves, "the value attached to school attendance, education and scholastic achievement", would you say, Sir, from your experience, that that is a correct statement?

Mr. RAUTENBACH: I would say it was a perfectly correct statement. I can support that with my own experience—the great yearning of the African people for more and more education and their great expectation that education will solve all their problems.

Mr. GROSS: Would you say, Sir, that perhaps the single most important aspect of social development is education?

Mr. RAUTENBACH: I would subscribe to that fully.

Mr. GROSS: Does this, Sir, underly the reason why you perhaps recommended compulsory education as soon as practicable?

Mr. RAUTENBACH: Yes, that is one of the reasons why we recommended compulsory education.

Mr. GROSS: Would it be within your knowledge to advise the Court whether or not if, let us say, it proved feasible in the urban areas to introduce compulsory education for non-Whites, considering that it exists for Whites, that you would recommend that that be done, where practicable as well as when practicable?

Mr. RAUTENBACH: Yes, I certainly would do that, but taking into account the wishes of these people themselves to a certain extent.

Mr. GROSS: And the wishes of these people, Sir, relate to the people to whom the Odendaal Commission is referring when they say "a striking feature is the value attached to school attendance" and so forth. Would they include these people in the phrase you used?

Mr. RAUTENBACH: Yes, but now I must mention this other facet, or rather aspect, of the matter and that is that Dr. Van Zyl and his commission found that there was no widespread wish on the part of the people in South West Africa, at this stage, to make it compulsory, but at some future stage.

Mr. GROSS: Yes, Sir, I have in mind that testimony when I ask a question now with respect to your own knowledge on the basis of your own recommendation whether, in addition to the reference to which you referred to the people as a whole, to get away from the group, or "whole" aspect of the matter, your recommendation with respect to compulsory education for non-Whites is based upon feasibility of accomplishment where possible as well as when possible?

Mr. RAUTENBACH: Certainly.

Mr. GROSS: Would you say, Sir, that, as far as the urban areas are concerned, in the light of what you have testified about the Odendaal Commission findings, do they or do they not present a special problem and a special opportunity with respect to this matter of compulsory education?

Mr. RAUTENBACH: I would say that the urban areas are somewhat in advance of rural areas and homelands in this respect.

Mr. GROSS: Did you, Sir, in your recommendation, take into account the treatment of requisite education to qualify for education in universities?

Mr. RAUTENBACH: I do not quite get that.

Mr. GROSS: Did you in your analysis of the matter of compulsory education take into account the degree of educational achievement requisite to qualify for university education?

Mr. RAUTENBACH: Yes, I had that in the back of my mind, that we should get more university students; one way of getting more university students from these communities was to introduce compulsory education in future at some time so that a larger number will proceed beyond the ordinary compulsory stage, which as a rule is 16 years or Standard VIII. Once they have gone up to 16 years, then one could encourage them to stay on to Standard IX and Standard X and come to the university.

Mr. GROSS: Would this, or would it not, have a bearing upon the following undisputed facts in the record, out of the Odendaal Commission report—I refer to page 157, paragraph 650; there are 94 doctors in the Territory of South West Africa, there is no Bantu doctor; 93 are White, and one is classified as "Baster" and practises medicine in Windhoek; with respect to the problem of education generally, would you have an opinion with respect to why, after these many years of the Mandate administration, there is no Bantu doctor in the Territory of South West Africa?

Mr. RAUTENBACH: I would suggest that it is owing to general backwardness in education, as is the case in many parts of Africa. I happen to have read through the summary recently of the Odendaal report, and the statement there is that the real significant development in education, or the real start of education, was only after South Africa got the Mandate in 1921; whereas something like 15 per cent. of the population had been attending school, now in 1962 something like 46 per cent. were attending school. I have a list here of the number of graduates in 1962 throughout the whole of sub-Saharan Africa, and it is very much of a similar picture through South West Africa.

Mr. GROSS: Would you say that the same reasons apply to explain why there are 16 dentists in the Territory, of whom all are White—would the same explanation that you have just made apply to that fact?

Mr. RAUTENBACH: I know as yet of no Bantu who has completed his dental training, up to the present moment. There are 80 doctors in training in the Natal University; in the medical faculty 80 Bantu doctors stayed over the seven years; but I do not know of a Bantu dentist—it may just have slipped my notice, but I do not know of one as yet. One should bear in mind that the highest number of matriculants amongst the Bantu were still under 300 so far in the Republic, and of these, the three university colleges have to be fed, and teachers' training colleges, and in administration and all these services, and that is why I am so keen to get more

Bantu matriculants, more Bantu university students, to provide better for the future.

Mr. GROSS: With respect to the 80 who are receiving medical education, are any of these from South West Africa, so far as you know?

Mr. RAUTENBACH: I have not had these broken up, I am not sure about that.

Mr. GROSS: Finally and very briefly, with respect to another profession which has been the subject of some discussion here, engineering; it is undisputed in the record that there are no non-White engineers in South West Africa. I refer to Dr. Krogh's testimony, at page 134, *supra*.

The PRESIDENT: That is in the sense of graduates, I take it, Mr. Gross—graduates in engineering?

Mr. GROSS: Yes, Sir, that is my understanding. And Dr. Pepler, who has testified previously on 29 September at page 241, *supra*, testified in response to a question that "an engineer cannot ever qualify by in-service training". Did you understand the quotation?

Mr. RAUTENBACH: I understand the quotation, but I beg to differ from Dr. Pepler. He cannot get a degree, but he can get associate membership of the Engineering Association which enables him to enter the same sphere of work as a graduate engineer. By the way, that is something which is in my realm, and that is that of university and qualifications, and so on; it is not Dr. Pepler's realm, because he is an agricultural expert.

Mr. GROSS: I see. Are there any agricultural engineers?

Mr. RAUTENBACH: Oh yes, we train agricultural engineers; my university has been training them since 1928, but there are no Bantu agricultural engineers as yet.

Mr. GROSS: Could an agricultural engineer receive experience by in-service training which would qualify him to serve in the same capacities as a qualified engineer with a degree?

Mr. RAUTENBACH: I am not quite sure about that, but I just have an idea that under the departmental work of Dr. Pepler and his people—soil conservation and so on, and these matters—if a boy, whether Bantu or White or Indian or Coloured, were to enter that, were to take certain examinations of certain overseas institutes, I think it is just possible that he could become an associate of one of these institutes of civil engineers, but I am not sure about this. It is happening with others, so that I think it could be possible.

Mr. GROSS: That would involve training, education, at overseas institutions, you say?

Mr. RAUTENBACH: No, not necessarily training. You can enter as an external student of many of these institutions overseas without being overseas yourself, and it is done by correspondence.

Mr. GROSS: So far as the Republic itself is concerned in this matter, there has been placed into the record an excerpt from the debates in the South Africa House of Assembly on 25 May of this year, which is No. 17, column 6638 in *Hansard*, in which the Minister of Bantu Education, Mr. Cadman, was asked how many Bantu are at present being trained as roads, public works, transportation, telecommunications, town, electrical, water, civil and constructional, and other types of engineers, and the answer, in each case from the Minister of Economic Affairs, was "None". With respect to the training of engineers, what is the policy in the universities in South Africa with respect to non-Whites, specifically Bantus, qualifying for engineering degrees?

Mr. RAUTENBACH: The policy of the university institutions involved is to advise the Minister to make provision for training as soon as it becomes apparent it has been established that there is a need. A survey of this type was made since the institution of the Bantu colleges, and the first result was that five young men would apparently come forward for training, but before further provision was made or anything further was done, all five had withdrawn and had chosen other professions. And in the case of one or two of the other applicants there is on record, the record I have brought with me from South Africa, in 1962 the Minister of Bantu Education gave permission to a Bantu student to study engineering at the University of Cape Town. A number of others had previously applied, and they were informed they could do the first year of study at one of the Bantu colleges or as an external student of the University of South Africa.

Mr. GROSS: That would be by correspondence course?

Mr. RAUTENBACH: For South Africa correspondence, but in the case of the three Bantu colleges the subjects are mathematics, applied mathematics, physics and chemistry, and all these four subjects on a first-year basis can be done, but no student has been forthcoming so far who really has a serious idea of getting an engineering training amongst the Bantu. Amongst the other groups there are a large number in training at the moment.

The PRESIDENT: What other groups do you speak about?

Mr. RAUTENBACH: I am speaking about the Indians, and I am speaking about Coloured people, but I think particularly about a group which has not been mentioned here, and these are the Chinese people—there are about 220 or 230 of them at the Universities of Witwatersrand, Cape Town, Rhodes and Natal, and there are many engineers in training amongst them.

Mr. GROSS: Dr. Rautenbach, with respect to the question of the overseas institutes to which you referred, would that, Sir, apply to correspondence or to personal attendance in the normal way.

Mr. RAUTENBACH: That would apply, Mr. President, to correspondence.

Mr. GROSS: With regard to personal attendance, what, Sir, is the policy, if any, with respect to applications which might be made by Bantu scholars who wish to personally study overseas?

Mr. RAUTENBACH: Mr. President, I am under the impression that the Government is not encouraging Bantu students to study overseas at the present time, but to retain them in South Africa and to make provision for them in South Africa.

Mr. GROSS: Sir, with respect to the matter of overseas study, are you aware, on the basis of any study you have made, of the number of Bantu or, I mean to say, generally non-White students of South African origin, who are personally studying overseas, not by correspondence?

Mr. RAUTENBACH: Mr. President, no. The last statistics I saw referred to the year 1959, in one of the publications from Britain. There was a summary of students coming from overseas (that was still when South Africa was in the Commonwealth) and I remember, at that time (I still remember some figures) the largest number in Britain in that year were from Nigeria and that was 1,200. There was not a very large number, but there were a number coming from South Africa. I do not remember the numbers. I have not seen statistics later on.

Mr. GROSS: You would not, Sir, or would you, regard this question as one which would be relevant to the development of the university level education system in South Africa?

Mr. RAUTENBACH: It would be relevant in this respect and that was also expressed by Carr-Saunders and others, that one does want to retain the ablest students at your own university institution because these young men go on to post-graduate study. These young men, if they do well, enhance the reputation of that university, and losing the ablest students means also a handicap to the development of that university.

Mr. GROSS: Sir, *à propos* of your testimony with respect to the availability of overseas study by correspondence, and your testimony with respect to the facilities available in South Africa, I would like to refer to a table appearing in the report of the Sub-Committee on Africa of the Committee on Foreign Affairs to the House of Representatives of the United States with respect to the number of African students, specifically South African students, studying in the United States, and the figure is 390 students from South Africa, of whom 136 began their studies in the United States in 1964 to 1965. Sir, what bearing, if any, would this figure have with respect to the problem of university level education in South Africa in terms of the desire of students to study abroad? Is that question clear, Sir?

Mr. RAUTENBACH: No, it is not clear.

Mr. GROSS: This, you will agree, would you not, indicates a desire on the part of a certain number of non-White students from South Africa to study abroad? That is clear from the figures, is it not, Sir? I ask whether, Sir, as an expert, you would have any views with respect to the significance of that figure, that fact, with regard to the general desire of non-White students to study outside South Africa?

Mr. RAUTENBACH: I can testify that I know that there is such a desire. I have been a member of the Advisory Committee to the British Council which awards scholarships and bursaries; I was a member of the Commonwealth Universities' Advisory Committee on scholarships abroad; I know about the application of Africans or Bantu and others to go abroad, and it is a consideration on our part always whether that man is prepared to declare that he wants to return to South Africa.

Mr. GROSS: Now, Sir, if he declares his wish to return to South Africa, would this be a reason for denying his visa to study abroad?

Mr. RAUTENBACH: No, that in itself would not be a reason, and in that case, if the man is otherwise suitable and promising, we recommend and then it is outside my sphere or our sphere whether he gets a visa or not.

Mr. GROSS: Do you know, Sir, how many, if any, of the South African non-White students who are, let us say, studying in the United States, by way of example, are there without visas or other official permission of the South African Government?

Mr. RAUTENBACH: I could not say, but from time to time one does read in the papers about one or other of these young men, or not so young men, in certain cases, who in some way or other fled the country and provision was made for them in the United States, by some foundation or something of the kind. I have read about these cases but I have no personal knowledge.

Mr. GROSS: This has not come within the purview of your concern with regard to the university level education in South Africa?

Mr. RAUTENBACH: No, I do not see that it has any bearing unless it

is a wonderfully gifted man who could become a professor of, let us say physics, for instance. I would be interested in getting such a man back because we have so few, as yet, on the side of the exact sciences who have progressed far, but, on the other hand, again, South Africa does provide for training up to a doctorate and even post-doctorate levels in the case of C.S.I.R.

Mr. GROSS: Sir, in your studies or analysis of the university level education policies to which you are addressing your testimony, would you express an opinion to the Court why, if you know, on the basis of your experience or judgment, a South African non-White student should apply to a foreign university for training? Specifically, perhaps, to focus the question, what bearing does that fact have, if any, with respect to the adequacy or otherwise of educational facilities in the Republic in the fields of his aspiration?

Mr. RAUTENBACH: I think it has comparatively little bearing because as many, or very many more Whites apply for scholarships and bursaries to overseas universities—American and so on.

Mr. GROSS: Are the same policies or, as you term it, encouragement or lack thereof, applied to the White South African student who wishes to pursue studies abroad?

Mr. RAUTENBACH: Taking into account the situation of the White community, certain policies are applied. For instance, scholarships are not awarded in branches where a student can do his training in South Africa.

Mr. GROSS: If a White student applies for a visa to study abroad is he, as a condition of obtaining that visa, under any obligation to state whether it is his intention to return to South Africa upon completion of his studies?

Mr. RAUTENBACH: To the best of my knowledge, but I would not take my oath on that. That is asked in the form which he fills in to obtain a visa for going abroad, but in those bodies of which I am a member this is not significant. He has got to express his intention of returning to South Africa.

Mr. GROSS: In other words, if a White person applies for a visa to pursue studies abroad he has to state his intention to return to South Africa upon completion of his studies? Is that what you have said, Sir?

Mr. RAUTENBACH: Yes, to the best of my knowledge that is so in the case of providing passports. As I said, I would not like to take my oath on it. Again, it is a field in which I am not an expert.

Mr. GROSS: This is not a type of policy question which arises before the Advisory Council?

Mr. RAUTENBACH: No, the Advisory Council deals with sub-university level and there is no need to proceed overseas at the sub-university level.

Mr. GROSS: Now, just to round out the factual picture, have you had occasion to inquire concerning the number of South West African non-Whites who are pursuing studies abroad, outside South Africa?

Mr. RAUTENBACH: Have I any knowledge did you ask?

Mr. GROSS: Have you any basis for knowledge on that point, Sir?

Mr. RAUTENBACH: I read about a man by the name of Benkes who at that time claimed to be a student overseas and one or two others, but I just read that in the newspaper and I do not regard that as the very best source of information for an academic man.

Mr. GROSS: Now, Sir, this table to which I have referred, being an



official publication of the Congress of the United States, the House Foreign Affairs Committee, sets forth that there are six students, non-White or "African" students from South West Africa, who are at the present time studying in the United States. Would that fact have any significance in your mind with respect to the choice of institution available in South Africa as distinguished from abroad?

Mr. RAUTENBACH: It would have an effect on my mind if I were to know what the reasons were for these young men going to one or the other country. It would also affect me if I were to know whether they had fled the country or tried to get out in the ordinary way, or whether they had received a passage out of the country on condition that they would not return again. Quite a number of these factors would influence me but just quoting six men without knowing anything about their past or their background—I could not say.

Mr. GROSS: The fact that there are twice as many South West Africans pursuing university level instruction in the United States than there are in South Africa—would that ratio have any significance in your mind?

Mr. RAUTENBACH: *Not in this situation as we know it at the present time.*

Mr. GROSS: Now, Sir, did I understand you to refer to "condition of agreeing not to return"? Did I understand you to say that, Sir?

Mr. RAUTENBACH: I have also read in the newspapers about the time a complaint was made about a certain individual wanting a passport and the passport was granted subject to that individual not returning to South Africa. As I say, it is a newspaper report.

Mr. GROSS: I am attempting to focus on policy because I wanted to make sure the Court understood your testimony in the way you would wish it. With respect to the White student who applies for a visa to study outside the country, I understood you to say that the question asked was whether he would agree or intend to return to South Africa. Is that correct, Sir? I understood you to say that in the case of the non-White student who makes a similar application to study outside the country the question is asked or the assurance requested that he will not return.

Mr. RAUTENBACH: I have read about cases like that.

Mr. GROSS: Do you happen to know what the policy is, Sir, with respect to the Whites and the non-Whites respectively in this context?

Mr. RAUTENBACH: Not with such certitude that I could inform this Court about the policy and its details.

Mr. GROSS: Do you, Sir, regard then the entire question—I address this to you as an expert, Dr. Rautenbach—do you then regard the entire question of the number of non-White South and South West Africans who study abroad, and the reasons for which they do go abroad, do you regard these elements as unrelated to an analysis of the university system of South Africa?

Mr. RAUTENBACH: No. If I had the genuine reasons why they went abroad, that could influence my views on the necessity of making certain provisions for which there was no provision in South Africa. To say six people, whether they went overseas to take English as a major subject—well, we do make provision for that. If they went to study engineering and if I could learn something about what course these young men were pursuing, then I would be in a better position to reply, but just mentioning the number . . .

Mr. GROSS: Well, I think that is a fair comment, Sir. However, before

we get to that, I would like to ask you again whether you consider that the reasons why these young men and women go abroad for education is related to your analysis of the educational system of South Africa itself? Do you regard this as a matter with which you, as an expert, need not concern yourself? This is my question, Sir.

Mr. RAUTENBACH: Mr. President, I am asked to judge on reasons which I could imagine or somebody else could imagine, not on real reasons, for they have not been advanced. And until I have these reasons before me I cannot answer that question of whether their presence abroad is relevant to future education policy in South Africa. I am very sorry. I regret sincerely, but I cannot reply to hypothetical situations. I am inclined to agree with Sir Isaac Newton—*hypotheses non fingo*.

Mr. GROSS: My question, and I will pursue it only to make sure you understand it, is whether you regard the number of non-White students who pursue studies abroad and the reasons why they do so as outside the scope of your analysis of the South Africa university level educational system—is it or is it not a factor related to the South African university system?

Mr. RAUTENBACH: The nature of the reason would determine whether their presence abroad was relevant to the South African situation.

Mr. GROSS: Well, Sir, your admitted lack of knowledge with respect to the reasons would reflect would it, Sir, some gap in your information of a relevant nature?

Mr. RAUTENBACH: Not necessarily, because the real reasons and the reasons given are not always the same.

Mr. GROSS: So that your suspicion of the data which you would obtain has deterred you from making an enquiry—is that what you want the Court to understand?

Mr. RAUTENBACH: No, it has never impressed me as being a factor on the horizon of such vast importance that I should devote any particular amount of time to that.

Mr. GROSS: With respect to the six South West African students and still referring to the same document, this time however, to table 3 at page 20—you do not have the document in front of you, Sir—I am reading it—of the six South West African students, four are listed as graduate students in agriculture. Now would you have any basis for an opinion, Sir, as to whether the fact that these four students from South West Africa are graduate students in agriculture in the United States—would that have any bearing on whether there were adequate facilities in South Africa for a South West African non-White to pursue graduate studies in agriculture?

Mr. RAUTENBACH: No, not unless I know whether they perhaps took their degree in Basutoland, because in Basutoland provision was made to the best of my knowledge for study in agriculture.

Mr. GROSS: But it is undisputed in the record that no facilities for higher education exist in South West Africa, and so far as South Africa is concerned, on the basis of your knowledge or expert opinion, would any of these four South West African non-Whites who are pursuing graduate agriculture studies in the United States have qualified in South Africa itself—could they have qualified in South Africa itself?

Mr. RAUTENBACH: No, they could not have qualified in South Africa itself because the training is given at the universities of . . . yes, they could have, there is a slight possibility that one could have trained in

Natal because in the University of Natal there has been an agricultural faculty for a number of years and they were allowed to do various courses, and it may just be, I am not sure about that Mr. President.

Mr. GROSS: I do not want to tax your knowledge beyond the point of your information, but I want to get before the Court your analysis of the possible implications of these facts from an expert point of view.

Mr. RAUTENBACH: I have other information on this point if you want it.

Mr. GROSS: If it is relevant to this point, Sir, I think perhaps the Court would welcome it.

Mr. RAUTENBACH: It is relevant to this point and also to the other point raised in connection with engineering. There has been a committee going into this whole matter of the training of agricultural experts in animal husbandry, etc., and one of the members of that committee was the Dean of the Faculty of Agriculture at my own university and I know about this because he had to get leave from me to do this, and on the other hand, as Chairman of the Council of the Bantu College of the North, I had a part in acquiring an experimental farm with a view to establishing an agricultural faculty at that institution. So that my reply is now that if the presence of these young men in America is due to a lack of training facilities in South Africa, as soon as we know about a need then we go into that and we make recommendations to the Minister—I am very interested in these figures.

Mr. GROSS: May I then express gratification that this information may perhaps be of service to you in your further studies.

The PRESIDENT: The important thing is that it be of service to the Court I think, Mr. Gross.

Mr. GROSS: That is the first loyalty always, Sir. I would like to turn to your testimony with respect to conditions previous to 1959 in South Africa and in particular your testimony on page 331, *supra*, of yesterday's verbatim record, which is 4 October. I refer specifically to your statement in response to the question put by Mr. Grosskopf at the top of page 331, in which Mr. Grosskopf asked you—"To what extent would you say that the Bantu took advantage of, or were admitted to, those facilities?" Your answer was as follows:

"They were admitted under certain limitations. In the case of the University of Natal they were not admitted to the Faculty of Science and Mathematics because there were too few places to accommodate students outside the White group. In the case of the other universities, they were admitted subject to certain limitations."

Now Sir, with specific reference to the fact, as you testified in the portion I have just read, that there were too few places to accommodate students outside the White group, does that mean, Sir, that an absolute priority of admission was given to the Whites?

Mr. RAUTENBACH: Yes, the University of Natal was established with the idea of it being a University for the Whites and with all the sympathy of its Council and its Principal for other groups, it had to satisfy the first of its patrons. It was not legally established that it was for one group, but by tradition. The University of Natal decided in 1935 to provide facilities as far as possible for non-White groups, but I have read that at a certain stage, owing to the European numbers coming forward in the post-war period, there were no more places for the non-Whites and they were encouraged to enter only the other courses of study.

Mr. GROSS: This was a matter of university policy to reserve the positions for Whites only?

Mr. RAUTENBACH: It was a policy of this particular university because at that time it was an open university and the University Council decided what the policy would be in this respect and this was the University Council's decision as far as I know.

Mr. GROSS: The University Council's decision was to give an absolute priority to Whites to fill up all available places before non-Whites would be considered for admission—is that correct, Sir?

Mr. RAUTENBACH: That is correct as far as the Faculty of Science and Mathematics is concerned—I have only read about that being the case.

Mr. GROSS: Would you explain or do you consider that you have explained why this absolute priority was established by the University as a matter of policy?

Mr. RAUTENBACH: I could just guess at that—the University of Natal, situated in one of the provinces of the Republic, the majority of the people are English-speaking and they have been settled there for a long time. It was established as a College in 1909 and I think very few applications came to this University before 1935 to make provision for others, it had become part of tradition. In 1935, the Council of this University decided to make some provision for the training of other groups outside Whites, subject to internal separation.

The PRESIDENT: May I ask the witness a question. Mr. Rautenbach, you speak of the Council deciding these things, to what extent is the Council, if at all, subject to the direction of any governmental control?

Mr. RAUTENBACH: In the universities established by Acts of Parliament, the so-called incorporated universities, the Council has what we call in Afrikaans or Dutch law "regspersoon"—it is a corporate body and it is a corporate body which has all rights pertaining to a corporate body with certain exceptions; the one exception is that it may not establish new departments or faculties unless the Minister of Education gives his approval; secondly, it may not institute new posts unless the Minister of Education gives his approval—otherwise it is an autonomous body.

Mr. GROSS: With respect to this question that the honourable President has addressed to you, in the first place, has the corporate body to which you refer been composed exclusively of White persons?

Mr. RAUTENBACH: A corporate body of the University of Natal has always been to the best of my knowledge composed exclusively of White persons.

Mr. GROSS: Is it not true, let me put it affirmatively—is it true that the members of the Council are appointed by the State President?

Mr. RAUTENBACH: No.

Mr. GROSS: By whom are they appointed?

Mr. RAUTENBACH: Only a certain number of members are appointed by the State President. Let us say, there are 20 members or 22 or 24 in the University of Natal and the rule is that the State President appoints about one-third—about eight. As a rule three or four are elected . . . must I continue—shall I continue with this? As a rule three or four are elected by the alumni. Then another number are elected by the donors, those who have given or presented gifts or donations to the University in excess of a certain amount.

Mr. GROSS: You mean the generous alumni, Sir?

Mr. RAUTENBACH: We are a young country—we have not got so many alumni as yet who are both generous and well-to-do, but many of the large corporations do give amounts. We are not as far advanced as the Americans in that respect—they really set an example to the world. Then as a rule the municipality in which that university is situated also appoints a certain number of members so that the number of members appointed by government may be one-third to two-fifths—it differs from university to university.

Mr. GROSS: Thank you, Sir. With respect to the fixing of priorities, absolute or otherwise on a racial or ethnic basis—would the Council in exercising its autonomy consult with the Minister of Bantu Education or any other government official, normally?

Mr. RAUTENBACH: Now, I could not say what other councils would do in that case because prior to 1959, it was not necessary to consult with the Minister.

Mr. GROSS: Therefore, your testimony with respect to the matter in question is not based upon information concerning how the council, in fact, arrived at its decision and in the first place stopped there—is that a correct statement?

Mr. RAUTENBACH: No, that is not quite correct. The Principal of the University of Natal, who is retiring at the end of this year and who has been serving there for over 20 years, published a long article in October 1964 on the history of the training of various groups outside the White group—*The University of Natal, over the period 1938-1963*. In this long article he mentions various steps which were taken to make that provision and also the various provisos which were made by the Council, so that if that is not sound and reliable information then I would not know what is. Perhaps I misunderstood you?

Mr. GROSS: You understood me perfectly and you cited exactly the right authority, if I may say so. The question I would now like to ask you is, did this undoubted authority to which you refer explain in his report why there was an absolute priority for Whites in the Faculty of Science and Mathematics and not in other faculties?

Mr. RAUTENBACH: No, he did not even mention it in that report.

Mr. GROSS: Do you have any expert or other basis for an opinion on that subject—for the reason for this distinction?

Mr. RAUTENBACH: Yes, in one of his addresses which he gave about six years ago he mentioned this fact that a limitation had to be set on entry into a science faculty because there were too few places.

Mr. GROSS: But you have no opinion, Sir, as I understand, as to why there was an absolute White priority in this faculty whereas in other faculties there was not?

Mr. RAUTENBACH: Yes, I have an opinion on that, and as I have already said, I think that Natal was by tradition regarded as a university which in the first place was established for the training of Whites, and this Council has to bear in mind what public opinion is and if the Natalians by birth or people residing in Durban or Pietersmaritzburg had been excluded they would have raised Cain I think.

Mr. GROSS: Excluded from the Faculty of Science?

Mr. RAUTENBACH: Excluded from whichever faculty they could not enter because other groups stood in their way.

Mr. GROSS: Is your testimony on the point that Bantu were not admitted to the Faculty of Science and Mathematics because there were

too few places outside the White group? Does that apply to other faculties at the university of Natal as well?

Mr. RAUTENBACH: That I could not say. I only saw this mentioned in the case of the Faculty of Science.

Mr. GROSS: You do not know what the policy was with respect to other faculties at the university?

Mr. RAUTENBACH: I can make them by inference, that the policy was that as long as there were places let them come along.

Mr. GROSS: So that there was an absolute priority for Whites in all faculties in your opinion, Sir?

Mr. RAUTENBACH: With this one exception.

Mr. GROSS: With what exception?

Mr. RAUTENBACH: The Science Faculty. The Faculty of Science and Mathematics.

Mr. GROSS: I understood you to say that your opinion was that the absolute White priority applied to all faculties of the university.

Mr. RAUTENBACH: Yes, it applied in theory but no problem arises until there is a lack of student places.

Mr. GROSS: I see.

Mr. RAUTENBACH: In faculties like Arts and Literature you can accommodate large classes and you can duplicate classes and you can triplicate classes, but in the Science Faculty you have got to have a lab.

Mr. GROSS: In other words, Sir, this is the reason; the Science Faculty studies needed laboratory facilities and that this, would you agree, is where the shoe pinched? That in the case of the other faculties there was not the necessity to apply the policy of absolute White priority. Would you agree to that statement?

Mr. RAUTENBACH: No, there was not as good a reason, or as sound a reason in other faculties as in this case.

Mr. GROSS: All right, Sir. Turning now to the same verbatim at page 345, *supra*, this is by way of clarification or elucidation, if you will, Sir. At page 345, in answering questions directed to you by Respondent's Council, you assigned as one of the consequences which would follow from what was described as the abolition of differential universities, one of the reasons you assigned on page 345 was: "Secondly, you could not retain the best staff if the best type of student does his post-graduate work elsewhere." Now, Sir, would you consider, as an educationalist, that the limitation of freedom of movement or opportunity for the best type of student, limiting his freedom to pursue his studies elsewhere, might have a depressing or discouraging effect on the faculty of that institution?

Mr. RAUTENBACH: That the limitation imposed, did you say, would have a discouraging effect?

Mr. GROSS: Your testimony is that one of the reasons for the so-called differential universities, which are otherwise described as segregated universities, was that you could not retain the best staff if the best type of student does his post-graduate work elsewhere. Now, my question is whether you regard this reason for limiting the freedom of an individual to pursue studies at a university of his choice as an adequate reason from the educational point of view? Do you understand my question? Would you care to answer that, Sir?

Mr. RAUTENBACH: Yes, I will answer that. The indication so far has been that no member of staff has become unduly depressed by the limitation of the movement of graduate students. I have not

heard about anybody thinking of resigning his post for that reason.

Mr. GROSS: Your testimony as I understood it, Sir, and as I said before—this is for clarification and elucidation—was that this was one of two reasons you gave in response to Counsel's request for your opinion as to what the result would be if segregation or differential universities were abolished, and you have cited this as one of the two reasons. Now, I wanted to pursue that with you and ask whether you think it is, if I may put it shortly, a valid and sensible reason from an educationalist's point of view?

Mr. RAUTENBACH: It is a valid and sensible reason from an educationalist's point of view, who has an open eye for the realities of the situation. The most important component of a university, after the student of course, is the teacher and the retention of a good staff is something which worries every university executive, and, where I have an interest in these Bantu universities, I would like to retain that staff. They have left the university for other reasons but not for the reason that the limitation of the movement of students has depressed them to such an extent that they thought they had better get out of this type of university.

Mr. GROSS: So you would not regard this as a major reason, in reply to Mr. Grosskopf's question?

Mr. RAUTENBACH: No, it is an additional reason.

Mr. GROSS: Merely an additional or supplementary . . . ?

Mr. RAUTENBACH: A supplementary reason.

Mr. GROSS: And it is purely suppositious on the basis of anything that has happened so far in your experience?

Mr. RAUTENBACH: Yes, we have done a great deal of supposing this morning.

Mr. GROSS: Thank you, Sir. With regard to the general problem of staffing of the non-White universities, has there been a difficulty created in respect of recruitment of teachers by reason of the opening of the segregated schools?

Mr. RAUTENBACH: The influence or the result of the opening of more schools with more posts has aggravated the situation which existed before that time, which exists throughout the whole world at the present time—and that is the shortage of academic manpower. It is noticeable now that we have to appoint at the White universities younger men than previously and we are experiencing the same problems. I am experiencing a problem at my university to get properly qualified young men into the Faculty of Law and I have had a complaint, just before I left my country, from Professor John Maré of the University College of Ngoye, and he was on the look-out for a young B.A. or LL.B. man. We are experiencing the same difficulty, but he was more fortunate than we are in being able to recruit men from the White universities who could still retire at the age of 60 and then, with the assistance of the Minister of Education, offering them a ten-years' contract to go and teach at the Bantu universities. He has just recruited a man from the University of Witwatersrand for the teaching of English, who formerly was senior lecturer at my university—a very good man.

Mr. GROSS: Now, Sir, would you be prepared to say, Sir, that leaving aside, but not forgetting, the beneficial reasons you have asserted in your own view for the establishment of these segregated schools, that this teacher problem was one of the prices that had to be paid in order to accomplish the objectives you had in mind?

Mr. RAUTENBACH: Yes, it is one of the prices which had to be paid there and it is one of the prices which is being paid over again in the establishment of two new European universities.

Mr. GROSS: With regard to the establishment of the separate universities in the 1959 Extension of University Education Act, as it was called, I shall now address certain questions on that subject to you. In order to lay a foundation for those questions, I would like to ask you, Sir, whether you are familiar with the 1959 Act in question?

Mr. RAUTENBACH: Mr. President, I am familiar with that Act. I think I have a copy of the Act with me.

Mr. GROSS: I may not necessarily refer to specific provisions but I just want to establish whether or not you regarded yourself as an expert with regard to the provisions of the Act.

Mr. RAUTENBACH: Mr. President, I have no legal training. The only man who can really be an expert on these matters in fact is a man with a legal training. I have a general knowledge of this Act.

Mr. GROSS: You will know, Sir, generally, what the reasons were which were assigned by the Government for the adoption of the legislation?

Mr. RAUTENBACH: Yes, Sir.

Mr. GROSS: I am not asking you now to explain them, I just want to lay the basis for your knowledge on this subject.

Mr. RAUTENBACH: Yes, Mr. President, and I think these are to be found in the report of the Select Committee of Parliament.

Mr. GROSS: Yes, Sir. You are familiar with the reasons, are you not?

Mr. RAUTENBACH: I am familiar with the reasons.

Mr. GROSS: Are you familiar with methods by which the legislation was implemented—has been implemented?

Mr. RAUTENBACH: Yes, in general.

Mr. GROSS: Are you familiar, or do you profess familiarity with the consequences of the measures taken to implement the legislation?

Mr. RAUTENBACH: Yes, I am familiar with the number of students, etc., if that is what is referred to.

Mr. GROSS: Generally speaking. Thank you. I want to turn now to the question of the major reasons, if you please, which were assigned by the Minister of Bantu Education to the House of Assembly in support of the Act in question. Can you summarize those? Select the ones that you regard as of outstanding significance.

Mr. RAUTENBACH: I think a mistake is made there. The Act was not introduced in the House of Assembly by the Minister of Bantu Education but by the Minister of Education. That is the Act of 1957.

Mr. GROSS: Yes, Sir, now I am referring to the statement of the Minister made in the House of Assembly in 1959, which is referred to in the Counter-Memorial, III, page 483, which is preceded by—introduced by the comment at paragraph 35, from which I read:

“Later the Minister of Bantu Education, in the same debate, explained the four fundamental considerations on which the Bill was based.

The following is a summary of the Minister’s speech.”

This, Sir, is the speech to which I am addressing myself.

The PRESIDENT: That was not on the introduction of the Bill, that was later. Is that correct, Mr. Gross?



Mr. GROSS: This, Sir, was on the introduction of the Bill, on an explanation of it. It is cited in a footnote of the Counter-Memorial: "*U. of S.A., Parl. Deb., House of Assembly, Vol. 100 (1959).*" That would be at the time of the debate on the Bill that had been introduced. Is that correct?

Mr. RAUTENBACH: Yes, but I do not think . . . I know for certain in 1957, when the Bill was introduced for the first time, the Minister of Education, Arts and Science introduced it.

I had actually spent the previous evening with him as his guest and I knew he was going to introduce it the following day. Now I am not sure whether the second introduction of the Bill was done by the Minister of Bantu Education, but in any case he participated in that debate. There is no doubt about that.

Mr. GROSS: That is the speech to which I am referring. Mr. President, is there any other aspect of this which you wanted . . . ?

The PRESIDENT: I wanted to be clear upon certain points.

Mr. GROSS: With respect to the speech, the excerpts from which are set forth in the Counter-Memorial, III, pages 484 and following—I will not burden you, Sir, or the Court with the reading of excerpts from those speeches, I do, however, wish to ask you a basic question—a question which perhaps you can answer shortly. Would you say, Sir, that the introduction of the Act was a portion of the general implementation of the apartheid or separate development policy in the Republic?

Mr. RAUTENBACH: Mr. President, that has been my impression all along, that that was one of the bulwarks of this programme.

Mr. GROSS: And, Sir, would you, in the context of that reply—and this is one sentence to which I call your attention and the only one which I shall read, on page 485, that referring to open universities or mixed universities. The Minister is quoted as saying as follows:

"If it is still to be permitted [that is to say, the open university] it will create the fatal impression that apartheid is something which is applied and should be applied only until the non-White has received his matriculation certificate . . ."

The sentence goes on from there. You may consult it if you wish, or counsel may check to see whether this is fairly in context but, pausing there, would you, Sir, have an opinion with respect to the extent to which the introduction of the segregated university system was designed to assure that the policy of apartheid generally would not find any exception in the education system of the country? Would you agree to that as a fair summary of that statement?

Mr. RAUTENBACH: No, I would not agree to that as a fair summary of that statement.

Mr. GROSS: Would you please explain to the Court what your view would be of that matter?

Mr. RAUTENBACH: The apartheid separation (the word sounds so very sinister in another language, although it does not in my own as it is an Afrikaans word) is not there for its own sake—it is a programme—a programme starting from this premise, that every community in South Africa has the right to be in South Africa, has the right to live there, has the right to develop there; that any community in South Africa is capable of producing its own leaders; that any community should be encouraged to produce its own leaders; that it should be open to a community, through a process of self-determination, assisted when it is

less mature than the other, to make its own choice as regards the future; that any community has the right to lay claim to its most gifted young men and older men, whether trained primary school level, or the secondary school level, or the tertiary school level. The main objective of this programme was stated, I think, very clearly by the Prime Minister, Dr. Verwoerd, in London, in 1961, during the Lancaster House events, when he saw a vision of the future of South Africa as being a country with nations or communities politically independent and economically interdependent. Now all these aspects or facets—the first level of education and the second level of education and the third level of education—are part and parcel of this programme, and education is a very important part of this programme, to move in the direction of full nationhood for these various communities and peaceful co-existence where the justified aspirations of all are on their way towards fulfilment, if not fulfilled. I cannot see the trend of the question, for—that measure of 1959 was to save an aspect of apartheid, because that is a means towards an end. One is involved with the end more than the means. Apartheid is a means towards an end—it is not an end in itself.

Mr. GROSS: Yes.

Mr. RAUTENBACH: I do not know whether I have answered the question.

Mr. GROSS: I appreciate, Sir, the length of your reply. I would like to know whether what you have described or attributed to Prime Minister Verwoerd would be perhaps accurately summarised by another reference more directly relevant to the educational system of South West Africa. In the House of Assembly Debates on the so-called White Paper regarding the Odendaal Commission report, on Wednesday, 6 May 1964—the document has been cited in the record and is cited in the pleadings, Sir—the Prime Minister, Column 5641, said as follows:

“I therefore lay it down as a principle that we envisage the eventual right of self-determination for each of the smaller and larger racial groups in South West Africa. Secondly, we offer protection for every group in their development towards the highest functions within each group, including self-administration in all spheres. The Report proves this very clearly, and the education envisaged is directed towards that object.”

I pause there, Sir, “. . . the education envisaged is directed toward that object”. Now the object as stated, would you agree, Sir, is based upon the object of self-determination for each of the smaller and larger racial groups and separate political entities, economically interdependent; is that the objective?

Mr. RAUTENBACH: That is, to my mind, the objective.

Mr. GROSS: Would you agree, Sir, with the Prime Minister's characterization of the education system as being envisaged as directed toward that objective?

Mr. RAUTENBACH: Yes, I read that together with his well-known policy announcement on the Bantu Education Bill in the Senate Meeting of 7 June 1954.

Mr. GROSS: Then, Sir, finally, the Prime Minister goes on to say, thirdly, and I skip a few irrelevant words in which he castigates the honourable Member for Hopetown:

“The limitations imposed on the freedoms of people (as we find

practically over the whole world where anybody lives in a territory of somebody else) falls away as soon as everybody can enjoy his own freedom in his own territory."

On the basis of your study and analysis of this situation, would you agree with the indication from this statement—if it is a fair indication—that the non-White in the so-called White sector of the economy in the territory is living in somebody else's territory, would you apply that concept to that particular situation?

MR. RAUTENBACH: Yes, I would regard him as being a man who is sojourning there and they sojourn there perhaps for three generations or four generations.

MR. GROSS: I see, Sir. Leaving that then and continuing, "the limitations imposed on the freedoms"—may I ask you, Sir, whether you regard this as a fair statement of the situation that there is a limitation on freedoms imposed on the sojourner? Would you agree to that, Sir?

MR. RAUTENBACH: Yes, there is definitely a limitation. It would be extremely dishonest to deny that.

MR. GROSS: Now, Sir, would you then, proceeding from that point, express your view, whether you agree or disagree, with the conclusion of the Prime Minister in this same excerpt that these limitations will, to use his term, fall away as soon as everybody can enjoy his own freedom and his own territory, do you agree with that evaluation of the . . . ?

MR. RAUTENBACH: That is the Prime Minister's vision of the future, and he is visionary at times and that vision appeals to me.

MR. GROSS: Now you would characterize it as a vision, Sir?

MR. RAUTENBACH: As a vision. Yes.

MR. GROSS: Not then, as a programme of action?

MR. RAUTENBACH: No, the ultimate is a vision. The programme of action is this programme of separation, to realize what is incorporated in that vision.

MR. GROSS: Would you have any estimate at all, or basis for an estimate, as to when, if ever, the vision will be off the drawing board, so to speak?

MR. RAUTENBACH: I am very pleased with that question, Mr. President, because in the sphere in which I am active I set my target at not later than 1980. By then, the Bantu university colleges will be full fledged universities. By then, the stage will be reached—I mention the blue-print—where the present Council will change places with the present Advisory Council and when the Bantu people, in this case, will take over the functions of the Council and my successors (I shall not be there by that time) will then be the people who will realize that they have sojourned for so many years in Bantuland.

MR. GROSS: With respect to the proposition of . . .

MR. RAUTENBACH: The reason for 1980, I mentioned that.

MR. GROSS: Yes, Sir, that has familiar overtones to me . . .

MR. RAUTENBACH: That is the target for all middle Africa—from South of the Sahara right down to the border of Rhodesia, and I think we are in advance of this.

MR. GROSS: With respect to the "falling away" of the limitations on freedom, and I quote "as soon as everybody can enjoy his own freedom in his own territory", and we are talking here, Sir, about the educational context, the field of your own knowledge and experience, would you say that the educational system is geared to the proposition that there will,

at some unspecified time, be a total separation according to racial groupings each "in his own territory", to use the Prime Minister's language?

Mr. RAUTENBACH: Yes, there is a likelihood of that. I believe we are doing our best to make that happen and to bring that about.

Mr. GROSS: You envisage a total physical separation of the ethnic groups?

Mr. RAUTENBACH: As far as I can see it, separation of the ethnic groups, as I said, politically independent, economically inter-dependent. He spoke of a commonwealth of nations in South Africa.

Mr. GROSS: Sir, he spoke about . . .

Mr. RAUTENBACH: No, that was in London, he spoke about the Commonwealth of Nations.

Mr. GROSS: What I am referring to is (sometimes it appears elusive in some of the statements made, if I may interject that) to have as precisely as possible, in terms of the education context, particularly, whether the educational system is geared toward the objective of physical separation of races or ethnic groups in separate territories?

Mr. RAUTENBACH: Yes, I could subscribe to that for 50 per cent. You see, the separate territories are there already. Education will not create separate territories, but education gives a recognition to the fact that there are separate territories, there are separate homelands, and, to use Mr. Gross's word, education is geared to that reality. It is a form of community service, education of a particular community.

Mr. GROSS: I regret to say that this is where previously in the record I have also fallen off going around a curve, if I may put it that way, Sir. I am not talking about the same thing you are talking about. I am asking you whether it is an objective for which the educational system is devised and applied. Is it an objective that there will be physical separation on a racial basis, whereby Whites will live in one geographical area, and non-Whites of various backgrounds and types and tribes will live in other areas; is this an objective, Sir?

Mr. RAUTENBACH: Yes, as far as I can judge that is part and parcel of the education programme. The education programme adjusts itself to that reality, that there are Bantu homelands, there are Bantu residential areas.

Mr. GROSS: I do not want to argue with you, I am trying to clarify my question. There are Bantu homelands, as you describe them—let us forget the nomenclature and for the sake of this discussion perhaps let me agree with you. There are of course areas, and I am referring specifically to the southern sector of the Territory for this purpose . . .

Mr. RAUTENBACH: I thought you were referring to the Republic, not South West Africa.

Mr. GROSS: I am coming to that, but I should like to be sure that we understand each other. I am referring at the moment to the southern sector in which there are Whites and non-Whites, in the so-called White economy, in the Odendaal Commission phrase. It is undisputed in the record that there is a majority of non-Whites in that sector outside the Reserves, in the so-called White economy. Pausing there for a moment, is it envisaged as an objective of the education policy with respect to these individuals, non-White, and White for that matter, that they shall be at some stage, visionary or otherwise, physically separated and placed so that they will live in separate geographical territories or areas—can you answer that question?

Mr. RAUTENBACH: May I, to clarify that, just ask a question in return, Mr. President?

The PRESIDENT: Certainly.

Mr. GROSS: With the Court's permission, I will try and answer it to the best of my ability.

Mr. RAUTENBACH: Is it the idea of Mr. Gross that I should answer in reply to this whether the people who are now resident in that area should be removed at some future date—is that what he is after?

Mr. GROSS: If you request me to clarify my question, I will be delighted to.

Mr. RAUTENBACH: That was what I asked—does he want me to reply to that, whether I visualize a possibility of their being removed, or that education aims at that—that they should be removed from their residential areas there on to reservations or Bantu homelands, or something of this type?

Mr. GROSS: May I say, without trying to be facetious, if you have a group of people living together who have one life-time, or more, or part of a life-time, or whatever the case may be, my question is whether, regardless of how it is accomplished, whether they go voluntarily or by persuasion or by compulsion—for the moment forgetting that—is it an objective that, by some means or other, the races or groups now living and working in the same sector in the same economy will be physically separated—is this an objective of the educational system, toward which the educational system is directed?

Mr. RAUTENBACH: It is an objective of the policy of apartheid or separation, and education is also part of that programme. I can reply as regards the Republic, just from general knowledge, not because I am an expert on this, that the date is mentioned as 1978 when the absolute number of Bantu in the Bantu residential areas in the Republic will become stabilized and from then onwards will go down, so that by the year 2000, if I remember correctly—I suppose demographers, or whatever you call them, made this calculation—we would have the same situation again as we had in 1944-1946; but please, I have no politician's conscience in my keeping—it is very difficult for me to answer these questions which lie in the sphere of politics.

Mr. GROSS: I realize how difficult the questions may be. The questions, however, that I intend to ask, centre on the education policy and its objectives, as to which you are testifying as an expert. Is it your answer to my question that it is or is not an objective toward which the education policy is directed, that at some time in the future there will be a situation in which there are Whites in one area and non-Whites in other areas—can that question be answered yes or no?

Mr. RAUTENBACH: That question cannot be answered without some qualifications, because with Whites in one area, in absolute separation, and others in another area, in absolute separation, that means there will not even be people who come from the one and work in the other.

Mr. GROSS: That is right, that would be exactly what would follow. Is that envisaged as a part of the doctrine of apartheid or separate development?

Mr. RAUTENBACH: No, what I seem to remember about this is that we will always have people coming from over the border to work in the White area, as far as human vision stretches.

Mr. GROSS: Then, on the basis of that response which you have so clearly stated, how, if at all, would you explain the Prime Minister's

reference to the limitations imposed on the freedom of people falling away as soon as everybody can enjoy his own freedom in his own territory; what relevance, if any, does that statement have with respect to the non-Whites who will always be, from time to time or their life long, working, living alongside Whites—what relevance does it have, if any, this statement?

Mr. RAUTENBACH: I still cannot get the gist of your . . .

The PRESIDENT: Is the witness being asked this as an educational expert or in terms of political policy?

Mr. GROSS: As an educational expert, Sir, because the testimony as I understand it, and I may be mistaken—perhaps if I am not mistaken, the testimony will be withdrawn—I thought that the testimony was directed to the point that the education system has an objective; that that objective, among others, is part of the policy of apartheid or separate development. There are therefore certain possible areas of relevance, are there not, pertaining to the education policy itself, which are governed by the objective to which the educational policy is directed, if you call them political, or economic, or social, or moral or anything else. Is it not correct that the educational policy is directed toward a major objective, vision or concept—call it what you will—to be applied in the Territory and in the Republic—is that not a fair statement?

Mr. RAUTENBACH: On the face of it, yes, but as an educationist the major objective of an educational policy is an educational objective, and that is the training of the whole man in a whole community.

Mr. GROSS: And then perhaps we might come to this question: if you use the word community, as you just have, what is the significance of the word as applied to the economy in the southern sector which is described in the Odendaal Commission report as a modern or exchange sector—what community do you have in mind in that context?

Mr. RAUTENBACH: I have already said that I have not visited South West Africa, and I cannot reply to that.

Mr. GROSS: With respect to the Republic, how many non-Whites live in the so-called White areas, that is to say the urban or modern economy?

Mr. RAUTENBACH: I think by and large about one-third—one-third in the homelands and one-third in the rural areas.

Mr. GROSS: About one-third?

Mr. RAUTENBACH: Yes.

Mr. GROSS: About roughly how many people would that be?

Mr. RAUTENBACH: That would be three to four million, I suppose.

Mr. GROSS: With respect to those individuals, or a preponderant number of them, you are familiar generally with that aspect of the educational problem of South Africa, I am certain?

Mr. RAUTENBACH: Yes.

Mr. GROSS: With respect to those people—we come to the same question, but transposed to South Africa, with which you are familiar—is the education policy pursued with respect to these one-third, let us say, directed at the objective of leading them to self-fulfilment as members of ethnic communities or the area, the urban White, so-called economic, community in which they live and work—what is the objective of the education system, in those terms?

Mr. RAUTENBACH: For the foreseeable future I think the education system takes note of both, and in that connection may I refer to the speech of the Prime Minister, his Declaration of Policy, as given on

7 June 1954 before Senate, the Upper House, where he stated that the aim or objective of education was preparation of people for work and for life. He mentioned work and life in own communities, but he also mentioned the type of work available for Bantu and others in the White areas, he also mentioned that, and that is why, as I say, he himself in any case mentioned various aspects of this matter. I am now referring to his speech of 1954.

Mr. GROSS: This is Prime Minister Verwoerd, is it?

Mr. RAUTENBACH: That is Prime Minister Verwoerd in the Senate, yes, with his Declaration of Policy, after the Act had been passed in September 1953—he also made a speech then, but only brought out two points; later on he reviewed the whole situation, and this is a whole kind of philosophy of education, of Bantu education, education in general, and so on; I regard it as a most important speech in that respect.

Mr. GROSS: Is that the speech in which he said:

“I just want to remind honourable members that if the Native in South Africa today in any kind of school in existence is being taught to expect that he will live his adult life under a policy of equal rights, he is making a big mistake”—

is that in that same speech?

Mr. RAUTENBACH: I have an idea it is in that same speech, and in its context it is rather interesting.

Mr. GROSS: And is it also in that same speech when he said:

“Until now the Native has been subjected to a school system which drew him away from his own community, and practically misled him by showing him the green pastures of the European, but still did not allow him to graze there”?

Mr. RAUTENBACH: Yes, it has that familiar ring.

Mr. GROSS: When the statement to which you have referred, by the Prime Minister, and other similar statements are made, do they envisage then, in your judgment—I am not speaking politically, but of what the education system is oriented toward—that there will be for all foreseeable future a limitation upon freedoms of non-Whites who are in so-called White areas, living and working and going to school there—is this the way these statements are fairly to be construed?

Mr. RAUTENBACH: Yes, and vice versa.

Mr. GROSS: Vice versa meaning, I take it, that what has been referred to as the doctrine or principle of reciprocity is envisaged permanently, or for the foreseeable future, indefinitely, on the ground that, or alongside the fact that, in the non-White areas, if I may call them that, the Whites will be subject likewise to limitations upon freedom—is this the basic element, or shall I say the philosophical basis, of the concept of apartheid?

Mr. RAUTENBACH: Yes, that is the philosophical one, and what is more, it is the moral one, too, and Matanzima, the Chief Minister of the Transkei, just before I had left South Africa, had again informed publicly the White traders in the Transkei that their sojourn there would always be of a very temporary nature.

*[Public hearing of 6 October 1965]*

Mr. GROSS: Dr. Rautenbach, I propose to direct your attention, if you please, to the problem of the segregation of the South African universities

in the terms of your testimony and its implications, and I will attempt to be somewhat more specific perhaps in certain respects than I was yesterday.

In the first place, we have referred, I believe, to the fact that in 1959 there was passed in the Republic of South Africa the Extension of University Education Act. That is correct, is it not, Sir? Now, would you say, as a general, and I would say a rather obvious, matter, that in view of the absence in South West Africa of facilities for higher education, which is an undisputed fact in the record in so many words, in the Counter-Memorial, III, page 474, that it follows that the system and facilities in the Republic of South Africa itself constitute for all practical purposes the facilities and system for higher education for the Territory of South West Africa? That would follow, would it not, Sir?

Mr. RAUTENBACH: The fact is that the facilities for higher education for people from South West Africa are provided in the Republic of South Africa at the present time.

Mr. GROSS: Yes, Sir, and there are none others, you agree, in South West Africa? That is your understanding, is it not, Sir?

Mr. RAUTENBACH: No. There is no institution of a university type in South West Africa. To my knowledge there are four teacher training colleges which tend towards tertiary education but they could not be called university-level colleges.

Mr. GROSS: Yes, Sir. Now, in going over some of the principal features of the Extension of University Education Act, I should like first to start with the fact that the Act, does it not, provides criminal penalties, including imprisonment, for White persons attending non-White university colleges? Is that correct, Sir?

Mr. RAUTENBACH: Criminal . . .

Mr. GROSS: Criminal penalties. Yes, Sir.

Mr. RAUTENBACH: But how could they attend?

Mr. GROSS: I have just asked you whether you know if this in fact is a provision of the Act.

Mr. RAUTENBACH: No, I do not know that.

Mr. GROSS: Well, it is, I believe, the case. The provision is a fine or six months' imprisonment in the event of a White attending a non-White university or a non-White attending a White university.

The PRESIDENT: Does that mean, Mr. Gross, a fine or six months' imprisonment in default of payment of the fine or an alternative?

Mr. GROSS: It does not specify, Sir. It is apparently discretionary with the court, Sir.

Could you express an opinion with respect to the reason for such a criminal provision?

Mr. RAUTENBACH: No. I did not know about that provision for punishment and I could hardly imagine a situation in which that would ever occur or happen. It seems to be very theoretical.

Mr. GROSS: I beg your pardon, Sir?

Mr. RAUTENBACH: It seems to be a very theoretical provision, if there is such a provision.

Mr. GROSS: Would you have a comment, Sir, with respect to its policy implications, if any? The reasons why such a provision would be regarded as a necessary part of the educational system?

Mr. RAUTENBACH: No. It is part of a common system. It would mean fraud and it is punishment for fraud, not for trying to become educated.



Mr. GROSS: By fraud do you mean concealing racial origin? Is that what you mean, Sir?

Mr. RAUTENBACH: Well, an effort at concealment of colour, etc.

Mr. GROSS: So you would have no other explanation for such a provision in the academic scheme other than to avoid concealment of racial origin?

Mr. RAUTENBACH: No. I would explain it in terms of any ordered and civilized community which likes to have order and makes provision for those who do not respect what has been ordered.

Mr. GROSS: Would you say, Sir, that the apparently perceived requirement for criminal penalty might imply that there is a danger or risk from the standpoint of the Government—that some individuals might seek to obtain admission to universities of a different colour, so to speak?

Mr. RAUTENBACH: Mr. President, the whole situation is of such an imaginary nature, so fantastic, that is very difficult for me to express opinions on hypothetical situations.

Mr. GROSS: Do you regard, Sir, the existence of a criminal provision in this Extension Act as a fantastic provision? Is that what you mean, Sir?

Mr. RAUTENBACH: No. The situation which is sketched here, that something of this kind could happen, I could hardly imagine it happening, but if it does happen it is a form of fraud. That is what I mean.

Mr. GROSS: And that is the only basis upon which you can explain the existence of the provision?

Mr. RAUTENBACH: I am not a trained lawyer—I have no experience of that type—I could not give all these explanations.

Mr. GROSS: Sir, in your various capacities on advisory councils and so forth, would you, if it has now come to your attention for the first time, make a recommendation for elimination or maintenance of that provision?

The PRESIDENT: Mr. Gross, it does not seem to me that that question has any relevance at all. The Professor is an expert in a certain field. He says he does not know anything about this particular matter and you are seeking to extract an opinion from him. Now you are asking him as to whether he would make a recommendation in the future. What relevance has that got to any issue before the Court?

Mr. GROSS: Well, Sir, with respect, I am having a little difficulty in obtaining from the expert witness his opinion concerning the validity, as a part of the educational system, of such a criminal provision. It is for that reason that I was attempting to frame my question to elicit an opinion. With respect, Sir, if it is in order and the witness does not wish to answer, I will not press the point.

The PRESIDENT: It is not a question of whether he wishes to answer but rather whether he is competent to answer a question of that description and whether it is relevant. After all, your difficulty is that you are asking the witness about a particular matter of which he knows nothing, and asking his opinion upon the matter.

Mr. GROSS: I will not press this line further, Mr. President.

The next element in the Act, to which I would call your attention, is this. Are you ignorant of or familiar with the fact that the legislation omits the so-called conscience clause? Are you familiar with that?

Mr. RAUTENBACH: I am familiar with that.

Mr. GROSS: Would you explain to the Court, Sir, what the "conscience clause" is, as it is commonly called?

Mr. RAUTENBACH: The conscience clause is a clause which was embodied in legislation referring to higher education, which was passed in 1916, and the conscience clause forbids that in the case of an appointment or promotion a man's faith, or lack of faith, should be taken into account. The conscience clause forbids that in examining students, awarding certificates, classifying students as passing with or without distinction, that a man's religious faith should play any role whatsoever in these situations.

Mr. GROSS: Sir, does that clause prevail in respect of White universities at the present time?

Mr. RAUTENBACH: The conscience clause prevails in respect of nine of the ten universities. It does not apply in the case of the University of Potchefstroom as regards staff.

Mr. GROSS: Can you explain, Sir, if you know, the reason for that exception of Potchefstroom?

Mr. RAUTENBACH: Yes, it is due to historical reasons. When the Act was passed incorporating the former University College into a university, the legislative body took note of the historical fact that the University of Potchefstroom, like many universities in many countries, also in the United States, was established by a church and in the Act of the University of Potchefstroom there is a very wide provision that, in the case of appointments, note could be taken of the historical Christian character of the institution.

Mr. GROSS: This was, if I understand it, an exception to the prevailing policy of a conscience clause with respect to White universities?

Mr. RAUTENBACH: No. It is not so much an exception as it was. There is another university which is tending towards that and once had legislation before Parliament and will probably return again.

Mr. GROSS: Which university?

Mr. RAUTENBACH: The University of the Orange Free State.

Mr. GROSS: And would you explain whether that also is explained by the same reasons?

Mr. RAUTENBACH: No. I think it can be explained by the fact that the student population is rather homogeneous there and there is strong church support too. It is rooted. It is also its national university, rooted in the people of that Province and it reflects something of the nature of those people.

Mr. GROSS: Yes, Sir.

Mr. RAUTENBACH: A university should reflect something of the nature of its community.

Mr. GROSS: Now, Sir, is it a fact, if you know, that the legislation to which we are addressing ourselves omits the conscience clause? Are you aware of that, Sir?

Mr. RAUTENBACH: I was aware of that from the very outset.

Mr. GROSS: Would you explain to the Court the policy, or other considerations of an educational nature, underlying that omission from the Act?

Mr. RAUTENBACH: I personally think it is a very fine provision and I think it is an advance on the old conscience clause.

Mr. GROSS: What is the provision to which you refer, Sir? I was referring to the significance, if any, of the omission from the Act of a conscience clause and my question was whether you could advise the Court what significance, if any, there is from the educational point of view with respect to its omission from the legislation?

Mr. RAUTENBACH: In effect, the conscience clause has little real effect and the omission of a conscience clause does not mean the omission in the South African picture of the freedom of conscience, because freedom of conscience is guaranteed by the law of the land.

Mr. GROSS: But can you not explain the reason for the omission of the conscience clause from the Act?

Mr. RAUTENBACH: The best reason that I could give is that there was no very good reason for retaining it.

Mr. GROSS: You do not regard the omission of the conscience clause as of significance?

Mr. RAUTENBACH: No. In fact I advised the then Prime Minister, who had a discussion with me, to omit it.

Mr. GROSS: To what?

Mr. RAUTENBACH: To omit the conscience clause.

Mr. GROSS: And have you advised, Sir, with respect to the omission or cancellation of the repeal of the conscience clause from the legislation pertaining to White Schools?

Mr. RAUTENBACH: May I just qualify my statement? By the then Prime Minister I mean Mr. Strijdom, in 1957, not Dr. Verwoerd. I am sorry, I would like to hear your question again.

Mr. GROSS: I was just asking you, Sir, whether you have made any recommendation with respect to the repeal of the "conscience clause" in the legislation pertaining to the White universities?

Mr. RAUTENBACH: No, it lies outside my province, with the exception of my own university, and I think I could spend my time in a more profitable way in the case of my own university than in this or that repeal. It costs a lot of money to repeal a law, too.

Mr. GROSS: As a matter of principle, would you care to express your view as to whether you would favour the elimination or repeal of the "conscience clause" from the White universities?

Mr. RAUTENBACH: In the case of my own university, it would make no difference whatsoever whether it stands or whether it is omitted and, seeing that it would cost some money, well, like others, I like to spend my money, or the university's money, in the best possible way.

Mr. GROSS: Now, Sir, turning to another question. I refer to the regulations proclaimed for students at the so-called Bantu or non-White university colleges, and ask you whether you are familiar with the regulations gazetted for the students at those colleges, Sir?

Mr. RAUTENBACH: Yes, if these are the regulations which came after the Act, I am familiar with them because the Council of the University College, of which I am Chairman, dealt with those regulations and made our recommendations to the Minister of Bantu Education.

Mr. GROSS: Are you familiar, Sir, with the regulations involved in the White universities?

Mr. RAUTENBACH: I am familiar with the regulations involved in the White universities, particularly my own.

Mr. GROSS: Is there a regulation in your university, for example, Sir, that students may not leave the college precincts without permission from the hostel superintendent?

Mr. RAUTENBACH: There is a regulation at my university that students—it all depends on what year they are in—but first-year students may only leave the precincts of the residential campus with the permission of the warden or the lady warden of the residence and only for a

number of evenings in the week, but no student is free to come and go as he wishes in my university. As regards the residential part of the campus, there is also a regulation, or a whole set of regulations.

Mr. GROSS: With respect to the regulation . . .

Mr. RAUTENBACH: I actually meted out punishment some time ago when 18 students were absent when the roll-call was held and I took disciplinary measures against two of them.

Mr. GROSS: Is it required that the classmen, or the members of the universities above the first year, receive permission to leave the college precincts?

Mr. RAUTENBACH: Yes, as far as I know, that is so.

Mr. GROSS: In your university, Sir?

Mr. RAUTENBACH: No, in my university it is not so. To leave the college precincts when they are in residence—they cannot leave the college precincts without leave or without making use of what we call open evenings or open days or weekends, but that does not hold in the case of leaving the teaching campus because we have off-campus housing. They may come and go on that as far as they like, but those who are in lodgings provided by the university . . . we must always know where they are, even the members of my staff leaving the campus for more than 24 hours have to leave their addresses behind and, if it is during the week, I myself or the Dean must give them leave to go.

Mr. GROSS: The student, for example let us say, on a day when there are no classes, who wishes to go into town for a half-hour to buy personal effects, does he require permission for that purpose?

Mr. RAUTENBACH: No, he does not require permission because we are right in the town itself and the Bantu colleges are removed at a considerable distance from any town.

Mr. GROSS: I see, Sir.

Mr. RAUTENBACH: That is a very important difference. Pietersburg, the nearest town to the Bantu College of the North, is about 16 to 18 miles. You have got to go by bus. Now in South Africa, as in many countries, the parents of students regard the university authorities as being *in loco parentis* and if the parent turns up and the boy or girl has been absent for more than 24 hours, or 12 hours, they call the university authorities to account for what has happened.

Mr. GROSS: I see, Sir. So, if I understand you correctly, a student may not leave the college precincts to go to a shop without faculty permission. Is that correct?

Mr. RAUTENBACH: That is correct in the case of Turfloop. There is a shop 18 miles from there.

Mr. GROSS: That is the case in what, Sir?

Mr. RAUTENBACH: In the Bantu College of the North.

Mr. GROSS: I am talking, Sir, about your university.

Mr. RAUTENBACH: No, I have already said, Mr. President, that those students who are in residential halls or dormitories, as they are called in America, if absent from a meal have to report, not always to the lady warden or the warden, but there is a house committee and there are student advisers, and if they are absent they have to report to these, even during mealtimes, but they can leave outside those hours. They cannot leave in the evenings without permission and they have got to sign a book when they come in and they have to sign a register when they go out.

Mr. GROSS: With respect to one more regulation—I will not pursue this too much further, I just want to get the clarification of the distinction, if any, drawn in the regulations gazetted—is it the practice in the White universities with which you are familiar that no statement may be given to the press by, or on behalf of, the students, without the Rector's permission?

Mr. RAUTENBACH: Yes, that is so in my own university, but I give permission, again, I delegate my authority to the Chairman of the Students' Representative Council. He can make declarations, with my permission, seeing that I have delegated that to him, on student affairs.

Mr. GROSS: Do you know the practice, Sir, at other so-called White universities?

Mr. RAUTENBACH: Yes, I know the practice . . . You mean in South Africa?

Mr. GROSS: Yes, Sir.

Mr. RAUTENBACH: In South Africa, it is very much the same all over, but students do, in fact, make declarations, and at times they are called to order and at times they are not called to order. One has to use one's judgment on such matters.

Mr. GROSS: Is there, so far as you are aware, in the case of the White universities a regulation proclaimed or gazetted which prohibits declarations without permission?

Mr. RAUTENBACH: In the case of the White universities, our regulations are not proclaimed or gazetted outside our own campus and the students themselves have made a regulation, in support of a university regulation, that no man outside the Chairman of the Students' Representative Council may make a press statement concerning student matters, so that *pari passu* we also have, on our own campus, made and proclaimed regulations.

Mr. GROSS: This, then, Sir, if I understand, is a matter of, shall we say, student self-discipline or student self-government. Is that correct?

Mr. RAUTENBACH: No, it is not only a matter of student self-government but it is a *delegation of certain authority* to the students by myself, as Chairman of Senate. Senate is the body, as in the case of the Bantu colleges, which has sway over student discipline. It stands there, too.

Mr. GROSS: That policy is not manifested in, or implemented by, a regulation, is it, Sir?

Mr. RAUTENBACH: No, not by a gazetted regulation in the Government Gazette.

Mr. GROSS: Yes, Sir.

Mr. RAUTENBACH: That is the difference.

Mr. GROSS: Yes, Sir. Now, I would like to turn to the organization and control of the non-White colleges. I believe you have testified, Sir, that the Councils are all-White and the Advisory Councils non-White. Is that correct, Sir?

Mr. RAUTENBACH: That is entirely correct, Mr. President.

Mr. GROSS: And, Sir, you have testified that the Senates are all-White and the Advisory Senates non-White. Is that correct?

Mr. RAUTENBACH: That is correct also.

Mr. GROSS: And, Sir, what is the method by which members of the Councils and Advisory Councils are selected or appointed?

Mr. RAUTENBACH: As regards the appointment of the Council—I am now referring to page 4 of the copy of the Act which I have—that was

as gazetted, I do not know whether you have the same there . . . The fourth article says that a university college does consist of . . . and then, Council, etc., and there is no specific provision here as regards the qualifications to be held by members of Council.

Mr. GROSS: Perhaps I could assist you to focus on this, and perhaps save time, if the President permits. Is it not correct that all the members of both the Council and the Advisory Council are appointed by the State President who designates the Chairman? Is that correct?

Mr. RAUTENBACH: Yes, that is correct but that does not signify any qualifications, excepting, I think, that he should not be bankrupt or anything of that kind.

Mr. GROSS: I was not referring to qualifications but to methods of appointment.

Mr. RAUTENBACH: I am sorry, it was a misunderstanding on my part.

Mr. GROSS: Similarly, is it not correct that, with respect to the White Senate and the non-White Advisory Senate, the Rector is *ex officio* a member of the Senate, the other members being professors or lecturers selected by the Minister of Bantu Education, after consultation with the Council? Is that correct?

Mr. RAUTENBACH: That would be correct.

Mr. GROSS: And, with the Council's consent, the Senate may delegate to the Advisory Senate powers to deal with matters relating to instruction, examination and discipline. Is that correct?

Mr. RAUTENBACH: That is correct.

Mr. GROSS: Now, with respect to the Senate and the Advisory Senate—I believe that you have agreed that the members are appointed by the Minister of Bantu Education in both cases—is that not so, Sir?

Mr. RAUTENBACH: The members of the Senate?

Mr. GROSS: The members of the Senate and Advisory Senate are appointed by the Minister of Bantu Education. I think you have just testified to that?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Now, I should like to revert to your testimony of yesterday, page 372, *supra*, of the verbatim, in which you testified regarding the method by which members of the Council of the University of Natal, I believe, are selected. Are you looking at page 372, Sir, of the verbatim? May I read it to the witness, Mr. President?

The PRESIDENT: Certainly. I think it is near the bottom of page 372.

Mr. GROSS: Near the bottom of page 372, Sir. You testified in response to my question "By whom are they ['they' referring to members of the Council] appointed?" Your answer was "Only a certain number of members are appointed by the State President" and then you went on to say, in effect, if I may summarize it briefly, that the State President appoints about one-third—about eight, and then you described how others were appointed. Now, Sir, would you explain to the Court, if you will, the basis of the distinction between the method of selection of members on an ethnic basis, or otherwise, of members of the Council, in the case of the non-White as compared to the White universities?

Mr. RAUTENBACH: The basis for this differentiation is that in the one case we are dealing with private, State-supported universities, a well-known type of university in Britain and all over the world where there has been British influence. The White universities have become that type of university after having been in many cases for a number of years

State institutions very much like the Bantu State institutions of the present time. The Bantu State colleges are purely State institutions. You find in every country, even in this country where we are at present, in the United States, with its famous State universities, that, as in the case of State universities all over the world, the governing body is appointed by the public authority. The government paying in this case, bearing the financial burden up to the extent it does; the government also, of course, who pays the piper calls the tune in this respect; that everywhere where there is a State institution, the governing body is appointed by the State, whether it is a highly developed country, an under-developed or a developing country. It is universal.

Mr. GROSS: Now Sir, in South Africa itself, if we may confine ourselves to that at the moment, are there any State supported White universities?

Mr. RAUTENBACH: All universities are State supported.

Mr. GROSS: Financed?

Mr. RAUTENBACH: Financially, yes, up to the extent of 66 per cent.

Mr. GROSS: And Sir, *à propos* the distinction, then, that you draw between State supported and financed White, as distinguished from non-White, institutions in respect of the question we are discussing—the method of selecting the Councils and Senates. Is the distinction based upon the fact that in one case there is 100 per cent. financial support by the State and the other case, as you mentioned, 66 per cent.?

Mr. RAUTENBACH: No, it is not 100 per cent.—it is close to 100 per cent.

Mr. GROSS: In the case of the non-White?

Mr. RAUTENBACH: In the case of the non-White as was the case of my own institution prior to 1917.

Mr. GROSS: Could you clarify again your response to my question in terms of the reason for the distinction in the method of selecting the members of the Councils and Senates, respectively, in the non-White and White schools? You said, if I understood you, that the reason why the government appointed the members of the Councils and Senates in the non-White institutions was because of the fact that they were financed by the State. Did I understand your answer correctly?

Mr. RAUTENBACH: That was my answer—that is one of the important considerations—there are others.

Mr. GROSS: Well Sir, before you get to the others, in view of the fact that, as you have testified, the White institutions or some of them, I think you said all of them, are also financed by the State, would you explain why their Councils and Senates are not also appointed by the Government?

Mr. RAUTENBACH: Yes, that is a matter of evolution. There was a stage in which the majority of what we today call White universities were in the very same position that the Bantu institutions are at the present moment. The institution of which I am the academic head was established in 1908 and up to 1917 it was a State institution and it is written in the record that not even a wheel-barrow could be bought by the Transvaal University College without the permission of the Minister.

Mr. GROSS: Is it not a fact, Sir, that the University College of Fort Hare in 1959 had on its Council and Senate both White and non-White persons?

Mr. RAUTENBACH: I am not sure about that—it can be. Oh yes, they had in the senate, Professor Jabavu, at one time he was a member of

Senate, a well-known African and there was a gentleman from America, a negro, who was professor and who recently returned to South Africa for a visit—the Senate was a mixed Senate.

Mr. GROSS: The Senate was what, Sir?

Mr. RAUTENBACH: What we call a mixed Senate.

Mr. GROSS: So that the answer to my question is that it is true that in 1959, the Fort Hare Council and Senate were composed of Whites and non-Whites.

Mr. RAUTENBACH: I am not sure about the Council, Mr. President, Mr. Gross was asking me a question about the Senate.

Mr. GROSS: In the work entitled *A Decade of Bantu Education* by Muriel Howe, published by the South African Institute of Race Relations in 1964 in Johannesburg, at page 131, it is stated that at the University College of Fort Hare in 1959 the Council had 19 Whites and 3 African members, and that the Senate had 21 Whites and 4 Africans. Do you dispute the accuracy of that?

Mr. RAUTENBACH: No, it is quite possible.

Mr. GROSS: Now Sir, when you speak about evolution as explaining why there are 100 per cent. government appointed non-White Councils and Senates as distinguished from the practice with respect to Whites—would you not agree that in view of the change that has been made with respect to the University of Fort Hare that this is evolution in reverse?

Mr. RAUTENBACH: Now, before I can reply to that, it would help me if I were to know if those members of the Council mentioned there were not members of the Senate who had been elected by the Senate to the Council. Under the old system the Senate had a certain number of representatives on the Council, but it would not change the fact that there could have been Coloured members of Council.

Mr. GROSS: Well, there were non-White members of Council. In fact my question to you is whether the changeover, by reason of the 1959 legislation and its implementation at Fort Hare, as an example, to an all governmentally appointed White Council and White Senate, would not be evolution backwards?

Mr. RAUTENBACH: No, because there was also a parallel evolution and that was that the government prior to 1959 had subsidized Fort Hare in the same way as the so-called White universities, and after 1959 a new system of financing the university arose and parallel with the new system of financing the university, as I said, it became a State institution. Once you have a State institution, there is the tendency in all countries of the world that the governing body shall consist of appointees of government, and what is referred to now as the evolutionary lies ahead in so far as the advisory council will in due time take over the whole job of governing the university; it has already taken over certain parts which have been delegated as mentioned in the Act, the possibility was stated and it has been exploited.

Mr. GROSS: I plead guilty to confusing you with the form of my question. I am afraid I confused two things and I think it may be important to clarify it. I referred, I am afraid without specification, to the two problems: one, the method of appointment of the Council and the Senate membership and two, the question of its composition on an ethnic basis. Now at the moment, just for the sake of clarity, since I am afraid I put the two into one question before, I am referring solely to the question of the racial or ethnic composition of the Council and Senate and ask you



again, if I may, to avoid any confusion in your mind by my previous form of question, whether in respect of the ethnic or racial composition of the, let us say, Council and Senate of Fort Hare, which is now all White at the Council and Senate level and all non-White at the advisory level, so to speak—whether that change from the previous mixed system of government of the university is not a step backwards?

Mr. RAUTENBACH: My reply to that is that it is a step forwards and the reason is that now the Advisory Council is a body, no longer two or three members sitting there, but a body, with its own Chairman and also a member of that ethnic group. That body is preparing itself for the take-over, and the opportunity of involving more leaders of these communities in a body with a certain status, and a very high status, is a great step forward in the participation of that group and its leaders in the government of the university.

Mr. GROSS: Sir, in what respect if any is it a step forward or a great leap forward, or whatever formulation you wish, to have adopted legislation which eliminated the possibility of continuing the membership on the Council of non-Whites who had participated as members for some years—in what respect is that a step forward?

Mr. RAUTENBACH: If, to use the word of Mr. Gross, they were eliminated from the one and there had been no provision elsewhere, that would have been a step backwards—not one, it would have been a dozen steps backwards—but seeing that the provision was made by the Act elsewhere and seeing there is a blueprint showing what the end of this process of evolution should be, I do not think it was a step backwards but, as I say, a leap forward.

Mr. GROSS: Well Sir, when you used the word “elsewhere” are there any non-White colleges in the Republic which have mixed Councils?

Mr. RAUTENBACH: Not to my knowledge.

Mr. GROSS: And when you say “elsewhere” what do you mean by that, Sir?

Mr. RAUTENBACH: Those people who lost membership of the Council at Fort Hare or men of their standing are now accommodated in the Advisory Council.

Mr. GROSS: By elsewhere you meant that they were moved from the Council to the Advisory Council—is that what you meant by “elsewhere” Sir?

Mr. RAUTENBACH: Yes. I would not say these individuals as such, but the type of man, the leader.

Mr. GROSS: You mean the non-Whites, Sir, don't you?

Mr. RAUTENBACH: Yes, I mean the non-Whites, what we are referring to, both of us.

Mr. GROSS: Now therefore, you think this was a step forward to make a provision whereby non-Whites who had previously served as members of the Council were given opportunities “elsewhere”, which means to serve as members of the Advisory Council. Is that what you mean, Sir?

Mr. RAUTENBACH: That is precisely and exactly what I mean.

Mr. GROSS: And you regard that as a step forward, Sir?

Mr. RAUTENBACH: As a step forward of more than three feet.

Mr. GROSS: Now Sir, did you not state that it was the objective that in due course that non-Whites would serve on the Council itself?

Mr. RAUTENBACH: Yes, I did say that.

Mr. GROSS: So that would be a step forward, would it, when that great day comes, Sir?

Mr. RAUTENBACH: It would be a step forward when that is envisaged and carried out in an honest manner.

Mr. GROSS: Assuming that it would be carried out honestly, would it be then fair to summarize your testimony saying that it was a step forward when the non-Whites are excluded from the Council and it will be a step forward when the non-Whites are again admitted to the Council? Is that not then the summation of your testimony on this point?

Mr. RAUTENBACH: No, that is not the summation of my testimony.

Mr. GROSS: Well, would you clarify it in any respect that you feel appropriate?

Mr. RAUTENBACH: Yes, I could clarify it on one point. Mr. President, when the Select Committee of Parliament was appointed to report to Parliament on the proposed legislation, I gave testimony before and submitted a memorandum before that Select Committee, I advised that the best way would be to have what I called this morning "a mixed Council" and a "mixed Senate"—I advised that, that was my recommendation.

Mr. GROSS: As they had in . . .

The PRESIDENT: I think the witness ought to finish his explanation.

Mr. GROSS: I thought he had finished. Please continue.

Mr. RAUTENBACH: That was my idea—I made this suggestion. The Chairman of that Select Committee asked me the following question: what would you do if an African leader, an educationalist, a good man, a sound man—if I inform you now that he asked that we should not do that and he gave the following reasons: when we sit there together with White people, one of two things happen—we just go along with them as if they were always right or we have a tendency to go in the opposite direction because they are White; please leave us out of this at this stage, and let us have a body by ourselves where we can develop. Then, when the Act came along, I thought it was a very elegant solution. I did not get my way, but if that was desired on the part of leaders of the Bantu, then, well, after all, one has to take note of how they wish to have things done and they wish to develop. My words were quoted in the minority report presented to Parliament, they are on record.

Mr. GROSS: Is it your testimony, then, that a reason for the exclusion of non-Whites from membership in the Council or Senate is that it is the wish or will or preference of the non-Whites themselves? Is that your testimony?

Mr. RAUTENBACH: I must say now that it certainly had a great influence, because that was what actually happened: that the idea of a joint council was dropped, which I had suggested, or a joint senate, and a rather elegant device evolved, and that was the other one of having the two bodies and the blueprint; we should not think of the two bodies without the blueprint, or refuse to develop it.

Mr. GROSS: Are you familiar with the events which took place in October 1959 when the Fort Hare students adopted a resolution with regard to the matter of the changes contemplated in the legislation?

Mr. RAUTENBACH: Yes, that was general familiarity with students on campuses of all types, and their acts and actions, protests, etc.

Mr. GROSS: I refer to the resolution which is set forth in the *Sunday Times* of 11 October 1959, as follows. This was adopted by the Fort Hare students:

"The Government in its dictatorial action in dismissing our staff members without stating any reasons has added to the atmosphere of insecurity and uncertainty that has engulfed Fort Hare during the past few years. This atmosphere makes the normal pursuit of academic activities almost impossible, but let it be noted once and for all that our stand as students of Fort Hare, and as the future leaders of our country, upholding the principles of education as universally accepted, remains unchanged and uncompromising. Our outright condemnation of the university apartheid legislation remains steadfast."

Were you familiar with that resolution at the time?

Mr. RAUTENBACH: Yes, I also read the *Sunday Times*.

Mr. GROSS: The reference to the resignation of the staff—do you know how many members of the staff of Fort Hare resigned?

Mr. RAUTENBACH: No, I know some members resigned.

Mr. GROSS: Do you know the reasons they assigned for their resignations?

Mr. RAUTENBACH: The real reasons, or the reasons they gave?

Mr. GROSS: I asked you for the reasons they assigned. We can go into their motivation, if you wish to, later, but first would you be good enough to answer my question?

Mr. RAUTENBACH: I also read in the *Sunday Times* about their reasons.

Mr. GROSS: What reasons did they assign, according to your information?

Mr. RAUTENBACH: In a general way—it is now some years ago—some of them expressed this idea: they were no longer prepared to serve in this kind of institution, which has a tribal character, which sins against every possible principle of university education, etc. These were the general reasons published in South Africa.

Mr. GROSS: It was, in sum, based upon opposition to the changes proposed by the legislation, was it not?

Mr. RAUTENBACH: Yes, in the general way, opposed to the principles embodied in the legislation.

Mr. GROSS: Is it true also that in 1960 eleven students were not re-admitted? Are you aware of that fact?

Mr. RAUTENBACH: Yes, I am aware of that fact.

Mr. GROSS: And that the Minister of Bantu Education, explaining their exclusion—this is from *Hansard* of 8 March 1960, column 2927—said that their re-admission "was not considered by me to be in the best interests of the college because of their activities in 1959". Two of these, incidentally, were postgraduate students; one had completed eight university courses, two had completed seven courses, one six courses. Do you know anything about this incident, further than what you have testified?

Mr. RAUTENBACH: I know about that incident, and I also know that it is part and parcel of every university act that if the university council does not consider it in the interest of the university, it need not accept the registration of a student. It holds also in the case of my university and other universities—all university institutions in South Africa; without giving a reason, we need not register a student.

Mr. GROSS: Here there was a reason given, and my statement to you, if I may pursue it one notch farther, was that they were not re-admitted because of their activities in 1959. Could you explain to the Court, on

the basis of your knowledge or information, whether this explanation referred to any activities of these students other than in connection with the resolution which I have quoted?

Mr. RAUTENBACH: No, Mr. President—Mr. Gross has read that the Minister has said “owing to their activities in 1959”—that is the reason he gave, and that is the reason I read also in the newspaper report of the sessions of Parliament.

Mr. GROSS: You know of no other activities in 1959 for which these students might have been disciplined, other than their activities in connection with this resolution? That is my question.

Mr. RAUTENBACH: No; I do not know the details of disciplinary measures against students other than these in that year—we do not advertise disciplinary measures as a rule, we keep it as a private matter.

Mr. GROSS: Thank you. Now, with respect to the testimony which you gave on Monday, 4 October, at page 338, *supra*. I will read it, if the President permits. Counsel, Mr. Grosskopf, asked whether you saw any value in the intellectual contacts on the staffs of these Bantu university colleges between the various groups represented there. I should like to place your response into the record, with the President's permission, because of subsequent questions. Your answer was:

“Yes, on the campus of the Bantu College of the North there is association as between the White members of staff and the Bantu members of staff. There is intellectual association. They meet. They come to know each other. They come to appreciate each other. I think they come to know each other's problems. I think there is great advantage in this association. In fact, Mr. President, I have, myself, gained a good deal of knowledge for my own work in advising the government on education from association with the Professor of Practical Education at the Bantu College of the North, Professor Kgnari, whom I have often met in his office.”

With your recollection of that testimony refreshed, this is a correct version of your testimony, is it?

Mr. RAUTENBACH: The word “often” should come out—“whom I have met”—I would not over-emphasize that “often”.

Mr. GROSS: When you say “whom I have met often in his office” you would delete, with the President's permission, the word “often”?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Could that be done, Mr. President?

The PRESIDENT: It is a correction which you are giving as evidence now?

Mr. GROSS: Yes, Sir.

The PRESIDENT: Then it need not be omitted, it is simply recorded in the transcript.

Mr. GROSS: Would the intellectual association to which you refer, and the benefits you testified you derived from the association, be unusual in connection with the relationship between Whites and non-Whites on the staffs of universities?

Mr. RAUTENBACH: No, that would not be unusual.

Mr. GROSS: That would be a normal incident of the relationship between the various staff groups, of different races or ethnic groups?

Mr. RAUTENBACH: Yes, on the same campus.

Mr. GROSS: And would you say whether the contact—“association”,

to use your word—between these groups, between the staff members of various ethnic groups, has produced, in your own words, “better understanding” of each other’s problems in the sense of their educational, social, economic, political problems?

Mr. RAUTENBACH: I would say that, and I could give reasons for that.

Mr. GROSS: Perhaps the Court would be interested in your reasons.

Mr. RAUTENBACH: The Bantu College of the North is situated in the Pietersburg district, a district chiefly populated by Afrikaans-speaking farmers, and like most rural people, on the conservative side. Now since the college was established in 1960 and came to be better known, it has happened that on various occasions a Bantu member of staff has addressed a White gathering, a meeting of Whites, on university and academic matters, and a good deal of prejudice in that very conservative area against the very presence of the Bantu College of the North in its own environment has been removed. In fact, there is an appreciation now for the very presence of this Bantu college, and the idea which is embodied there, and the ideals which are strived after. Just before I left the country, about two weeks ago, there was a report on an address which had been given to one of the clubs in Pietersburg itself consisting of young businessmen in the town and coming from outlying districts, and the address was given by one of the Bantu members of the staff of the University College of the North. Professor Kgnari also has addressed people, Whites have been invited to certain meetings, and I remember this education man—I was not there, but I had reports from the Rector—addressing a group of people, and the very fact of Whites who have not had the opportunity of hearing a coloured man of learning and culture and civilization, that very fact has had its beneficial influence.

Mr. GROSS: Would you agree, as a distinguished educator, that it is a virtue, and indeed, perhaps one may say a glory, of the university that it provides the facility for bringing together persons of diverse backgrounds—economic, racial and other? Would you say that is one of the central, cardinal features of the university?

Mr. RAUTENBACH: No, I would say that is an important feature.

Mr. GROSS: But you would not minimize its importance, or would you, as an educator?

Mr. RAUTENBACH: There are various ways of establishing contact between academics outside actual, physical contact in each other’s presence, but it is one way of doing it, and there is this, let us say, worldwide communication at the present time, but there is another way of doing it: this very man I am mentioning was a recipient of a State Department grant and visited the United States, this Bantu; I read the report just after I had visited the States, and that established contact as between him and other people again—that is another way of doing it.

Mr. GROSS: Then you would say, would you, that the increase of contacts of various types is of constructive and beneficial value?

Mr. RAUTENBACH: It is of constructive and beneficial value if it does not take place at the expense of the most important part of any campus, and that is instruction or teaching and research and education in general.

Mr. GROSS: And in what respect would you advise the Court that there would be such obstruction arising from the contacts in question?

Mr. RAUTENBACH: No, I never used the word “obstruction”.

Mr. GROSS: I beg your pardon, I misunderstood you—what word did you use?

Mr. RAUTENBACH: I do not remember using a word which could be interpreted as meaning obstruction.

Mr. GROSS: To get to the point: I am attempting to elicit from you, for the benefit of the Court, if it wishes, what obstacles or disadvantages there are in the negative side of the balance sheet, so to speak, with regard to contacts which have these advantages of which you have spoken.

Mr. RAUTENBACH: I think it was as a result of the words I used, that as long as the primary task is carried out on the campus, then that other very important matter can also be tackled, but the one should not be done at the expense of the other. By that I mean that this new type of academic who is either always on his way towards an airport or from an airport is not always an asset to a university.

Mr. GROSS: Regarding the advantages which derive from the type of contacts we are discussing, which you have testified appertain at the staff level. Would you regard that similar values would attach to contacts between the members of the Council and the Advisory Council, and between the Senate and the Advisory Senate, respectively? Would they also benefit from the type of contact to which you refer and for the same reasons?

Mr. RAUTENBACH: A type of contact would be beneficial.

Mr. GROSS: Sir, would there, for example—to discuss for a moment the desirability or advantages, if any, of having a mixed college Council—be advantages of closeness of contact and understanding by participation in the deliberations of the Council itself?

Mr. RAUTENBACH: After having seen the new system in action, and having watched it closely, that is, where there is a separate college council and advisory council with the link in between, the Rector who, ex officio, is a member of the Advisory Council, and, by the way, the Chairman of Council may visit the Advisory Council, I have changed my mind about that since I gave evidence before the Select Committee of Parliament.

Mr. GROSS: It is your present view, Sir, that there would be advantages derived from closer contact through common or mixed membership?

Mr. RAUTENBACH: No, I overestimated the advantages when I gave evidence before the Select Committee.

Mr. GROSS: Has there been any experience, Sir, since 1959, which changed your opinion in that respect?

Mr. RAUTENBACH: Yes, and the experience has been that the Advisory Council is doing such a good job of work without the presence of Whites that I do not see that it is very necessary that we should meet face to face always.

Mr. GROSS: And, conversely, would you say that the White Council is doing so well without the presence of non-Whites that there is no reason, from that point of view, to mix it again as it was at Fort Hare in . . . ?

Mr. RAUTENBACH: No, seeing that the White Council gets the minutes and agenda of the Advisory Council and, besides that, having the link between the two bodies in the Rector of the university, we have found no necessity, outside of asking the Rector some questions about certain resolutions, to have a meeting or to meet each other.

Mr. GROSS: Sir, would it be fair to say that (to summarize your testimony on this point) the collaboration which takes place between the Council and the Advisory Council takes place in various forms, but does not include joint deliberations? Is that a correct statement?

Mr. RAUTENBACH: That is a correct statement.

Mr. GROSS: And the reason against such joint deliberations is what, Sir?

Mr. RAUTENBACH: The reason I gave was the reason given at that time by a leading Bantu educationalist expressing preference for a separate body for foreseeable time.

Mr. GROSS: Sir, are you familiar with the reason given by the Minister of Bantu Education for the changeover from the mixed to the racial composition of the Fort Hare College?

Mr. RAUTENBACH: No, not Fort Hare particularly, but in a general way the whole policy. I am acquainted, by and large, with that—the whole background. I have served on occasions . . .

Mr. GROSS: Having read *Hansard* . . .

Mr. RAUTENBACH: That was some years ago.

Mr. GROSS: Could I remind you, Sir, that it was in 1959 that the Minister of Bantu Education, in the Assembly (and this is in *Hansard* 5 and 12 of 1959, Columns 50 and 60 and Columns 4443-4453) explained as follows: (I paraphrase to save the Court's time, but the reference is to the actual language in the *Hansard*.)

"In the past, White and non-White persons had served on the Council and Senate [and this had been Fort Hare] and had been accommodated on a basis of equality. [The Minister went on, too, in his explanation to say that] This must inevitably create the fallacious impression among the non-Whites that apartheid was something which disappeared when one attained a certain academic level, that academic training would remove discrimination in South Africa. As a result the students would become agitated against the racial order in South Africa instead of valuable members of their own community."

Now, Sir, is the Minister's explanation familiar to you?

Mr. RAUTENBACH: I did not remember those specific words.

Mr. GROSS: Those were not his exact words. I have summarized his words. Would you say that, on the basis of . . .

The PRESIDENT: If you could summarize words in that description, Mr. Gross, you could quote the precise words.

Mr. GROSS: Sir, I do not have with me the *Hansard*. I have quoted from an authoritative work, which I have cited *A Decade of Bantu Education* by Muriel Horrell, published by the South African Institute of Race Relations, to which I have referred.

The PRESIDENT: It is not unusual, you know, in books which are written by people that the summary, when it is examined with the document or the material from which the summary is made, is not a completely true reflection.

Mr. GROSS: Mr. President, with respect and with gratitude for pointing it out, I have attempted to make clear in the record that these are not the words. I have asked the witness whether or not he is familiar with the speech and, having read the summary from this work, I have, Sir, asked the witness whether he is familiar with the original, and that is as far as I have proposed to go because of the very point the honourable President has made.

The PRESIDENT: Thank you very much.

Mr. GROSS: Would you say, then, Sir, whether you are familiar with

the language actually used by the Minister of Bantu Education in that speech?

Mr. RAUTENBACH: Familiar with the language?

Mr. GROSS: You are, or are not, Sir?

Mr. RAUTENBACH: In a general way, yes, but I cannot quote the words . . .

Mr. GROSS: I would not ask you to do that, Sir.

Mr. RAUTENBACH: And I cannot judge words which are not quoted words.

Mr. GROSS: On the basis of your general familiarity, would you say whether or not you regard this summary by Miss Horrell in this work as a fair summary, or can you answer that question?

Mr. RAUTENBACH: No. I do not regard that as a fair summary of the motivation for the establishment of separate universities and the form of governments. It is slanted.

Mr. GROSS: I see, Sir. With regard to the slanting of this summary, would you say, Sir, on the basis of your knowledge or recollection of the speech in question, that the policy of changeover from the mixed to, shall we say, segregated governing body of Fort Hare was related in any way to the governmental policy of apartheid or separate development in the educational system as a matter of principle?

Mr. RAUTENBACH: Yes. I really think that at that stage it brought the Bantu universities into line with the general policy of the Government.

Mr. GROSS: And would you agree, Sir, that the reason for the change was to bring the situation in Fort Hare in line with the Government policy of strict separation?

Mr. RAUTENBACH: With the Government policy of separation for the sake of those communities. It is always half a statement to concentrate on the means and not the objectives or the aims.

Mr. GROSS: For the sake of those communities?

Mr. RAUTENBACH: Yes, and for peaceful co-existence.

Mr. GROSS: Yes, Sir. Now, these are the reasons for the rigid separation which, of course, are very prominent in the records. The answer to my question, I take it, is that for reasons which you regard as excellent, Sir, the reason for the change-over was to bring Fort Hare in line with the governmental apartheid policy. That is correct, is it not, Sir?

Mr. RAUTENBACH: Yes, that is correct.

Mr. GROSS: Now, Sir, regarding the general attitude prevailing about the period 1957-1959, *à propos* of your testimony, *inter alia*, with regard to the attitude of certain individuals, White or non-White, on the segregation policies, I would like to ask you, Sir, whether you followed during 1957-1959 the various positions taken pro and con by authorities with regard to the legislation then under discussion?

Mr. RAUTENBACH: I took a good deal of notice of what was happening in South Africa and outside South Africa.

Mr. GROSS: And you would regard yourself as rather well-informed on those developments at that time, Sir?

Mr. RAUTENBACH: As relatively well-informed. I could not declare myself an expert.

Mr. GROSS: Are you acquainted with the work which was the joint product of the Universities of Witwatersrand and of Cape Town, published under the heading *The Open Universities in South Africa* and published in Johannesburg, Witwatersrand University Press, 1957? You are familiar with that?



Mr. RAUTENBACH: I am familiar with that. I had about half a dozen copies sent to me. I read one of them.

Mr. GROSS: Yes, Sir. Did you comment on it in writing or otherwise after you had read one of the six copies?

Mr. RAUTENBACH: In articles I published I commented on certain of the ideas which had been expressed and one article was the article on Sir Eric Ashby's speech on the occasion of one of these ceremonies.

Mr. GROSS: Well, Sir, lest there be any confusion, I am referring to the document *The Open Universities in South Africa*, which was published "pursuant to and as a result of the Conference convened in Cape Town in January 1957 and attended by authorized representatives of the two universities, senior members of the academic staffs and members of the two university councils". This is quoted from the preface in this volume to which I have referred. Are you familiar with that work, Sir?

Mr. RAUTENBACH: Yes, I am familiar with all these agitations.

Mr. GROSS: All these what?

Mr. RAUTENBACH: Agitations.

Mr. GROSS: You describe this document as an agitation, Sir?

Mr. RAUTENBACH: No, but the whole process during that time—the events on all sides—were . . .

Mr. GROSS: On all sides was there a series of agitations and counter-agitations? Is that how you would describe the discussions at that time?

Mr. RAUTENBACH: Yes. You were referring to the period 1957-1959 and there was a good deal of agitation on both sides in that period; memorials and counter-memorials, marches and counter-marches on the side of the students and, in the long run, some academics too.

Mr. GROSS: I see. When you used the term "agitation" in respect of this publication, was it your intention to impeach its authority by use of that term?

Mr. RAUTENBACH: No, not to impeach its authority that it is an account of what happened and what was said, but when I say agitation it is not the type of discussion, exposition, which has arisen since then and which one associates more with the university and the university atmosphere. As I say, it is on both sides. I do not want to impeach the one side—one is like the other.

Mr. GROSS: Now, I would just like to clarify your use of that term, Sir. It is true, is it not, that the preface is signed by former Justice Centlivres, who was then Chancellor of the University of Cape Town, and by Richard Feetham, who was Chancellor of the University of Witwatersrand? You are familiar with the fact, Sir?

Mr. RAUTENBACH: I am familiar with that fact and I knew ex-Justice Feetham very well.

Mr. GROSS: In the preface, Sir, again to weigh its value in terms of its acceptability as an authority, it states that the book—

"clearly reveals the far-reaching character of the issues raised by the Government's proposal and no one who recognises the gravity of these issues, in their bearing on the future welfare of South Africa, can afford to ignore the strength of the case made in support of the claim of the open universities that they should not be deprived of freedom to continue to exercise their existing rights. Readers will realise that the plea of the open universities is not only a plea for the preservation of their own freedom, but a plea for the preservation of the freedom of every South African university."

Would you agree, Sir, with the characterization of the issues involved as of gravity and having a bearing on the future welfare of South Africa?

Mr. RAUTENBACH: I would agree that the issues being raised at that time and being discussed were of importance and are still of importance for the future welfare of South Africa. But that does not mean that I agree that what was at stake is as described in that particular booklet.

Mr. GROSS: Are you referring now, Sir, to the merits, or otherwise, of the pronouncements or conclusions reached?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Turning to those, Sir, if I may, I refer to page 5, which is under the heading of "The Essence of the Case" and, for convenience, attempts to summarize the essence of the problem. The first point is, Sir—to which I will ask you whether you agree or disagree—

*"The open universities declare that legislative enforcement of academic segregation on racial grounds is an unwarranted interference with university autonomy and academic freedom. These are values which should not be interfered with, save with the utmost circumspection; and the onus lies upon any government which contemplates such interference to justify its proposed action clearly and irrefutably."*

Pausing there, would you agree or disagree with that statement?

The PRESIDENT: There are a number of statements there, Mr. Gross. This type of question has been referred to more than once. When you are cross-examining an expert in respect of something said by somebody else it does not give the expert an opportunity to consider his reply, nor is it of great assistance to the Court, if you read a statement containing a number of allegations. Why don't you put the allegations specifically to the witness, as you have done on previous occasions? That is the correct way, if I may say so, to seek to cross-examine an expert witness.

Mr. GROSS: The two sentences which I have read are interrelated and I had thought that they encompassed one thought. I will, however, read each sentence and ask whether it contains more than one idea. I find it somewhat difficult to break it down without destroying the context, Sir.

The first sentence is:

*"The open universities declare that legislative enforcement of academic segregation on racial grounds is an unwarranted interference with university autonomy and academic freedom."*

If there is not more than one thought in that, Sir, would you express agreement or disagreement with that statement?

Mr. RAUTENBACH: Starting at the end, because there are also three or four statements in what you have read, there are two concepts at the end, academic freedom and autonomy.

Mr. GROSS: Would you distinguish between the two for the purpose of my question? Let us take first the statement that "the open universities declare that legislative enforcement of academic segregation on racial grounds is an unwarranted interference with university autonomy". Do you agree with that statement by these authorities?

Mr. RAUTENBACH: No, I do not agree with that statement because it does not state the whole of the situation.

Mr. GROSS: What important element has it omitted, Sir, from the point of view of your agreement or partial disagreement?

Mr. RAUTENBACH: That what is called "academic segregation" there

is rejected without giving a full explanation or a somewhat wider explanation of what the aims were of establishing separate institutions.

Mr. GROSS: With respect to this sentence, and I do not mean to parse it, Sir, but I want to be sure that we understand it in the same way—I understand this sentence to emphasize legislative enforcement. This is the essence of the case, one of the key paragraphs. “The open universities declare that *legislative enforcement* of academic segregation on racial grounds is an unwarranted interference with university autonomy”—we stop there. Do you disagree regarding the conclusion that legislative enforcement of academic segregation is an unwarranted interference with university autonomy?

Mr. RAUTENBACH: No. I do not agree with that in South Africa in its own peculiar situation.

Mr. GROSS: Now, Sir, would you then explain why you disagree in respect of the desirability or otherwise of enforcing this segregation by legislative enforcement?

Mr. GROSS: Dr. Rautenbach, I believe you were about to answer or would you prefer to have the question re-stated with the President's permission?

Mr. RAUTENBACH: I would prefer to have it re-stated please.

Mr. GROSS: As closely as I can recall it, it related to the basis of your disagreement, whole or partial as it may be, with the pronouncement of the authorities we have been discussing, that the open universities declare that legislative enforcement of academic segregation on racial grounds is an unwarranted interference with the university autonomy. The emphasis, Sir, I thought, is on legislative enforcement, and we were at the point, I believe, of your explaining to the Court why you disagreed with this statement's emphasis on the undesirability of legislative enforcement as a method for bringing university apartheid into being.

Mr. RAUTENBACH: Using the same emphasis of legislative enforcement, I agree that these things can and should be done by legislative enforcement even if there is autonomy and freedom, even as I agree that in certain countries, under certain conditions, integration in universities of all racial groups should be brought about by legislative enforcement.

Mr. GROSS: In other words, you are referring in the latter connection I take it to certain policies and certain States which by law or otherwise prohibit segregation or discrimination in education—is that what you are referring to, Sir?

Mr. RAUTENBACH: No, not only prohibit but prescribe intervention and I am referring, of course, in this case to the United States of America, where so much was spent after the Supreme Court gave its verdict on these matters and spent on that legislation thousands and thousands of dollars and the employment even of armed forces to enforce it; that is something beyond the “legislative” of course, it is the result of legislation. I would agree that there was justification for that.

Mr. GROSS: I think we need not, unless the Court wishes, get into a discussion of the Constitutional position of the United States. However, I take it that you do not agree with a policy which would prohibit segregation in South Africa—that is self-evident, is it not, Sir? Do you understand my question?

Mr. RAUTENBACH: At this present juncture, I would not agree, if I have taken the question correctly, with legislation. At least, I would be against legislation which would enforce integration.

Mr. GROSS: Which would prohibit separation, Sir, or is that just another way of saying the same thing?

Mr. RAUTENBACH: That is another way of saying the same thing.

Mr. GROSS: Your preference would be to put it the other way. Now with respect to the legislative enforcement of university apartheid or separation (in the words of the report it is apartheid), would you say, Sir, that the desirability, in your terms, of legislative enforcement, rests upon the unwillingness of the universities themselves to apply the policy of apartheid? Would you say that enters into the problem and justifies legislative enforcement?

Mr. RAUTENBACH: No, I could not say that in face of the fact that at the University of Natal there was voluntary segregation, and even in the case of this University the legislation brought about a new state of affairs.

Mr. GROSS: Sir, with respect for a moment to these universities which have been described as the open universities as distinguished from Natal . . .

Mr. RAUTENBACH: Natal regards itself as an open university.

Mr. GROSS: All right, Sir. Then let us say that with respect to open universities other than Natal, is the justification in your analysis of legislative enforcement of apartheid in the universities to be explained to any degree by the resistance of some of the open universities to the policy of separation?

Mr. RAUTENBACH: That may have played a role, Mr. President.

Mr. GROSS: Is there any other reason you can think of, Sir, and explain to the Court, why legislative enforcement would be necessary?

Mr. RAUTENBACH: Yes, to further the objectives in connection with development of the various groups.

Mr. GROSS: Do you mean by that, Sir, to say that the open universities such as Witwatersrand or Cape Town could not be trusted without legislative compulsion to carry out these policies to which you have just referred, for the reasons which you assert?

Mr. RAUTENBACH: No, there are also other reasons, another being that the so-called open universities never at any time in their existence were in the fullest sense of the word "open" universities—only the classrooms were open but not the other aspects of university life.

Mr. GROSS: The open university (I do not insist upon the phrase, this is the phrase used in the title of this work and commonly used, I think, by yourself in your testimony), I am using the term merely to identify certain universities. Would you state again, Sir, if you have already done so, whether it enters into the necessity for legislative enforcement that these universities, or some of them, could not be entrusted, if left to their own devices, to carry out the policy of apartheid in their education—is that a correct statement of one of the reasons for the legislative enforcement?

Mr. RAUTENBACH: Mr. President, it is very difficult for me to give a verdict on what would or would not have happened. As I say, it may have been one of the causes and it probably was one of the causes, but I would not go so far as to say that it would always be the state of affairs, because some of these gentlemen have changed their minds.

Mr. GROSS: I ask you again, Sir, are there any other causes or reasons underlying your disagreement with the statement here against enforced segregation by legislative measures?

Mr. RAUTENBACH: I think, by and large, in the course of my submissions here, or my testimony, I have given a number of reasons of a positive nature why I think that legislative enforcement should have taken place.

Mr. GROSS: You have no others to add, Sir?

Mr. RAUTENBACH: No, not particularly at the present time.

Mr. GROSS: With respect to the normal requirements of law and order, enforcement is normally geared to the proposition that some people or institutions are prone to commit wrongs—is that not so, Sir?

Mr. RAUTENBACH: There would have been no law in the world if the possibility of transgression had not been there, or the reality of transgression.

Mr. GROSS: Normally, Sir, if there is a legislative requirement, particularly one which is attended by criminal sections, that would mean, would it not, that there was a fear or suspicion that the universities in question might, if left to their own devices, continue with their traditional policy of mixed or open education—is that not so, Sir?

Mr. RAUTENBACH: Mr. President, I have been trained in law at my university by lawyers who at the Senate Meetings say that whatever law is passed is a law which regulates something—something must be regulated—and a law regulates. It seems to me that that is a very sensible way of approaching it.

The PRESIDENT: Were you aware of any suspicion on the part of the universities, or the open universities, that if left to their own devices they would not support the policy of separateness or apartheid in the universities?

Mr. RAUTENBACH: Yes, there is a possibility. I think there were symptoms of that . . .

Mr. GROSS: There were what, Sir?

Mr. RAUTENBACH: There were certain symptoms or signs that that could possibly have happened.

Mr. GROSS: Sir, continuing now, with the next statement under the heading of the Essence of the Case, I read as follows from page 5, and continuing on page 6:

“The open universities believe that the policy of academic non-segregation provides the conditions under which the pursuit of truth may best be furthered and that it has promoted inter-racial harmony and understanding.”

Pausing there, Sir, do you agree or disagree with that conclusion?

Mr. RAUTENBACH: I disagree with that conclusion. I will give my reasons. In the case of the University of Natal, I attended a graduation ceremony (I think the American term for that is a “commencement”, a commencement exercise) which had been boycotted by the Coloured graduates, after a good deal of agitation had taken place. The case in the University of Natal—the graduates came before the Chancellor or Vice-Chancellor in groups and not alphabetically. Now that is where men were on the same campus, attending segregated classes, but even there this problem arose. You have the problems brought about by Whites, not by the Coloured people, demanding that the social functions, dances and so on, should be attended by all and, in the University of Natal, a fight broke out when a Bantu man had approached a young White woman for a dance and the police had to be brought in. The reason why I think there should be enforced segregation at this stage is to prevent that and not only for the sake of law and order, but it is an attack, it is an offence to

the dignity of a man who has been invited to a dance by a member of the Committee if one of the womenfolk refuses to dance with him on the ground of colour. That is the worst type of discrimination which can be found.

Mr. GROSS: Sir, to revert to the comment or conclusion of the authorities here under discussion, that the policy of academic non-segregation promotes, among other things, inter-racial harmony and understanding. Apart from the episode to which you have just referred, Sir, which I would agree, of course, is deplorable, do you agree that the mixed or open system of education promotes inter-racial harmony and understanding in any respect?

Mr. RAUTENBACH: It may do so, but it has often happened that, even on one campus, a school campus, where there are two language groups (now I am referring to the language groups in South Africa of the Whites, the English and the Afrikaans language groups) on a certain day, when one group wants to celebrate this or that event in the past history, it has led to conflict. I hope in due time we will become more mature and overcome that, but bringing people together from various backgrounds may lead to conflict, and particularly as soon as the numbers become more or less equal. When there is a small minority on one side they tend to withdraw, but when the numbers become larger the possibility of conflict becomes very great if you have more or less two equal groups, or if the situation arises where a group begins to think it is not getting its full share and, in the case of people who are of various colours, of various ethnic relationships, on the same campus at the present time there is such strong sense of the rights of groups that I really do think it would not be very advisable, by law or by custom, to re-introduce so-called open university systems, particularly in those two universities which I have mentioned where there is integration in the classrooms, but outside of that segregation.

Mr. GROSS: Would it be consistent with your analysis, with which you have just favoured the Court, that in terms of the report, from which we are quoting at page 6, that inter-racial harmony and understanding are promoted by segregation? Would you go so far as to say that, Sir?

Mr. RAUTENBACH: I would go so far as to say that if segregation is of a positive, dynamic nature, which means that each of these groups ought to have an opportunity of realizing their aspirations, then segregation will lead to more harmony because nobody will have a right to be disgruntled or make comparisons.

Mr. GROSS: Does this answer presuppose or rest on the fundamental premise of apartheid, as appears, for example, from Prime Minister Verwoerd's statements which have been read into the record, that each group, or community, is to operate in its own sphere, so to speak?

Mr. RAUTENBACH: So to speak. To lead toward nationhood in each sphere.

Mr. GROSS: Let us talk about South West Africa for a moment, which is the subject of these proceedings. What would be the answer you have just given in terms of the so-called modern or exchange economy? Would you consider that in that sector the Whites and the non-Whites live in the same sphere?

Mr. RAUTENBACH: They live in the same sphere for eight hours a day probably, if they have an eight-hour working day, but for the other 16 hours, they do not live in the same sphere.

Mr. GROSS: Would you say, Sir, that the degree of realization of economic well-being, social advancement and moral self-realization, that these factors are influenced in any way during the eight hours in which they work?

Mr. RAUTENBACH: I do not quite get that question.

Mr. GROSS: You made a point, Sir, of the fact that they live in one sphere for eight hours and live in another sphere for eight hours.

Mr. RAUTENBACH: They work in that sphere for eight hours.

Mr. GROSS: They work in that sphere for eight hours?

Mr. RAUTENBACH: They do not just sit down.

Mr. GROSS: They spend their time in that mixed or so-called White economy? My question to you, Sir, if I may perhaps put it in more direct terms, with respect to that portion of their lives which is spent in the service of the White economy, shall we say, what, if any, role should education play with respect to promoting inter-racial harmony and understanding, as between the White and non-White in that sector?

Mr. RAUTENBACH: Education should always tend towards establishing harmony between individuals and groups. I think it is part of the educators' task to do that, but I do not see how you relate that education to that eight hours, specifically, where a man is busy working on a machine or something of this type. I cannot quite see how you, Mr. Gross, relate these matters.

Mr. GROSS: Well, suppose that man who is working on a machine has aspirations to, let us say, become assistant foreman, just by way of hypothesis. With respect to his understanding of the Whites, in the sense of better understanding of the White employer, he being non-White, would education have a role in the establishment of better understanding between the two groups? This is my question to you, Sir.

Mr. RAUTENBACH: Yes, I certainly think that education should in any case teach representatives of both groups that all are human beings with all the characteristics of human beings, that the colour of a man's skin does not make him sub-human or superhuman. That is one thing that education, in the wider sense, should bring about.

Mr. GROSS: Do you think, Sir, that lesson is taught well by the segregation, enforced or otherwise, of education according to ethnic groupings?

Mr. RAUTENBACH: Education according to ethnic groupings . . . But it is also education according to Christian ethics in so far as scripture is taught in all schools, but with freedom of conscience and, if there is one lesson scripture brings forward—from the third chapter of Genesis—it is that all people are created after the image of God irrespective of colour or race or ethnic grouping.

Mr. GROSS: With regard to the welfare and progress of the non-White person who is spending eight hours a day on a machine in the so-called White economy, do you recommend, Sir, as a matter of educational policy that he be taught in a segregated school and that the White employer and his children be taught in a segregated school in order that those two could understand each other better? Is that what you are saying to the Court, Sir?

Mr. RAUTENBACH: Yes.

Mr. GROSS: In what respect would this segregation or separation teach the White and the non-White, respectively, lessons in harmony and mutual understanding?

The PRESIDENT: Or produce it?

Mr. RAUTENBACH: I beg your pardon.

The PRESIDENT: Or result in it?

Mr. GROSS: Or result in it—yes.

The PRESIDENT: Teach or result in it.

Mr. RAUTENBACH: In the first place, having a school in your own group, having a school committee, or a school board, from your own group, using the vernacular, or the mother tongue, as the first language for teaching and learning certainly gives a sense of value or dignity to every group and the individual raised in a group, where the group itself is aware of its value and its dignity, will remove that idea of inferiority when meeting the other. It would not be conducive to a sense of value or dignity at the present stage to bring them together. There are many reasons why, in the one case, a better opportunity is provided for self-fulfilment and self-realization, happiness and satisfaction than in an integrated group.

Mr. GROSS: And this reasoning that you have just advanced applies, does it, Sir, to the situation in which the White and the non-White serve the same economy?

Mr. RAUTENBACH: Yes, that also applies because the residential areas are apart and the schools are situated in the residential areas and not in the factories.

Mr. GROSS: And not the what, Sir?

Mr. RAUTENBACH: *They are not situated in the factories, where they work for eight hours, but . . .*

Mr. GROSS: I think the record shows that the non-White schools are not only segregated but separated from the areas in which these people work.

Mr. RAUTENBACH: You could call that geographical separation.

Mr. GROSS: Geographical apartheid as well as educational? Yes, Sir. With regard to the underlying goal of promoting inter-racial harmony and understanding, I take it that your answer to my question was that separate instruction on the basis of racial groupings gives to each group a sense of dignity and . . . Is that correct, Sir?

Mr. RAUTENBACH: That is one of the points.

Mr. GROSS: And that creation of a sense of dignity on the part of each group encourages them to understand each other and to harmonize with each other more effectively? Is that what you conclude, Sir?

Mr. RAUTENBACH: Yes, because what I value in myself for my own group I have got to grant to another to value in his group. You have separation, too, leading to more peace—you have Northern Ireland and the Irish Republic. In Cyprus, where there was a question of integration, you got the opposite and even in the vast sub-continent of India, separation is not proving quite satisfactory. There is still some trouble with separation itself, but integrate now, there, and what will happen?

Mr. GROSS: Your point being, I take it, that the problem of inter-racial strife, prejudice and discord is a rather universal phenomenon. Is that correct, Sir?

Mr. RAUTENBACH: That is universal. It is not peculiar to South Africa.

Mr. GROSS: That is right, Sir. With regard to the general problem of promoting inter-racial harmony and understanding, you have testified have you not, Sir, that among the staff of the non-White colleges, with which you are familiar, the relationship, working contact and association between the Whites and the non-Whites has indeed promoted



mutual understanding? Is that a correct version of your testimony, Sir?

Mr. RAUTENBACH: That is a correct version of my testimony as regards the men on this academic level and an *ad hoc* association. It is an *ad hoc* association for certain purposes and it is an association subject to a certain development which is envisaged in the future.

Mr. GROSS: When you say people have a certain level where this chemistry of co-operation applies, at what level would you say a different relationship exists, or a different consequence results from working together and studying together?

Mr. RAUTENBACH: At those levels where the customs of the community play a dominating role and where these tend to arouse emotions. Now, it is generally presupposed that university people or the academics, the egg-heads some call them, have come to a stage where reason plays the greatest role. In other spheres perhaps emotion is more easily aroused and where emotion may be aroused, tension may be aroused and those tensions are not settled by argument or by debate, but in other ways.

Mr. GROSS: Would you say, for example, that the graduate of a medical school or the graduate of a law school had reached the level that you are describing, with respect to staff level?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Therefore, would you explain in what respect then there would be a difference, if any, in the mutual understanding arising from, let us say, medical students or law students studying together. In what sense would that problem, or the problems created thereby, be different from those which arise, or do not arise, in staff associations between ethnic groups?

Mr. RAUTENBACH: I have to return, Mr. President, to the evidence I submitted here before, and I have to draw attention to the fact that the experience at the University of Natal in its medical faculty, since the early fifties, has been that medical education of the Bantu is best served by spreading the six years' course over seven years. Now, if the Bantu and the others are to be brought together at the University of Natal—who have the widest experience of this, and immediately, not only the differentiation—it will be felt as a discrimination if the one group is told, you have a certain lag in language, remedial instruction, or a certain lag here or there, you are going to have to study for seven years whereas the others study for six years. That would immediately create tension, dissatisfaction and that would not be differentiation, that would be harmful discrimination.

Mr. GROSS: Therefore, Sir, in respect of the example I gave you, in medical school, let us say, the purpose of separation or segregation is to protect the non-White from what might be called, the consequences of his own cultural lag. Would that be a fair description of your testimony?

Mr. RAUTENBACH: Yes, as long as cultural lag is not ascribed to inherent factors.

Mr. GROSS: To what factors?

Mr. RAUTENBACH: Inherent or innate.

Mr. GROSS: Would it be pertinent, then, to enquire whether in your studies of the university level education, as part of the South West Africa educational system in this sense, if there have been any non-White candidates for medical school, let us say, who have not suffered from this cultural lag which you describe?

Mr. RAUTENBACH: I think there must have been at some time or other

medical students at the University of Witwatersrand—I know they were picked—Bantu students for final year, one year—I do not know how many years they took over the course—but there may have been some bright ones, some exceptionally bright ones, who took the course in six years. One of the examiners informed me that in certain subjects he found that the Bantu people had difficulty. In other subjects, again, they were probably in advance of the Europeans. He is not a trained psychologist, merely in internal medicine, but that was his impression. Now, that second-hand knowledge is not my own knowledge, but it is possible that it could have happened, and I think it has happened that a man of Bantu origin has passed this course in the same period as the other, but Natal's experience has been, by and large, that there is a handicap, there is a lag which must be overcome by remedial measures.

Now, I know in many countries of the world—I visited California—in California too, in the engineering training, certain remedial classes are given to students coming from certain schools, where there is also a lag.

Mr. GROSS: With respect to the non-White whom you describe and, whom, shall I say, for shorthand, is not to be thought of as a cultural laggard—with respect to such a person, who is admittedly and obviously qualified to perform his studies in the requisite period and with a hope of success, would you say that his exclusion from the medical school of his choice was based upon any consideration other than his race or ethnic origin?

Mr. RAUTENBACH: If I heard you correctly, you are asking whether the exclusion . . .

Mr. GROSS: Of such an individual is to be explained on any basis other than his racial or ethnic classification in a census?

Mr. RAUTENBACH: No, as far as the door of this is concerned, that door is opened or closed according to the act, and that act does base it on ethnic relations.

Mr. GROSS: So that the short answer to my question, I take it, is that the doctrine or policy of apartheid precludes attendance of such a person upon the basis of his racial or ethnic origin without reference to his innate capacity or ability. That is a correct paraphrase of your testimony?

Mr. RAUTENBACH: No, I am afraid that is not a correct paraphrase, because as long as it still stands in the Act that, with the permission of the Minister, a man may enter another university, that is not correct. It may be correct for 99 per cent., but correct means completely correct.

Mr. GROSS: That is right. Now let us turn to the point you have just referred to, the matter of exception, the 1 per cent. exception. First let me ask you, if I may, when and if an exception is granted, what is the role and relationship of the excepted person in the White university when he achieves the status of residing and studying there? What is his role and relationship in the university?

Mr. RAUTENBACH: The White student?

Mr. GROSS: The non-White who gets an exception, the 1 per cent. category, who are granted an exception to which you referred, and goes to a White university; what is his relationship to the White students that comprise the totality of that university?

Mr. RAUTENBACH: His relationship to the White students who comprise the totality of the student part of that university is that of a man who attends the same classes, the same lectures, works in the same laboratories, and his physical presence in a geographical sense is on that

same campus, but he is deprived of quite a number of amenities, quite a number of privileges, which form part and parcel of the extra-curricular contribution towards education.

Mr. GROSS: And would you add to that perhaps that he would be a lonely individual in that environment?

Mr. RAUTENBACH: Yes, he could be a lonely individual, he could develop complexes of the Freudian type.

Mr. GROSS: Would it be relevant to that possible consequence of the situation we are describing to consider the advantages, humane, practical and otherwise, of putting that gifted student in a position where he had like similarly gifted or capable students of his own race or religion in the same environment? In other words, putting it very simply, is there not a good reason arising from your testimony to have a situation in which that man does not find himself alone in a so-called White environment?

Mr. RAUTENBACH: Yes; if there had been complete integration, then the situation would have been different, but as long as there is no complete integration on any campus, there is something on that campus which hinders me.

Mr. GROSS: Still remaining with the question of the certificates of exemption or exception to which you referred in your testimony as the 1 per cent. exception to the apartheid principle . . .

Mr. RAUTENBACH: I did not mention 1 per cent., Mr. President—I mentioned it in another connection; there are at present 181 Bantu in the open universities, which is very much more than 1 per cent. of 1,107.

Mr. GROSS: 1,107 Bantu students in South Africa?

Mr. RAUTENBACH: Yes, in South Africa at university level in the residential universities or institutions.

Mr. GROSS: You referred to 99 per cent.—I don't mean to press you on that.

Mr. RAUTENBACH: No, that is in another context.

The PRESIDENT: It was a figure of speech?

Mr. GROSS: You say that there are 181 Bantu registered in White universities at the present time?

Mr. RAUTENBACH: Yes.

Mr. GROSS: That figure does not include those taking correspondence courses, I suppose?

Mr. RAUTENBACH: No.

Mr. GROSS: Where are these 181, if you will advise the Court, and how are they distributed among the universities?

Mr. RAUTENBACH: The greatest number is found in Natal.

Mr. GROSS: And how many are there?

Mr. RAUTENBACH: There are 80 medical students; I think all in all there must be over 100.

Mr. GROSS: Now those 80 medical students at Natal—would they not be in attendance at a non-White medical school?

Mr. RAUTENBACH: Yes, they are in attendance after the first year at the non-White medical school.

Mr. GROSS: So that including those 80 among the number you have just given would not be intended to signify to the Court that these 80 are attending White institutions except in the purely formal sense that the university is the over-all umbrella?

Mr. RAUTENBACH: That is so.

Mr. GROSS: Reverting to what I think perhaps may be closer to the

point, that leaves approximately 100 students who have been granted exceptions by the Minister, is that correct?

Mr. RAUTENBACH: Yes—that is about 10 per cent.

Mr. GROSS: Now among, roughly speaking, at what universities are those 100 exceptions in residence?

Mr. RAUTENBACH: They are chiefly to be found in the University of the Witwatersrand and the University of Cape Town, which were named open universities by Mr. Gross.

Mr. GROSS: Do you have any idea as to the relative distribution of these 100 between the two universities of Witwatersrand and Cape Town?

Mr. RAUTENBACH: A document is available here . . .

Mr. GROSS: I mean off-hand, do you know?

Mr. RAUTENBACH: They are to be found chiefly in those faculties and departments for which the Bantu colleges as yet do not make provision. I found some in music, for instance, and in certain cases for certain types of B.Sc. Degrees, and in speech therapy—I noticed that going through the list; but by and large they are chiefly to be found in those departments and faculties where the Bantu colleges as yet do not make provision.

Mr. GROSS: You do not know, I take it, the general distribution of these 100 as between Witwatersrand and Cape Town?

Mr. RAUTENBACH: The majority are at Witwatersrand.

Mr. GROSS: About roughly how many would you say?

Mr. RAUTENBACH: I think about 70 per cent. of those.

Mr. GROSS: So there are about 70, roughly, at Witwatersrand and 30 at Cape Town—that represents the total picture, does it, of exceptions granted to non-Whites to study at White universities, leaving aside the medical school of Natal?

Mr. RAUTENBACH: I could now give you exact figures. Out of 145 applications made to the Minister as from January 1960 up to February of this year, out of the 145, 24 were granted.

The PRESIDENT: Twenty-four were what?

Mr. RAUTENBACH: Twenty-four Bantu were given permission to attend White universities. The others may be carry-overs, and I do not know how the arrangement was, but that is the exact number—24 applications out of 145 were granted. The majority of those which were not granted were referred to the Bantu colleges which made provision for their study. Quite a number of them did not qualify for entrance to any university—they failed the matriculation examination and the supplementary matriculation examination. There is a list available of each and every one of these individuals.

Mr. GROSS: Is it the practice, so far as you are aware, for the Minister to give reasons for the rejection of applications?

Mr. RAUTENBACH: No, not the practice to give reasons, but there is generally a note added, the student is referred to this, that or the other institution which does make provision, and in that I see a certain reason, the reason for refusal then being that provision is already made at a certain place and approach that body or approach that university, but I would take it that the Minister does not give a reason in every case.

Mr. GROSS: Would the slip or note to which you refer indicate, for example, whether a course was available through correspondence at the University of South Africa?

Mr. RAUTENBACH: Yes, that is the inference which I must make from the list which I received.

Mr. GROSS: Would you be prepared to advise the Court, roughly again, approximately what proportion of the Applicants denied exception by the Minister were denied such exception on the ground that they could pursue the same courses through correspondence at the University of South Africa?

Mr. RAUTENBACH: I think more or less all of them, though not South Africa; quite a number were referred to the Bantu colleges.

Mr. GROSS: For correspondence courses?

Mr. RAUTENBACH: No, not for correspondence courses.

Mr. GROSS: I was referring to correspondence courses.

Mr. RAUTENBACH: Oh, for correspondence courses; no, a very small number of that list was referred to South Africa, because the majority of them had applied for current B.A. and B.Sc. Degree courses or education courses which were available at the Bantu universities.

Mr. GROSS: You say that a small number, so far as you are aware, were denied entrance by reason of reference to the possibilities of correspondence courses?

Mr. RAUTENBACH: Yes, I remember a small number of that type.

Mr. GROSS: What would your opinion be with respect to that as a reason for denying application for personal studies?

Mr. RAUTENBACH: For personal studies?

Mr. GROSS: Yes, not through correspondence, through attendance in person.

Mr. RAUTENBACH: Of course I give preference to attendance in person.

Mr. GROSS: Would you regard, from the educationist's point of view, a correspondence course as equivalent to a course achieved by personal attendance, in respect to its academic excellence and so forth?

Mr. RAUTENBACH: In respect of the content, the subject, of the course; as regards that, I have been informed by members of my staff that in many spheres they were surprised at the success which could be achieved through correspondence—languages, the arts, and so on; in fact, the Dean of the Faculty of Law told me—in South Africa you first have to take a degree outside the law faculty before you can enter the law faculty—that they had had a number of students coming from the University of South Africa who had been taught through correspondence, and who were up to the grade in the prescribed subjects of Roman Law, Roman Dutch Law, Latin and the two languages of the country; but I think in the case of the sciences, of course, you cannot make a man a physicist through correspondence—he has got to work in a laboratory outside the systematic part of the subject.

Mr. GROSS: Can you make him a musician by correspondence?

Mr. RAUTENBACH: No, you could not make him a musician otherwise either if he has not got musicianship in him.

Mr. GROSS: If somebody came to you, Sir, a non-White student, and asked your advice with respect to the relative merits in his personal case—may we talk about an individual and not a group for a moment—and asks you for your advice as to whether he would get a better education through a correspondence course than by personal attendance at a university—what would your advice to him be, Sir?

Mr. RAUTENBACH: My advice to him would be—if it is possible for you to attend what we call a residential university where there is *viva voce*

teaching, I would prefer that of course and everybody would prefer that because it is the acquisition of a skill and not only a theory—you could not acquire a skill by correspondence.

Mr. GROSS: Sir, in the book to which I have referred, *A Decade of Bantu Education* by Muriel Horrell, the statement is made at page 139 that *à propos* of the question we are discussing of exceptions requested and granted that “in 1961, only three Africans were permitted to enrol for a first time at an open university, two in Natal and one at Witwatersrand”. Are you in a position, Sir, to confirm or question those figures as the case may be?

Mr. RAUTENBACH: I have great doubts as to the correctness of that figure because that does not seem to coincide with the 24, and in the first two years there were more permissions granted than later on—and for what subjects were they registered?

Mr. GROSS: I was just asking you . . .

Mr. RAUTENBACH: Because that is misleading, Mr. President. If these were the very first Bantu students wanting to take, for instance, a Bachelor of Music degree, and I remember now that in the list I saw there was an applicant for music on the university level, it is misleading to say that these were the first ever allowed as if the others had not been allowed.

Mr. GROSS: Sir, because perhaps of the form of my question, you do injustice to this scholarly and careful work.

The PRESIDENT: That is your description of it, Mr. Gross, it is a document that is produced by somebody—it is not supported by giving it descriptions. It might be very scholarly, it might be very reliable and it may not be very reliable.

Mr. GROSS: Sir, it has been attacked as a misleading statement and I will withdraw the characterization of this book, of course, Mr. President, but the point to which I should like to draw your attention is that the statement is—“in 1961, only three Africans were permitted to enrol for a first time at an open university, two in Natal and one at Witwatersrand”—I asked you, Sir, whether you had any information on the basis of which you could confirm or dispute these figures?

Mr. RAUTENBACH: Mr. President, if that is taken literally, it is entirely incorrect.

Mr. GROSS: How many Africans were permitted to enrol for a first time at an open university in 1961?

Mr. RAUTENBACH: I do not know. Before 1961, there were 300 and at present, there are 181 and they could not be there—because otherwise the criminal procedure would have caught up with them by now, which was mentioned this morning—they could not be there unless they were allowed to enter by the Minister. Now Sir, subtracting the number from Natal, we have more or less agreed that there are 100. Now it is marvelous, if only three were enrolled in one year and that was a general trend, that there still could be 100—there is a conflict somewhere between these figures.

Mr. GROSS: I am not vouching for these figures. I have no personal knowledge of them and I will not characterize the authenticity of the work but I take it that the answer to my question whether you know how many Africans were enrolled for the first time in 1961, is that you do not know. Is that correct Sir?

Mr. RAUTENBACH: I do know that there were not more than 24.

Mr. GROSS: Well, there were not more than 150,000 for that

matter Sir, but the question is, how many were there? Do you know?

Mr. RAUTENBACH: Well, I think it pretty scholarly to say in this case not more than 24 because 24 were allowed since 1960 and I do not think all were allowed in one year.

Mr. GROSS: Well, let me ask you with respect to 1962—maybe there is something about 1961 that is putting us in an unnecessary atmosphere of dispute. In 1962, according to this same work, only two new African students were admitted, both to the University of Cape Town, to take diploma courses in nursing and music respectively—the citation for that, Sir, is the Minister of Bantu Education, Assembly, 2 March 1962, *Hansard* VI, Column 1869. Now Sir, do you know whether or not it is correct that only two new African students were admitted in 1962 under this procedure?

Mr. RAUTENBACH: That is not the correct way of saying it, Mr. President, “only two new African students” wanting permission to enter the course for sister tutors were admitted and they were the only two applicants and as far as I know they were the first applicants in South Africa. As a result of their coming forward eight Bantu women were trained and recently received their diplomas for the same course through the University College of the North. But it is misleading, in any case it is not the full story, to say “only two were admitted” because therein lies the suggestion that so many were refused or so many had not been admitted before.

Mr. GROSS: Perhaps the use of the word “only” justifies your comment but that is not my word but the book’s.

Mr. RAUTENBACH: The scholarly book?

Mr. GROSS: Uncharacterized. Now in 1962, Sir, do you know how many new African students were admitted to White universities?

Mr. RAUTENBACH: Now I know by and large in the five years, 24 were admitted but there are 181 and there is a list available here, if I could get hold of that I could mention every figure.

The PRESIDENT: It would save us a great deal of time if you could.

Mr. RAUTENBACH: I would be pleased to do it, Mr. President.

Mr. GROSS: Now Sir, with respect to the breakdown of the enrolment of Africans at universities in various years, at page 140 of this work, which I have cited, and the footnote gives the source of the figures, the enrolment of Africans at universities in various years starting at 1954 went as follows at Cape Town: 1954—26; 1957—29; 1959—39; 1961—18; is this correct according to your information?

Mr. RAUTENBACH: Yes, it is correct but . . .

Mr. GROSS: Do you question these figures or do you wish to explain them?

Mr. RAUTENBACH: These figures have to be explained. I take it that the majority of those mentioned under 1961 were those who, under the Act, could complete their training. They were not newcomers but they had been in those universities in 1959 and you cannot get a degree in South Africa unless you have done at least more than half of your work in the same university and under the Act, these people were allowed to carry on, so that amongst those 18, some are carry-overs from previous years.

Mr. GROSS: Thank you for the explanation. In other words, this is an enrolment figure, as set forth here, regardless of the origin or time of the original enrolment. You are quite right, Sir, there. Now with regard to

Witwatersrand on a table similarly across the line, in 1954, the enrolment of Africans in Witwatersrand University was 72; 1957—59; 1959—74; 1961—38. Would you explain to the Court, Sir, whether or not the 38 figure for 1961 would, if you know, include persons who had received exceptions?

Mr. RAUTENBACH: Yes, I remember from that list I saw, there were persons who had received exceptions.

Mr. GROSS: But you do not know, Sir, how many of that 38 would be in that category?

Mr. RAUTENBACH: I could bring it along. I am rather tired and my memory does not function as well as usual and the result is that it is some strain to bring forward the exact figures and all these details but I am prepared to accept those figures there, quite prepared.

Mr. GROSS: I think, Sir, that unless you wish to make any further comment on the question, I have no further questions with regard to the exceptions. Would you like to add anything?

Mr. RAUTENBACH: Yes, there is a very interesting point in the figures you have mentioned and that is the figures which went down before 1959 and there is an explanation for that too.

Mr. GROSS: Would you give that explanation?

Mr. RAUTENBACH: The Bantu students were encouraged, after the establishment of the medical faculty at Natal, by the authorities of the University of Witwatersrand, to go and study in Natal. I know that for a fact because the Principal of that University was my next-door neighbour and I know for a fact that he thought that the new policy should be to encourage the Bantu students to go and make use of this new faculty—that is the reason why they came down before 1959 and then went up again.

Mr. GROSS: I had not meant to mislead you by reading these figures at you but, the fact is that at Witwatersrand, as I read before, the figure in 1957 was 59 and in 1959 the number was 74.

Mr. RAUTENBACH: I would like to give comment on that. In the course of 1957 and 1958, and that is where the students come into the picture, and that is why I used the word "agitation" this morning, week by week meetings were held and the clarion call went out that now is the time to enrol at the University of Witwatersrand because under this new legislation you won't be able to—once you are in you can complete your course. That is one of the reasons, if you look at all of them with the exception of Natal, there was a tendency towards a steep rise in 1959 and my following comment will be—as was expected that after 1959, these numbers would go down and the result would be that we had this increase in numbers as from 1962 onwards at the Bantu colleges, going beyond what we had before, so that by 1965 there were 1,107 at the colleges and at the universities, whereas in 1959 there had been about 660, almost doubling the numbers—that is somewhat more of the picture.

Mr. GROSS: The rush, if I may call it that, Sir, to enrol in 1957 and 1958, indicated a desire, a strong desire perhaps, on the part of these persons to achieve that education at those institutions?

Mr. RAUTENBACH: That must have been one motivation at least.

Mr. GROSS: Do you regard that, Sir, as unworthy in any respect?

Mr. RAUTENBACH: No, it is a very worthy aspiration.

Mr. GROSS: In other words, the rush, if I may again call it that to enrol, was undoubtedly to be explained, was it not, Sir, by the fact that



if the legislation were passed there would be criminal penalties if they applied to enrol and were permitted to?

Mr. RAUTENBACH: I do not think any one of them knew about future possible criminal penalties. I did not know about it either this morning.

Mr. GROSS: I would like to refer to one particular conclusion reached in the report *The Open Universities in South Africa* because, by coincidence or otherwise, it expresses a judgment concerning the matter to which you testified and uses the same phrase you used. I refer to page 7 of *The Open Universities in South Africa* and I read the following:

"The open universities would also deny the validity of any argument for compulsory university apartheid which is based upon the adage that 'he who pays the piper calls the tune'. No government would be justified in using its control over the national purse as a lever for such a purpose. All sections of the population contribute to the national income and also to university endowments."

I stop there I take it, from your previous testimony, that you do, on the other hand, believe that "he who pays the piper calls the tune". Is that correct, Sir? Did you testify to that?

Mr. RAUTENBACH: In a certain context, yes, but not as one universal, unqualified truth.

Mr. GROSS: Now, Sir, in the context and sense in which you intended your testimony to be taken by the Court, or otherwise, would you now express your agreement or disagreement with the conclusion I have read from the report? Do you wish me to read it sentence by sentence, Sir?

Mr. RAUTENBACH: Yes, please.

Mr. GROSS: The first sentence is:

"The open universities would also deny the validity of any argument for compulsory university apartheid which is based upon the adage 'he who pays the piper calls the tune'."

Pausing there, Sir, do you agree or disagree with the validity of the argument that "he who pays the piper calls the tune"?

Mr. RAUTENBACH: I disagree with the tenor of the argument.

Mr. GROSS: Now, Sir, would you explain to the Court the basis of your disagreement?

Mr. RAUTENBACH: Yes, and I will take this very country in which we are at the present time—the Netherlands—as an example. In the Netherlands here there are three Imperial or State universities (*Rijks-Universiteiten*—literally Imperial University or State University). The legislation pertaining to these universities actually prescribes the date on which universities should open, prescribes the general tendency of courses to be given, and here we have a case, within a certain context, of "he who pays the piper calls the tune". The same holds for the State universities of the United States of America.

Mr. GROSS: Now we are speaking, are we not, Sir, about the argument of the piper's tune—argument, if I may call it that—in respect of the enforced introduction into the open universities of the system of apartheid? This is what we are talking about, is it not, Sir?

Mr. RAUTENBACH: Yes, but it also has a wider context because, in relation to the White universities—the so-called open universities—there are certain matters prescribed by law by the Government as to the minimum period of attendance for a certain degree, etc. In that respect,

the State contributing towards universities has a certain say on behalf of society at large and on behalf of the taxpayer. The autonomy of the university and the freedom of the university has never been absolute. It is a relative concept.

Mr. GROSS: Sir, in elaboration of that, I would call to your attention the explanatory considerations in this same report, with which you are familiar, at page 32, in which this joint conference concluded on this point as follows, and I will ask whether you agree or disagree, Sir:

"It might be argued by some theorists that the Government's claim to interfere in academic matters can be based upon the large sums of money which it pays to universities in grants and loans and that he who pays the piper has the right to call the tune."

Now, with that introductory comment they go on to say:

"Happily, no South African Government has by its conduct hitherto given countenance to this proposition."

Do you accept that as a correct statement of fact? This was in 1957, Sir.

Mr. RAUTENBACH: Yes. I have no reason at this moment to doubt the correctness of that statement.

Mr. GROSS: Now, they go on to say, Sir, or to argue, if you wish to call it that:

"If the time were to come when the piper theme had to be taken seriously we might perhaps ask who really does pay the piper. Is it the Government or the taxpayer? And are all the taxes paid by Whites?"

I will pause there, Sir, and ask you, if you will comment, is it true that all taxpayers are White, or not?

Mr. RAUTENBACH: It is evidently true that all taxpayers are not White.

Mr. GROSS: Now, Sir, with respect to those taxpayers who pay the piper, what role, if any, do they have in the selection of the Government which decrees their university apartheid system?

Mr. RAUTENBACH: No, they have no say. The Black people have no votes for the members of Parliament. I think that is well known.

Mr. GROSS: Now, Sir, the decision as to whether or not the university system should be placed in the apartheid framework was based, was it not, Sir, on Government policy without referendum?

Mr. RAUTENBACH: Yes, it was based on Government policy without specific referendum, without submitting it to the electorate at that moment. It is also based on custom which was much older than that Government.

Mr. GROSS: What is the custom, Sir?

Mr. RAUTENBACH: The custom is to live separately.

Mr. GROSS: In connection with the custom which you have described, the university study which I have in my hand, and I refer to page 6, says as follows with regard to custom:

"The open universities deny the validity of the argument that they should close their doors to non-White students on the ground that in being open they are ignoring an established South African tradition. Apartheid is not the only relevant established tradition in South Africa. The tradition followed by the open universities has

deep roots in the history of the Cape Colony and is no less South African for the fact that it accords with the universality of Christendom."

Now, if I may go back over that, as you wish me to, sentence by sentence. The statement, which is a connected thought, I believe, opens with the sentence that "the open universities deny the validity of the argument that they should close their doors to non-White students on the ground that in being open they are ignoring an established South African tradition". In the context of your reference to the "custom", would you also substitute the word "tradition", Sir? You take those as synonymous, do you, Sir?

Mr. RAUTENBACH: Yes.

Mr. GROSS: With respect to your comment with regard to the established custom or tradition, I take it you disagree with this statement then?

Mr. RAUTENBACH: I disagree with that and I will give my reason for that.

Mr. GROSS: Yes, I was going to suggest that you do so if you wish to.

Mr. RAUTENBACH: Well, the Native College of Fort Hare, which became the Bantu College, was established in that very Province, Cape Province, and was established—opened its doors—in 1916. So that in that Province, to which these gentlemen refer, where the old Cape liberal tradition held sway, the first university institution closing its doors to Whites—the Native College of Fort Hare—was established. So that seems to conflict with the historical reality.

Mr. GROSS: Sir, were not the open universities also located in the area you are referring to?

Mr. RAUTENBACH: No, only one of them: Cape Town. The Witwatersrand University is up north, close to my University. We are 40 miles from each other.

Mr. GROSS: Could you indicate to the Court if you know the comparative enrolment figures for Fort Hare versus Cape Town University?

Mr. RAUTENBACH: Yes. Fort Hare's enrolment in 1959 was 481, something like that, and Cape Town in 1959 must have had about 5,000—4,500.

Mr. GROSS: With respect to the question of the tradition or custom to which you and the universities, through the medium of this report, have referred:

"The tradition followed by the open universities has deep roots in the history of the Cape Colony and is no less South African for the fact that it accords with the universality of Christendom."

Taking the first part of that sentence, if I may, Sir, "the tradition followed by the open universities has deep roots in the history of the Cape Colony". Would you agree or disagree with that as a factually correct historic statement?

Mr. RAUTENBACH: I disagree with that. It is history as written by these gentlemen. There is a theory in South Africa of the old Cape liberal standpoint. Now there is some substance in that, but the substance does not lie where these university people think it lies but in the relation to the Coloured people. You see, we distinguish between the Cape Coloured people and the Bantu. There is a distinction and the old Cape liberal tradition was chiefly as regards the Coloured people and there was a

tradition of that kind, but not widely held outside Cape Town itself.

Mr. GROSS: Sir, *à propos* of that point of the Coloured as distinguished from other members of the population, according to the book by Horrell, cited previously . . .

Mr. RAUTENBACH: That is the scholarly one?

Mr. GROSS: *A Decade of Bantu Education* it is called. It states at page 132, that "of the 489 students"—this is 1959—"of the 489 students only 38 per cent. were of Khosa or Fingo origin".

Mr. RAUTENBACH: Khosa, yes.

Mr. GROSS: Is that the language which is accompanied by the click, Sir?

Mr. RAUTENBACH: A number of clicks. The Bushman language consists of clicks entirely.

Mr. GROSS: "Thirty-eight per cent. were of Khosa, or Fingo, origin, 34 per cent. came from other African groups, 14 per cent. were Coloured and 14 per cent. were Indian." Now, Sir, with respect to that distribution of ethnic groups at that College at that time, would you regard this as an advantage or a disadvantage from the point of view of the educational system?

Mr. RAUTENBACH: I would not consider this in the best interests of the groups and it was not unknown that Fort Hare had had various conflicts on its campus from time to time, prior to 1959.

Mr. GROSS: And yet, Sir, it is true, is it not, that it was precisely this distribution of ethnic groups, if I may call them that, that joined in a resolution of October 1959, to which I have referred and read into the record?

Mr. RAUTENBACH: I beg your pardon?

Mr. GROSS: I say, Sir, is it not a fact that it is precisely this group of students, distributed as they were, who joined together in the adoption of the resolution of October 1959, from which I have previously quoted?

Mr. RAUTENBACH: Yes. One can very well understand that.

Mr. GROSS: Would you please elaborate your opinion concerning the reason for their having crossed ethnic lines, if one may put it that way, in the resolution?

Mr. RAUTENBACH: Well, knowing students as I do and student nature as I do, after all these years of association with them, I would, in the first place, associate their activities with their propensity towards holding meetings and so on and passing resolutions. And this was a delicate stage in the whole matter. This was a delicate stage. I would have been disappointed, to tell you the truth, if they had not done so. There was also the loyalty to their colleagues at Fort Hare. Now, over against that, there are over 1,000 Indian students in the new Indian College at Durban, which is something very different from the slight 14 per cent. there and the small number in the open universities. One thousand—that is where the proof of the pudding lies.

Mr. GROSS: Sir, do you have any basis for the factual nature or any other kind on the basis of which you could testify that the students who adopted this resolution in 1959 did not mean exactly what they said?

Mr. RAUTENBACH: No, I cannot. I can just say that in the further course of events so many Indian and Coloured people and Bantu came forward to enlist as students of the other colleges that this seems to have had no effect on the growth of university education for these various groups.

Mr. GROSS: But they were prohibited by law from doing otherwise, were they not?

Mr. RAUTENBACH: They were prohibited by law, but the fact that the increase is 100 per cent. over five years whereas previous to 1959 it had only been 60 per cent.—that shows greater popularity of these colleges than any other institutions I have been to.

[Public hearing of 7 October 1965]

Mr. GROSS: Dr. Rautenbach, at the proceedings yesterday, 6 October, in the verbatim record at pages 405-406, *supra*, in response to a certain question addressed by me to you, Sir, on page 405, you responded as follows, among other things. In the first paragraph you said:

“The reason why I think there should be enforced segregation at this stage is to prevent that and not only for the sake of law and order, but it is an attack, it is offence to the dignity of a man who has been invited to a dance . . .”

Now, that referred to the incident which you had described previously. Then, later, toward the middle of the page, again referring to the subject of inter-racial harmony and understanding in terms of whether or not there is segregation of universities, you said, again among other things (toward the middle of p. 406):

“I hope . . . we will become more mature and overcome that, but bringing people together from various backgrounds may lead to conflict, and particularly as soon as the numbers become more or less equal. [And you continued] When there is a small minority on one side they tend to withdraw, but when the numbers become larger the possibility of conflict becomes very great if you have more or less two equal groups, or if the situation arises where a group begins to think it is not getting its full share and, in the case of people who are of various colours, of various ethnic relationships, on the same campus at the present time there is such strong sense of the rights of groups that I really do think it would not be very advisable, by law or by custom, to re-introduce so-called open university systems, particularly in these two universities which I have mentioned where there is integration in the classrooms, but outside of that segregation.”

Is that, Sir, your testimony as reflected in the verbatim and do you accept it as correctly stated there?

Mr. RAUTENBACH: That is correct, Mr. President.

Mr. GROSS: Now, Sir, may I ask you if you would be good enough to tell the Court what, if any, practical personal experience you yourself have had in the administration of an open university?

Mr. RAUTENBACH: I have had no experience, Mr. President, in the administration of an open university where there were people of more than one colour. May I explain that prior to the Act of 1959 all universities were open universities, my university was an open university too, but the University Council decided who could or should not enter and that is why I have experience of the administration of an open university, but not of an open university where people of more than one colour are on the campus.

Mr. GROSS: The fact is then, Sir, that your own experience in the

education field, that is, from the practical point of view of your own participation in the administration or teaching in a university, has been confined, has it not, to the University of Pretoria which has been all-White and the University College of the North which has been all non-White? Is that correct, Sir?

Mr. RAUTENBACH: Yes. My closest and most direct contact has been of such a nature as described by Mr. Gross.

Mr. GROSS: Now, Sir, upon what would your opinion as, for example, reflected in the testimony which I have just read be based? What experience would your judgment be based upon?

Mr. RAUTENBACH: My judgment is based upon the experience which was shared by the university principals who were in charge of open universities where people of more than one colour were present on the campus. I was in contact, from time to time, in the usual course of events twice per year, with Dr. E. G. Malherbe, the Principal and Vice-Chancellor of the University of Natal because the Committee of Principals has a meeting twice per annum. Outside of our ordinary meetings and agenda we mingle socially and discuss matters and the one man complains about his problems, and so on. Also a great friend of mine was the late Dr. Raikes who was, for more than 20 years, Principal and Vice-Chancellor of the University of Witwatersrand. Our Universities are 40 miles apart which, in South Africa, is considered a very short distance and we were in contact with each other at a monthly meeting of certain bodies to which we belonged and often compared notes; he often discussed these matters with me. Dr. Raikes was an Oxford man—a don—who had come to South Africa in 1928 and was Principal of the University of Witwatersrand for 20 years.

Thirdly, my youngest son was a student at the University of Witwatersrand, an open university. He was a student of engineering and, as happens in families, the experiences of the week and other things are brought forward. Then I read whatever I could lay my hands upon, if I could find the time, in connection with this whole matter. I have had a long interest in this matter because the University of which I am Principal, as long ago as 1934 approached the Government by petition to provide more adequate facilities and more facilities for the training of Bantu students. That was as long ago as 1934. I knew about that and I was interested in a step forward, or a leap forward, which would prove satisfactory.

Furthermore, as member of the Council of the University of South Africa, that University had been approached by a new institution which was in the course of being established in Basutoland and Basutoland was one of the Protectorates under the British Crown. This was the Pope Pius College. I was a member of the Executive Committee of the University of South Africa and a member of a sub-committee dealing with this whole matter of establishing a special relation between this contemplated Bantu college and the University itself. I met together with the Principal of the University of South Africa and other people; I met the delegates with them and, as I say, I had this interest in my neighbours, since I was born in close proximity to what was then known as a Native Reserve and my people had been dealing with the Bantu for over 100 years up North, I was always interested in the development of the Bantu.

Mr. GROSS: Thank you, Sir. Incidentally, with respect to your reference—is it called the University of Basutoland?

Mr. RAUTENBACH: It has now become the University of Basutoland, taken over by the Government of Basutoland, but it was established as the Pope Pius College by Catholic Fathers coming from Canada.

Mr. GROSS: It is true, is it not, Sir, that the University of Basutoland . . .

Mr. RAUTENBACH: I am sorry. It has now become the University of Basutoland, Swaziland and Bechuanaland.

Mr. GROSS: Thank you. Is it true that the University of Basutoland, etc., has been and is now an open university and that Whites and non-Whites are in regular attendance there?

Mr. RAUTENBACH: Yes. I am under the impression that it is now an open university.

Mr. GROSS: Thank you, Sir. Now, if I may revert to the question of the basis of your experience, you have testified and made clear your interest in this subject. With respect to your experience, would there be any other experience in addition to what you have mentioned in terms of your discussions with gentlemen of the sort to whom you have referred and family discussions? Is there any other experience upon which your judgments or opinions are based in this matter of segregation of university education?

Mr. RAUTENBACH: No. Outside of that experience which I mentioned yesterday, that is of the two language groups of the Whites, we were faced with this problem . . . Must I continue, Mr. President? We were faced with this problem for a long time: whether to have separate schools for English-speaking pupils and Afrikaans-speaking pupils or parallel classes on the same campus, or the dual medium. I was a member of a school board, and a school board deals with primary schools and to some extent with secondary schools. I was a member of the Pretoria City School Board from 1937 to round about 1950 and we often had to deal with this. We would establish a new school, whether it would be a school where teaching takes place in the mother tongue, a separate school for English-speaking boys and girls, separate school for Afrikaans-speaking boys and girls, or a school with parallel classes, because by then the idea of the dual medium, which means some of them have subjects taken through one language, some taken through the other, had been dropped in the Transvaal. There I had this experience of often hearing complaints, as a member of a school board, coming from the principal of a school that unpleasantness had taken place on this or that day and parents had been complaining that they were not getting their proper and due share of matters, and that is then the experience of having language groups of the same closely related race on the same campus. At that stage it often led to conflict and the word I used advisedly yesterday was I hoped my people would become more mature, they have become more mature and then that would be left.

Mr. GROSS: Thank you, Sir. Now, were you a member of the School Board of Pretoria City from 1937 to 1950?

Mr. RAUTENBACH: Yes.

Mr. GROSS: How large a group is that School Board?

Mr. RAUTENBACH: That School Board consisted of nine members.

Mr. GROSS: Sir, how many were non-White, if any?

Mr. RAUTENBACH: None of these were non-White. We did not deal with the Bantu, we only dealt with the Coloured schools at that time.

Mr. GROSS: How many Coloured members were there, if any, Sir?

Mr. RAUTENBACH: There were no Coloured members on the School Board.

Mr. GROSS: Was that a matter of policy, Sir?

Mr. RAUTENBACH: Yes, I think it was a matter of policy. I was under that impression.

Mr. GROSS: With regard to the question of the attitude of the two officials that you have mentioned, do you recall, Sir, whether or not in your discussions with them they indicated a point of view with respect to enforced segregation?

Mr. RAUTENBACH: Yes.

Mr. GROSS: What was their opinion, Sir?

Mr. RAUTENBACH: I have already quoted Dr. E. G. Malherbe, and his most recent publication on this subject was round about October 1964 in one of the magazines devoted to the study of race relations. And he wrote that he is in favour of an open university subject to certain limitations and in this case the limitation is that there should be separate classes within the precincts of that university for the various groups for reasons which he has given and gave—I am not going to mention them now. The late Dr. Raikes and I visited Natal University on the occasion of its proclaimed date for becoming a separate full-fledged university and that was in the South African autumn of 1948.

Mr. GROSS: Would it be accurate to say, Sir, that Dr. Malherbe is opposed—has expressed his opposition—to enforced segregation of universities?

Mr. RAUTENBACH: Yes, he has continually opposed that, but that is only half the story.

Mr. GROSS: Well, Sir, you mean that he is only half opposed to it? I am not sure I understand your qualification.

Mr. RAUTENBACH: He is opposed to compulsory segregation but, in his latest article he said "I can find no objection in principle against the establishment of ethnic colleges".

Mr. GROSS: I see, Sir. In addition to the open or mixed colleges?

Mr. RAUTENBACH: He is a qualified opponent.

Mr. GROSS: Yes, Sir. Now with respect to the other gentleman you mentioned, the other official . . .

Mr. RAUTENBACH: Dr. Raikes.

Mr. GROSS: Sir, on the basis of your discussions with him, would you express to the Court, to the best of your recollection, his views on the subject of open *versus* closed universities?

Mr. RAUTENBACH: Well, I was telling about this visit we paid to Natal and he invited me to return with him by motorcar—it is a distance of about 350 miles. He was discussing various matters.

On the occasion of these celebrations in Natal the then Minister of Education, Arts and Science, the late Dr. Stals, announced that the Government had decided to establish a separate medical faculty in the University of Natal for the training of medics, non-White medics. He had announced that, and, as a result of that, it was a subject of discussion on the part of Dr. Raikes because his university had been training Bantu and Indian and Coloured students. In the course of this discussion he said: Well, I am keen now to advise all newcomers to my university to go to Natal because I think it is a right thing that has been done.

He also told me this, which I found rather interesting. There are certain subjects in which Bantu students do exceptionally well and



there are also certain subjects in which they do not do so well; they have difficulty. He mentioned one subject and please do not ask me why it should be so—it is just what he said—and that is the subject in the third year of medical study, pathology; it is also called morbid anatomy. He said that the experience at the University of Witwatersrand had been that this was a very difficult subject for Bantu students, whereas the anatomy, as such, was a subject in which they did very well.

Mr. GROSS: Sir, I would like to be as brief as possible both in my question and in your response, if you will, Sir, consistent with your full explanations. Did Dr. Raikes express an opinion with regard to the enforced segregation or did he not, Sir?

Mr. RAUTENBACH: No, on that day he did not express an opinion.

Mr. GROSS: So you do not know what his views were?

Mr. RAUTENBACH: No, Sir.

Mr. GROSS: Now, I should like to turn to the statement issued by the Executive of Convocation of the University of Witwatersrand in 1955 . . . Now, Sir, are you familiar with the fact (or is it a fact of which you are aware, Sir) that the Executive of Convocation of the University of Witwatersrand gave testimony to the Holloway Commission?

Mr. RAUTENBACH: Yes, to the Holloway Commission and to the Government Commission appointed in August 1957.

Mr. GROSS: Now, Sir, with respect to the evidence before the Holloway Commission. The following statement is derived from the memorandum of evidence of the Convocation at page 2. I should like to read it and ask a few questions of you with regard to it. It is two sentences:

"It is our firm belief that segregation in the universities is most undesirable for many reasons . . . The fact that the juxtaposition of European and non-European students has occurred in our university without friction and without the disturbance of racial peace has provided a most valuable example of inter-racial co-operation under the most favourable conditions."

Now, Sir, with respect to that evidence, would you have any knowledge, on the basis of your experience, on the basis of which you would agree or disagree with the accuracy of that evidence?

Mr. RAUTENBACH: I have not the knowledge either to agree or disagree in this particular instance, that is first-rate knowledge from personal experience in this particular case.

Mr. GROSS: With respect to the history of the racial relationships which the Convocation statement sets forth at the University of Witwatersrand, have you in any discussions with other officials of the university been advised of a different point of view with respect to this evidence?

Mr. RAUTENBACH: No. I only heard students discussing this and not discussing this with me, but discussing it amongst themselves—students of the University of Witwatersrand. That is Madam Rumour, the lying jade.

Mr. GROSS: Now, Sir, the Holloway Commission, was I think entitled: The Holloway Commission on University Apartheid. Was that the title?

Mr. RAUTENBACH: Yes, Sir, there were two Holloway Commissions. This was the Commission round about 1954, consisting of Dr. Holloway, Dr. Wilcox, and a third member.

Mr. GROSS: Yes, Sir, unless you wish to put his name in the record it is not necessary for my question, Sir.

Mr. RAUTENBACH: Yes, we just want to be *ad idem* on which Commission. There was also another Holloway Commission.

Mr. GROSS: This is the one, Sir, 1954-1955. Now, in 1954 the Senate of the University of Cape Town in its evidence to the Holloway Commission was quoted in the newspaper *Cape Argus* of 23 November 1954 as stating as follows:

"In a country with racial problems it is obvious that the more the groups know of and understand each other the better chance is there of amicable settlement of differences and of co-operation and trust."

Pausing there, I take it you would agree with that statement as a matter of principle, would you not, Sir?

Mr. RAUTENBACH: Yes, one has to get understanding.

Mr. GROSS: That is right, Sir. The evidence goes on as follows:

"Such knowledge and understanding undoubtedly accrue from the daily academic contacts in open universities such as Witwatersrand or Cape Town."

Pausing there, Sir, on the basis of your own experience, would you have a reason to disagree with that conclusion?

Mr. RAUTENBACH: Yes, I have a sound reason to disagree with that conclusion.

Mr. GROSS: That you do not believe, Sir, do not agree, that "such knowledge and understanding accrue from daily academic contacts"; you disagree with that, Sir?

Mr. RAUTENBACH: No, I think it has been over-estimated—the significance of contact on a university campus. There is something artificial even about that and that is somewhat removed from everyday life. I think it has been over-emphasized that that form of contact is the ideal form of contact. There are other forms of contact which are much more valuable. I would, then, say I would accept that with qualifications. I disagree with it as an absolute truth.

Mr. GROSS: The evidence goes on as follows—this time it is only one sentence, although a lengthy one:

"Experience in other parts of the world, as also the present attitude of the non-European students at Fort Hare, have shown that to separate young human beings into two camps, in which one group believes it is being discriminated against, as against the other, is to foster discord and to breed suspicion and hatred to such an extent as to invalidate any claim to a satisfactory state of practicability."

Specifically with reference to the evidence I have just quoted concerning the present attitude of the non-European students at Fort Hare (this of course in November 1954, you will understand, Sir), did you have any experience on the basis of which you can express agreement or disagreement with that conclusion?

Mr. RAUTENBACH: Yes, Sir, I have some experience on the basis of which I can entirely disagree with that conclusion, very recent and very apposite, and that is the approach which was initiated by the Students' Representative Council of the Bantu College of the North to establish contact with the students of so-called White universities, and with the students of my own university. The Students' Representative Council of my university decided to meet them on an *ad hoc* basis, face to face. The A.S.B. (these words standing for Afrikaanse Studente Bond, meaning

Afrikaans Students Association) published a declaration of policy about two years ago expressing the wish to have contact as between the Representative Council and Council and not contact, as they said at that time, where one man sits in one room and uses a telephone and the other in the other room replies, but where they sit together around the same table dealing with the same subjects.

Now, I think that proves that, under this new system, or new organization, which has eventuated spontaneously on both sides, instead of hatred arising there is a yearning or a desire to meet and to discuss.

Mr. GROSS: Thank you, Sir. Now, with respect to the evidence to which I have referred, that is to say relating to the experience at Fort Hare—the attitude of the non-European students at Fort Hare to which this evidence of the University Senate referred—would you, Sir, on the basis of your own expert opinion, explain whether or not you consider that this analysis of the attitude of the non-European students at Fort Hare is or is not confirmed by the resolution adopted in 1959 by the students at Fort Hare to which we referred yesterday, Sir?

Mr. RAUTENBACH: If I understand you correctly—I am not sure if I do follow your question—I think the events subsequent to that declaration which I have just mentioned tend to do the very opposite and that is to confirm it was a case of mistaken diagnosis.

Mr. GROSS: This resolution, Sir, in 1959, you will recall (I will be very brief about this, just to refresh your recollection, Sir), was a resolution adopted by the students at Fort Hare strongly condemning and expressing opposition to the segregation or apartheid system. That is the resolution to which I am referring. My question was, on the basis of your own understanding and appreciation of this subject, whether you regard that resolution as confirming or otherwise the analysis presented to the Holloway Commission in 1954.

Mr. RAUTENBACH: No, these are in line with each other.

Mr. GROSS: Yes. Now, Sir . . .

Mr. RAUTENBACH: But reality is another question, you see. "Confirming" means two things in this case.

Mr. GROSS: Yes, Sir, but they are in line with each other.

Mr. RAUTENBACH: They are in line with each other.

Mr. GROSS: Yes, Sir. Now then, in 1954, at the time these studies were under way, Dr. T. D. Davie, who was then Principal of the University of Cape Town—I presume you knew him, Sir . . .

Mr. RAUTENBACH: We were very good friends.

Mr. GROSS: He, in an address on 1 May 1954, which is set forth in a publication entitled *The Idea of a University*, stated as follows:

"In the open universities, the great majority, though by no means all, of the non-European students become keen on co-operation with the Europeans for the general good of both races. The tendency in the segregated (non-European) institutions towards "anti-White" and other subversive activities and organizations is real and becoming steadily more obvious."

Now, since those are two fairly long sentences, may I break it down and read the first sentence:

"In the open universities, the great majority, though by no means all, of the non-European students become keen on co-operation with the Europeans for the general good of both races."

On the basis of your experience, Sir, would you express agreement or disagreement with that conclusion?

Mr. RAUTENBACH: I doubt that conclusion. I doubt it even on the very words used, because I do not know whether he took a poll or an opinion poll on this matter: it is his opinion over and against mine. He was an honest man, there is no dishonesty about him, I knew him very well, but every man looks at the matter through, takes on the colour of, the glasses he wears.

Mr. GROSS: Yes, Sir. Now, I should like to turn, if I may, to just one more expression of view, this time on the part of students. I refer to a very brief excerpt from a resolution adopted by the Students' Representative Council of the University of Cape Town, of 23 February 1953, and this is one sentence which reads as follows:

"As a highly successful experiment in race relations, academic non-segregation has stood the test of years and has led to nothing but a better racial understanding, tolerance and harmony."

Now, Sir, again I should like to ask you, on the basis of your personal experience, would you express agreement or disagreement with this excerpt from the resolution of the Students' Representative Council of the University of Cape Town?

Mr. RAUTENBACH: If I knew what is meant by "personal experience" . . .

Mr. GROSS: Not necessarily "personal" if you wish—any experience, Sir.

Mr. RAUTENBACH: If by that is meant what I saw with my own eyes, then I must return to what I saw in Natal, the information which I got of the University of Natal, that it had this trouble, which I mentioned yesterday, at the dance, and the other trouble about the graduation ceremony, the commencement exercises. And, of course, anybody who reads literature and magazines from other countries knows what has been happening in the United States of America, where people have been coming together: it has often led to bloodshed. But that is their business and I wish to refer to my own country and my own experience then, in this sense of hearing a man who has had a lot of experience, the head of a university, in favour of the open university, and saying that there were points of conflict, there were difficulties, there were problems, and I doubt whether the integrated university solves as many problems as it creates in the long run, in South Africa as it is at the present time. As I say, I do not wish to refer to other countries but the bringing together of people is an experience, a common experience of our generation, and the bringing together of people, instead of waiting for better understanding, has led to tension and conflict.

Mr. GROSS: So, Sir, on the basis of that analysis you do, I take it, disagree with this resolution.

Mr. RAUTENBACH: Yes, Sir—I question it.

Mr. GROSS: You do not question its existence, I take it, Sir?

Mr. RAUTENBACH: No, its existence on paper, no, but of course its real existence.

Mr. GROSS: Yes, Sir. Now, I would like to turn to your own testimony, and I refer to that of 4 October, at page 340, *supra*. You testified, Sir, according to page 340 of this verbatim record, in the form, *inter alia*, of a quotation from A. M. Carr-Saunders. The quotation from which you

read an excerpt appears on page 12 of what you describe as a brochure entitled *Staffing African Universities*. It is in the transcript as "Starting"—that is an error, is it not, Sir?

Mr. RAUTENBACH: Yes, it should be "Staffing".

Mr. GROSS: So that we are referring to the document *Staffing African Universities* by A. M. Carr-Saunders—that is the document to which you referred. Now you quoted from page 12 of that document. Had you read the rest of the document, Sir?

Mr. RAUTENBACH: Yes, at least a dozen times.

Mr. GROSS: Well, Sir, immediately following the passage from which you quoted there is the following set forth on the same page:

"However, certain African countries which do not have institutions of higher education at all, or which have such institutions but not in all fields, or which have institutions which are limited in certain fields, will have to continue sending their undergraduates abroad for as long as necessary."

For the sake of completeness of your testimony on this point, would you agree that this is relevant to the matter to which you drew the Court's attention in what you quoted, Sir?

Mr. RAUTENBACH: No, that is not relevant to what I quoted. What I quoted was relevant to what I as a rule call the social service aspect of a university, service of the community. That is relevant to communities where there is no university, like South West Africa, for instance, the mandated Territory.

Mr. GROSS: You would not agree then, Sir, that the reference in this article to institutions which are limited in certain fields . . .

Mr. RAUTENBACH: There are two parties there. One is with no institutions and the other is where the institutions are limited in certain fields, like the Bantu Colleges of the Republic, and in that sense it is apposite.

Mr. GROSS: In that sense then, Sir, what I have read would be relevant to what you have referred to?

Mr. RAUTENBACH: It would be relevant, yes.

Mr. GROSS: Now, also on the same page, in connection with graduate study, as distinguished from undergraduate study, which is the only study you have referred to in what you have read to the Court, I read the following two sentences, again on page 12 of the publication *Staffing African Universities* by A. M. Carr-Saunders. After the portion from which you have read your excerpt he states as follows:

"It is quite otherwise in respect of graduates study. Graduates study overseas can be a most stimulating and memorable experience; for a future university teacher it is of special value. For an African this is markedly the case, because African universities are usually isolated and a university teacher should know something of the academic world outside the confines of the institution where he graduated."

Would you want me to repeat this sentence by sentence, or do you get the drift of it?

Mr. RAUTENBACH: No, I could almost quote it myself.

Mr. GROSS: Now, Sir, that being the case, would you express your agreement or disagreement with it?

Mr. RAUTENBACH: I am in agreement with this, that the academic picture to which he refers, chiefly at the end, that it is to his advantage

to visit other universities, and that is why I, as Chairman of the Bantu College of the North, was in complete agreement when Professor Kgnari, to whom I have often referred, was invited to the United States, that he should go. My opinion was asked and I thought it was a very good opportunity for him to get experience, that kind of experience. But that passage refers to two matters.

Mr. GROSS: Yes, Sir, but sticking to the one, if I may pursue that for a moment or two, with respect to the considerations which you have just mentioned, is it, if you are aware, the policy of the Government of the Republic, either with respect to South West Africa or with respect to the Republic itself, or both, to encourage or discourage travel abroad by non-White students as scholars for graduate studies?

Mr. RAUTENBACH: Where provision is made in South Africa, it appears to be that the Government does not encourage study abroad. But I have come up against cases where students were granted visas to study abroad. In the course of my sojourn here I came across something published in one of the American papers, where a student had arrived in America for advanced study in divinity, from South Africa, and he had not fled South Africa, he had come there in a fit and proper way as a man studying divinity ought to do.

Mr. GROSS: Sir, I believed you testified that you were not personally familiar with the, shall we call it, visa policy of the South African Government with respect to this question. Therefore, have you, since the previous testimony on that point, had occasion to look into that matter?

Mr. RAUTENBACH: I have reflected on that matter and I have come to the conclusion that there are good grounds for saying that the same policies are applied to White and non-White as regards visas.

Mr. GROSS: The basis for your . . .

Mr. RAUTENBACH: By that I mean that I remember that there were cases where visas were refused to White persons, and there were cases where Bantu persons or Coloured persons received these. I remember that of the men nominated by that one body on which I served, that is the Advisory Body of the British Council, that visas had been granted to some.

Mr. GROSS: Now, Sir, with respect to this matter, do you know how many applications, for example, during the past year, or five years if you wish, were made by Whites for visas to study abroad as distinguished from non-Whites applying for the same purpose?

Mr. RAUTENBACH: No, Mr. President, it was outside my sphere of interest.

Mr. GROSS: Do you know, Sir, of your own knowledge, approximately—perhaps I have asked this before, if so I will apologize to the Court—how many non-White students are outside South Africa without the permission of the South African Government?

Mr. RAUTENBACH: No. I know there are students: one reads about them, one hears about them, and some claim to be students, but I do not know the precise number.

Mr. GROSS: And do you know, Sir, how many students are outside, how many non-White students are pursuing studies outside of South Africa with the permission of the South African Government?

Mr. RAUTENBACH: No, but I think there are a considerable number . . .

Mr. GROSS: Of non-Whites?

Mr. RAUTENBACH: Well, now that raises doubts in my mind, because

the other day you mentioned a brochure and I had an opportunity of looking into that report, and where you told me, Mr. President, informed me that there were so many Black post-graduate students of agriculture in the United States. I have in the meantime looked at that brochure and there is no proof whatsoever that these are Black students. They are called South African students and African students, and for all I know they may be White, and that is why, as I say, from the sources at my disposal at the present moment I cannot reply to that question.

Mr. GROSS: The publication to which you refer is entitled *African Students and Study Programmes in the United States*?

Mr. RAUTENBACH: That is the one.

Mr. GROSS: Published by the House Foreign Affairs Committee. The report . . .

Mr. RAUTENBACH: I have seen that.

Mr. GROSS: The report on African students and your study of this document, which was made available to you, Sir, following the testimony which was brought out, has left you in doubt as to whether the term "African student" refers to Whites as well as non-Whites?

Mr. RAUTENBACH: It has left me in doubt as to the correctness of your assertion that these do actually refer to Black students. In the record somewhere Mr. Gross used the words twice about Black students and now from that brochure I cannot make that inference. The possibility is that they are White students. The Americans seem to call all people from Africa, Africans, and I rather like that at times.

Mr. GROSS: Perhaps did you, in studying the document, or perhaps you did not have sufficient time to peruse it carefully, come across, Sir, the testimony of the Deputy Assistant Secretary of State, Arthur Hummell, Jr., with respect to this matter?

Mr. RAUTENBACH: Mr. President, no. I simply attended to what had been stated and mentioned here, just to check up on that, because I was rather disappointed at my own ignorance in not knowing that there were four post-graduate Bantu students in the United States of America, when I had rather prided myself on knowing something of what was happening.

Mr. GROSS: Now, Sir, you referred to the graduate students in agriculture and those you recalled were listed from South West Africa?

Mr. RAUTENBACH: I was informed they were listed with South West Africa.

Mr. GROSS: On the basis of your reading of this report, you are under the impression that one or more of these South West African students may be White?

Mr. RAUTENBACH: I am under the impression that, on the basis of dealing with that report, they are probably all White.

Mr. GROSS: The South West Africans?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Then, Sir, could I call your attention to the testimony which I have identified, which is at page 145 of the report, which refers to the scholarship programme—this is paragraph 8—from Southern Africa which includes, of course, South West and South Africa, and, in addition, other countries:

"The special scholarship programme for students from Southern Africa—this is surely, one of the most significant student programmes being conducted by the Department [that means the Department of State]. It involves mostly, but not exclusively, young

African refugees who have been leaving the White ruled areas in Southern Africa in increasing numbers in recent years. Several reasons, including political oppression, and denial of opportunity for education motivate their travel. Many are students who are desperately seeking education and training in preparation for responsible leadership positions when their countries achieve majority rule."

This, incidentally, was clipped when the copy was given to counsel and the clip was, if I may say so, Sir, deliberately left at that place. I was hoping that your attention might be called to it. Would you say, on the basis of your listening to this section, that the term "African" applies to Whites as well as non-Whites?

Mr. RAUTENBACH: I am in doubt as to what is meant there and I am still in doubt as to whether the post-graduate students mentioned by Mr. Gross are Blacks or Coloured people and I will remain in doubt until such time as I see their names. I may infer from that to which group they belong, but unless I have seen photographs of them—I am very sorry but I cannot accede to that indirect way of making me compromise myself on that point.

Mr. GROSS: Yes, Sir. The sum and substance of the testimony, Sir, is that you are ignorant of this fact either as to White or non-White students, is that correct?

Mr. RAUTENBACH: Yes, I am in the same position, Mr. President, as Mr. Gross is.

Mr. GROSS: Therefore, when you testified—which I did not, Sir, and I do not want to argue with you—concerning studying at overseas institutions and the problems presented by university separation, you did not have in mind any facts with respect to the number or character of students from South Africa overseas. Is that correct, Sir?

Mr. RAUTENBACH: I did not have in my mind, as I testified here, recent figures. I informed this Court and it is on the record, that in 1959 a report had come through either the British Council or the Commonwealth University Association showing the number of students coming from various parts of the Commonwealth and I mentioned the figure of 1,200 in the case of Nigeria. I get reports from time to time from American institutions (there is something with a title of I.A.U.), they come in and I just browse through them as regards the number of students from various countries, but I make no particular study of that.

Mr. GROSS: Sir, just one more aspect of this—the United Nations General Assembly adopted a resolution No. 1705, 16th Session (this is in the documents of these proceedings), the 1083rd Plenary Meeting, 19 December 1961, in which, among other things, the following is set forth in the preambular provisions:

"Recognizing in particular, the urgent need to ensure the educational advancement of South West Africans beyond the limitations imposed by the Bantu educational system in force in South West Africa and South Africa, and to prepare them for service in the administration of their country.

"Recognizing that the indigenous inhabitants of South West Africa, whose country can appropriately be designated as being economically underdeveloped, have a legitimate right to receive benefits from the United Nations programmes of technical co-operation but, owing to the refusal of the mandatory power to co-



operate and receive such assistance on their behalf, have not so far benefited from such programmes."

I pause there, and ask you whether you interpret or have doubts concerning whether this resolution refers to White as well as non-White Africans and South West Africans?

Mr. RAUTENBACH: I did not know what question was coming so I paid no particular attention to that passage and, Mr. President, I would be very pleased to hear that passage once more; what is relevant.

Mr. GROSS: I will just read the first paragraph:

"Recognizing in particular the urgent need to assure the educational advancement of South West Africans beyond the limitations . . . etc."

Mr. RAUTENBACH: South West Africans means all South West Africans.

Mr. GROSS: And you do not know and you do not have an impression whether this resolution refers to Whites as well as non-Whites?

Mr. RAUTENBACH: I would say in a general way, I would expect it to refer to the non-Whites because the word "undeveloped" country is used and in thinking of the undeveloped I also think of the part of the people who have, as yet, lacked and in that respect then, taking the whole together, my analysis would be, it is meant to refer to the non-Whites, even if it seems South Africans at the beginning. It is just an impression, Mr. President.

Mr. GROSS: But you are making a reasonable inference from the context are you not, Sir?

Mr. RAUTENBACH: I hope so, Sir.

Mr. GROSS: With respect to the policy to which this resolution refers, that is to say, the policy of the mandatory power in terms of the refusal of the Mandatory—perhaps you had not paid attention to this either?

Mr. RAUTENBACH: I registered that.

Mr. GROSS: "That owing to the refusal of the mandatory power to co-operate and receive such assistance on their behalf, etc."—in your studies, Sir, in the work of your Advisory Commission, of which you are Chairman, and in your testimony as an expert and witness here, what knowledge, if any, do you have with respect to United Nations resolutions or policies on the subject of university apartheid or any other aspect of education in the Republic or in the Territory?

Mr. RAUTENBACH: I pay a good deal of attention to bodies concerned or bodies working under the United Nations which pay particular attention to education and particularly education in Africa, and I find these documents most useful. I have already quoted from some of them and I have another number of quotes here which are relevant to the whole of Africa and to South Africa, and to the African people of South Africa, but for the remainder I do not take much note of these. I cannot and I have not the time. I hold down many jobs and I regret that I must say that I read what the ordinary newspaper reader reads—things like the *Sunday Times* and this type of paper, and its opposite numbers, too, the *Sondagnews*, that is, the Afrikaans-speaking paper, and I make no special study of the United Nations activities—I simply have not got the time.

Mr. GROSS: Do you have the time, Sir, in connection with the advice which your Council, and you, as its Chairman, give with regard to co-ordinating the educational policies and secondary levels of the Republic

as a whole, to learn what, if any, United Nations General Assembly resolutions, for example, have had to say with regard to the matter of apartheid, or educational apartheid, specifically?

Mr. RAUTENBACH: No, I pay more attention to, as I say, for example the conference under the United Nations in Geneva in 1963 on the topic of Higher Education and Technology as Applied to the Underdeveloped Countries. I pay attention to what was published on 16 May of this year as regards the use of the vernacular. I pay attention to many of these reports because they are very useful. Educational planning was one of the reports issued by United Nations. I have great respect for these reports because they draw on the expertise of many countries of the world and I learn from them.

Mr. GROSS: Do any of these reports to which you refer express judgments or conclusions with respect to the system of university apartheid?

Mr. RAUTENBACH: No, I don't remember having seen that in these reports by education bodies, those which I have read, for instance, on primary education. I have read one on primary education, and I have read various others on educational planning; in fact, the first draft was sent round the world for advice, whether certain suggestions could be made on educational planning, and it chiefly referred to educational planning in under-developed communities. I was very interested in that.

Mr. GROSS: Was there any reference in that document in any sense regarding the policy, enforced or otherwise, of segregation in the educational system?

Mr. RAUTENBACH: No; I will not say this under oath, but I remember something of a more positive nature, and that is the equality of all people, or the common humanity—that was a point made in more than one of these, that that should be part and parcel of education in this present-day world; I remember that side, though that I think would be the opposite side of the coin to which you are referring.

Mr. GROSS: You mean that would imply support for separation?

Mr. RAUTENBACH: Some would regard it as being support for integration.

Mr. GROSS: With respect to another organ of the United Nations—I refer to the United Nations Security Council—are you familiar with, or have you heard of, a report by a so-called group of experts which was appointed by the Secretary-General pursuant to a Security Council resolution of 4 December 1963, S/5741, which is in the documents of these proceedings?

Mr. RAUTENBACH: No—I have been shaking my head horizontally ever since the word was raised—I do not know anything about it.

Mr. GROSS: You do not know anything about it?

Mr. RAUTENBACH: No, I don't.

Mr. GROSS: In connection with the United Nations studies which you have made, and as to which I believe you have testified that you have come across no direct references to the question of university segregation in South Africa . . .

Mr. RAUTENBACH: I would say there was not that prominence given to it that that struck me as one of the outstanding points in the documents I had before me; it may have escaped my notice because I browse through many of these things—they are huge volumes—eight-volume reports, for instance, and I have got to browse through them.

Mr. GROSS: It might perhaps refresh your recollection then if I cite a

brief excerpt from page 30 of S/5658 of 20 April 1964, the United Nations Security Council document which is the report of the group of experts. Paragraph 76 (*f*) on page 30 states as follows:

"It is in higher education that most rapid reforms can be implemented both to provide training in the professions and otherwise to provide the leaders whom South Africa will so much need. We recommend that the Convention [they propose an inter-racial convention, as you may know] should at once consider the early and full removal of the recently imposed restrictions in the universities of South Africa."

Does this refresh your recollection as to the pages through which you browsed?

Mr. RAUTENBACH: No, it does not refresh my recollection, because I do not read what refers to the Security Council, so it cannot refresh what I have not read.

Mr. GROSS: I agree with that. With respect now to one more citation to which you referred and began to quote with approval, that is to say a work by Sir Eric Ashby to whom you referred in the verbatim record of 4 October at page 342, *supra*—do you have that?

Mr. RAUTENBACH: No, I remember that.

Mr. GROSS: Sir Eric Ashby is the person, is he not, whose *curriculum vitae* and experience you set forth at page 342?

Mr. RAUTENBACH: Only partly.

Mr. GROSS: His distinctions exceed those to which you referred?

Mr. RAUTENBACH: Oh, by far.

Mr. GROSS: I should like to read from a writing of Sir Eric Ashby which appeared in the publication *Minerva* to which you referred, in Volume I, No. 1, of Autumn 1962. I believe, incidentally, that you are familiar with this paper and have actually written concerning it, is that not so?

Mr. RAUTENBACH: Yes, this is my pamphlet on that.

Mr. GROSS: Sir Eric Ashby was, was he not, invited to give the first Chancellor's lecture delivered in the Great Hall of the University of Witwatersrand on 4 April 1962, is that correct?

Mr. RAUTENBACH: Correct.

Mr. GROSS: And is it correct, as set forth in the head-note to this piece, that the Chancellor's lecture was established to commemorate in every third year the following dedication, which was affirmed by the General Assembly of the University on 16 April 1959—are you familiar with whether the Chancellor's lecture was established to commemorate in every third year this following dedication?

Mr. RAUTENBACH: Yes.

Mr. GROSS: The dedication reads as follows:

"We are gathered here today to affirm in the name of the University of the Witwatersrand that it is our duty to uphold the principle that a university is a place where men and women without regard to race and colour are welcome to join in the acquisition and advancement of knowledge and to continue faithfully to defend this ideal against all who have sought by legislative enactment to curtail the autonomy of the university. Now therefore we dedicate ourselves to the maintenance of this ideal, and to the restoration of the autonomy of our University."

That is the end of the dedicatory plaque. Would you agree that this dedication is a clear indication of the viewpoint of the General Assembly of the University?

Mr. RAUTENBACH: Of the General Assembly?

Mr. GROSS: Yes, the dedication which was affirmed by the General Assembly of the University on 16 April 1959.

Mr. RAUTENBACH: I don't know, I have never heard the words "General Assembly" used in connection with a university in South Africa.

Mr. GROSS: I see. That is the expression used here.

Mr. RAUTENBACH: But that has no standing in law or in the statutes.

Mr. GROSS: So that you do not know to what body that phrase refers?

Mr. RAUTENBACH: No, I have never heard those words used before. The convocation, yes, I know what that is, and a congregation, but I don't think the words "General Assembly" . . .

Mr. GROSS: Would you agree that, irrespective of—I am afraid I cannot enlighten the Court with respect to what the "General Assembly" referred to here is—would you agree that this dedicatory plaque and statement represents the view of the University as an institution?

Mr. RAUTENBACH: Yes, I think it represents the opinion of the majority, and the opinion of the majority is regarded as the opinion of the University, of its staff and of its students.

Mr. GROSS: And of the Chancellor?

Mr. RAUTENBACH: Of course, and the Chancellor, who is a figure-head.

Mr. GROSS: Who is what?

Mr. RAUTENBACH: A figure-head—he is a titular head, he is no active participant in university matters.

Mr. GROSS: Who is the active head?

Mr. RAUTENBACH: The active head is the Vice-Chancellor.

Mr. GROSS: And is this true of his view as well?

Mr. RAUTENBACH: Yes, the present Vice-Chancellor, certainly.

Mr. GROSS: And he is not a figure-head?

Mr. RAUTENBACH: Professor Macronen, no—he is the man who is my opposite number, the Rector; he bears the heat of the day and the cold of the night.

Mr. GROSS: Now in the text of his speech Sir Eric Ashby stated as follows, and I quote from page 23 of the pamphlet under discussion:

"As a guest in your country I shall not comment on whether apartheid in general is right, but I do condemn without reserve the shallow assumption that even if apartheid were right for the Post Office and the railway station, it would automatically be right for the classroom."

I will go back and read this sentence by sentence with pleasure.

Mr. RAUTENBACH: No, I know that, I could almost quote it myself.

Mr. GROSS:

"It is difficult to see any relevance at all between a segregation of Black and White and the sale of stamps and tickets."

Mr. RAUTENBACH: And the sale of . . . ?

Mr. GROSS: And the sale of stamps and tickets.

Mr. RAUTENBACH: The sale of staffs . . . ?

Mr. GROSS: Yes, because, if I may refresh your recollection, he says:

" . . . I do condemn without reserve the shallow assumption that

even if apartheid were right for the Post Office and the railway station, it would automatically be right for the classroom."

Then he goes on to talk about what happens in Post Offices and railway stations, and says: "It is difficult to see any relevance at all between a segregation of Black and White and the sale of stamps and tickets."

Mr. RAUTENBACH: Isn't the phrase "by staffs of tickets", because the sale of staff—how can you sell a staff?

Mr. GROSS: Sell stamps.

Mr. RAUTENBACH: Oh, stamps—I thought you said staffs—I am very sorry.

Mr. GROSS: Is it the fact that there are different lines for White and Black in the purchase of stamps at Post Offices?

Mr. RAUTENBACH: Yes.

Mr. GROSS: And is it a fact that there are different entrances for Whites and Blacks in railroad stations?

Mr. RAUTENBACH: No, not different entrances always, but different coaches, I think; it all depends on the size of a station—I am not sure.

Mr. GROSS: With respect to the sale of tickets, is it or is it not the fact that Whites and Blacks form different lines to buy tickets?

Mr. RAUTENBACH: Yes, they form different lines.

Mr. GROSS: This, then, is probably what, no doubt, Sir Eric Ashby was referring to, but then he goes on now, pertinently to the university question directly, and says as follows:

"But the very purpose of a university, the faith it lives by requires it to reject any basis of segregation save intellectual merit. Therefore the only justification for university apartheid would be convincing evidence for the assertion that Black men are inferior intellectually to White men. In fact there is a convincing evidence against this assertion."

I pause there.

Now, may I ask you Sir, with respect to Sir Eric Ashby's judgment as reflected here, that the only justification for university apartheid would be convincing evidence for the assertion that Black men are inferior intellectually to White men—do you agree with that judgment by this person?

Mr. RAUTENBACH: No. There are other grounds and it would be unacceptable morally, to me, if the present system is based on a theory of inferiority of any group.

Mr. GROSS: But it is a fact, Sir, is it not, that the admission or the admissibility of the members of the community, and I refer to the community of South Africa and of South West Africa, is under the enforced segregation system of 1959 and onwards, based on ethnic classification rather than on intellectual merit? Is that a correct statement, Sir?

Mr. RAUTENBACH: That is a correct statement, but that is something other than what you have been asking me to say, that the only justifiable basis is that of intellectual inferiority. It would help me a great deal if you would keep these matters apart.

Mr. GROSS: I am not attempting to characterize Sir Eric's opinion, I am putting it forward to you, Sir, in his own terms for your own reaction and analysis, and agreement or disagreement. Very briefly, I would like to refer for one or two specific purposes to the publication to which I was

referring yesterday, *The Open Universities in South Africa*, which is the publication as you are aware of . . .

Mr. RAUTENBACH: That Cape Town meeting.

Mr. GROSS: Yes, Sir.

Mr. RAUTENBACH: Of 1956.

Mr. GROSS: Yes, that is right, Sir. Now, yesterday we were discussing the essence of the case as they expressed it and I would like to place in the record, for your agreement or disagreement, the conclusions reached. On page 17, the report states:

"The attack on the open universities does not emanate from within these institutions, which alone have practical experience of the association of White and non-White students at the university level."

Do you have any basis of experience or other basis for an opinion as to whether it is a correct analysis that the attack on the open universities does not emanate from within these institutions?

Mr. RAUTENBACH: I am under the impression that the attack did not emanate from inside those universities—the Universities of Cape Town and Witwatersrand.

Mr. GROSS: Then, in the same context, the second sentence of this excerpt:

"On the contrary, the Councils, Senates and staff and student organizations of both the open universities, have recently by overwhelming majorities re-affirmed their faith in the present system."

On the basis of your experience and knowledge, would you agree with that characterization of the position of the bodies and groups concerned?

Mr. RAUTENBACH: Yes, with emphasis on the word "majorities".

Mr. GROSS: Overwhelming majorities?

Mr. RAUTENBACH: I would not even use the word "overwhelming".

Mr. GROSS: You would not, Sir?

Mr. RAUTENBACH: No, because matters have changed since then.

Mr. GROSS: This refers to the . . .

Mr. RAUTENBACH: That is historical.

Mr. GROSS: This necessarily refers to the situation as analysed in February 1957, when this report was made, Sir.

Mr. RAUTENBACH: Yes, I think as a diagnosis of the situation then I could agree with that.

Mr. GROSS: Now, Sir, they go on to say:

"Neither does the attack emanate from the public which supports these institutions nor yet from non-Whites anxious to withdraw from contact with the Whites."

Do you agree with that conclusion?

Mr. RAUTENBACH: No, I cannot say, because what is meant by the words "public which supports these institutions"—there are two ways of supporting an institution: one is by providing funds by way of gifts and donations and the other is by sending children, boys and girls, young men and women to these institutions. If by that is meant the first, namely those who have made financial contributions of a considerable nature, I think that would be correct, but not the second, because the agitation against the University of Witwatersrand and Cape Town very often—through medium of the papers—came from people who claimed to have

children on these campuses. So, it is difficult for me, by a simple yes or no, to reply to a question which involves too much.

Mr. GROSS: Thank you Sir. I want to call to your attention the further judgment of these two universities expressed through the Joint Conference. Parenthetically Sir, I do not intend to nor do I invite a discussion of a political nature. I am reading this in the context of the report of the universities involved:

*"The attack on the open universities emanates from a political party which at present happens to control the government. It has been a sustained attack continued since 1948 in the party press, at party congresses, and in parliament."*

Would you agree, Sir, with that as a statement of fact?

Mr. RAUTENBACH: No, I would not agree.

Mr. GROSS: In what respect is it erroneous in your judgment, Sir?

Mr. RAUTENBACH: In that very period, I received a telegram from a Member of Parliament representing a Natal constituency and Natal, as I previously said, is chiefly populated by South Africans of English descent. Now I had a telegram asking me whether it was thought possible, and that was about a week after the university had started, to accommodate a young girl, an English-speaking girl from Natal, who had gone to the University of Witwatersrand but had never realized what the situation was in the Witwatersrand campus and he no longer saw his way clear, this parent, to let his daughter stay there if we could accommodate her at the University of Pretoria. Now, from the man's name, etc., I would not think he was a supporter of the government which has been in power for so many years; it was an English name and she was English-speaking and the question asked was also whether we could give her some assistance with her lag in the Afrikaans language which is the medium of instruction. So that the opposition did not come entirely from that political party, but I would say chiefly and overwhelmingly, to use the other word; there were also people outside the Nationalist Party, who very clearly indicated they were not pleased with the state of affairs.

Mr. GROSS: May I ask one more question, with your permission, prior to the recess—it finishes this.

The PRESIDENT: Certainly.

Mr. GROSS: And then finally the report sets forth the view that:

*"Now that it has become clear that this attack has failed to induce the open universities of their own accord to close their doors to non-White students, the Government has decided to resort to coercion."*

Sir, do you agree that it had become clear that the open universities could not be induced of their own accord to close their doors to non-White students?

Mr. RAUTENBACH: I know that was the contention.

The PRESIDENT: I did not catch the answer.

Mr. RAUTENBACH: I know that was the contention of the representatives of these universities.

Mr. GROSS: Now Sir, they were making a contention with respect to their own policy and objectives?

Mr. RAUTENBACH: The contention was that it had now become clear that these universities would not of their own accord close their doors—now the compulsion was brought about.

Mr. GROSS: I did not ask that question, Sir, I asked you whether you

agreed with the statement, the first part of this dual thought. Had it in fact, as they assert, become clear that the open universities had not been induced to close their doors of their own accord—would you agree with that, Sir?

Mr. RAUTENBACH: If the other statement is accepted, the majority having expressed itself in favour of retaining the system, then I take it, it had become clear by then.

Mr. GROSS: Then finally Sir . . .

Mr. RAUTENBACH: It is their opinion, you see. You are asking me to give an opinion on other people's opinion on other matters.

Mr. GROSS: It is their opinion but it is their university, Sir, is that not so?

Mr. RAUTENBACH: Yes, and different people have different opinions.

Mr. GROSS: Now Sir, I am talking about the opinion of the people whose university it is and who are responsible for its affairs.

Mr. RAUTENBACH: Yes, that is opinion but that is what the Greeks call *doxa* and not *episteme*—it is a difference.

Mr. GROSS: Now may I just, without understanding fully the significance of the last Greek phrase, ask you whether the conclusion that the Government had decided to resort to coercion under those circumstances would in your view be an accurate and realistic reflection of the reason for the adoption of the legislative coercion as a method of university segregation.

Mr. RAUTENBACH: I think, with all honesty, I must say it would probably have been.

Mr. GROSS: The reason?

Mr. RAUTENBACH: Yes.

Mr. GROSS: Dr. Rautenbach, there has been some testimony with respect to persons classified as Coloured. There has been, has there not, a succession of studies made by various commissions with respect to the educational system and regarding the persons who are classified as Coloureds, Sir?

Mr. RAUTENBACH: By various commissions and researchers.

Mr. GROSS: Researchers. And was one of those the Holloway Commission, to which reference has been made this morning?

Mr. RAUTENBACH: The Holloway Commission dealt, as far as I know, with non-White education and, the Coloured people being a group in that category, dealt with that.

Mr. GROSS: Sir, a public address was made by former Justice Centlivres who, I believe, became Chancellor of the University of Cape Town, did he not, Sir?

Mr. RAUTENBACH: He did.

Mr. GROSS: In this address entitled "Blundering into University Apartheid", in Cape Town, 5 February 1959—are you familiar with this address by any chance, Sir?

Mr. RAUTENBACH: I think I saw a report in the paper. Was it on the occasion of a graduation ceremony?

Mr. GROSS: It was before the Institute of Citizenship.

Mr. RAUTENBACH: No, I think I saw a summary report of that.

Mr. GROSS: Chancellor Centlivres made the following . . .

Mr. RAUTENBACH: Now I remember about it.

Mr. GROSS: He made the following reference to this matter in respect of the Commission report. He says at page 3 of the pamphlet which was



issued by the so-called Academic Freedom Committee of the University of Cape Town, published by the Standard Press Limited, in Cape Town, that:

"The Commission dealt specially with the position occupied by the Coloured people in our society. It said:

'Due to many centuries of contact with the European, cultural affinity between the Coloured and the European is much closer than between him and the Bantu.'

May I pause there to say, Sir, whether you would agree with that comment of the Holloway Commission as quoted by Justice Centlivres?

Mr. RAUTENBACH: I would emphatically agree with that.

Mr. GROSS: Justice Centlivres goes on to say:

"It [again the Commission] expressed the opinion that [now quoting from the Commission] 'unless many Coloureds are to lose the opportunity of acquiring a university education, the Coloureds should be allowed, as at present, to continue their non-separate studies at the universities, especially at the University of Cape Town which is prepared to admit them'."

Now, Sir, I should like to ask you whether the Coloureds are, since 1959, permitted to continue their education at the University of Cape Town?

Mr. RAUTENBACH: Yes, but, Mr. President, they are subject to the Minister giving them permission and there are, I think, over 300 or just under 300—let us settle at 300.

Mr. GROSS: All of these pursuant to permission granted by the Minister, Sir?

Mr. RAUTENBACH: Some were carry-overs from the pre-1959 Act, I think. Because the medical training is over six years and many may have failed and, you know, the new system has only been in effect since 1960. We are now in the sixth year. So I think some would be carry-overs and some would have been granted special permission.

Mr. GROSS: You do not know, Sir, or do you, how many Coloureds have been admitted to Cape Town pursuant to special exceptions made by the Minister?

Mr. RAUTENBACH: Yes. I have a document in the hotel . . .

Mr. GROSS: You do not know now, Sir?

Mr. RAUTENBACH: No. Numbers were given of Bantu, Coloured and Indians to whom the Minister had given permission to study at open universities.

Mr. GROSS: There are numbers of them. Now, Sir, on the premise that there are considerable numbers of Coloureds at the University, would you express an opinion to the Court whether the system of mixed education, if I may call it that, has produced tension or frustration or disorder, or any other anti-social symptoms?

Mr. RAUTENBACH: I have this knowledge from Press reports that the Principal and Vice-Chancellor of that University has been at loggerheads from time to time with his Students' Representative Council. The Students' Representative Council does want certain social amenities open for all students in that campus and the Principal again sticks to what he calls "tradition" and the result is that they have been at loggerheads for a long time. So that there is at least an unpleasantness between the Principal and his students and I realise what that means on the campus.

Mr. GROSS: Is it your opinion, Sir, as an expert or otherwise, that the attendance by Coloureds in these considerable numbers to which you refer is a desirable or undesirable phenomenon from the aspect of, let us say, promoting harmony between races?

Mr. RAUTENBACH: With what I have just said in mind, I would be inclined to say that wherever they are together on one campus sooner or later you get some form of trouble because what I have just mentioned contradicts what has been read this morning from the pamphlet about the Cape Town meeting. That was not mentioned in the pamphlet but I mentioned it.

Mr. GROSS: Do you agree, Sir, with the Holloway Commission report as quoted by Justice Centlivres that many Coloureds would lose their opportunity for acquiring a university education if they were not admitted to the White universities?

Mr. RAUTENBACH: With a certain qualification, that if they were not admitted to the White universities then they would lose their opportunity of qualifying in that subject or profession for which the Coloured University of the Western Cape does not as yet make provision and that is the reason why 300 are still at Cape Town University because, as a more developed community, they study in many more branches of learning than the Bantu at present, owing to the fact that there are more matriculants, there is a greater urge in various directions.

Mr. GROSS: Sir, I would like to ask, as we approach now the conclusion of this cross-examination, whether you would be prepared to agree to the proposition that the educational system of segregation is of the essence of the official policy of apartheid in all aspects of the social order in the Territory and in South Africa? Would you agree to that succinct proposition?

Mr. RAUTENBACH: It seems to be a very important question. I would like to hear it again.

Mr. GROSS: Would you agree to this as a succinct formulation, that the system of educational segregation—specifically university apartheid—is of the essence of the official policy of apartheid in all aspects of the social order in the Republic and in the Territory?

Mr. RAUTENBACH: Education as conducted in South Africa at present is a facet of the policy of separation—of the programme of separation.

Mr. GROSS: You would, then, Sir, agree—would you or would you not—to the proposition as formulated succinctly by the Prime Minister in a statement quoted in the Rejoinder, V, page 252, as follows: "There was no doubt whatsoever as to the attitude of the National Party: The White man will govern his country and the Bantu will govern his people, his areas . . ." Would you say, Sir, that the educational system which prevails in South Africa and represents the higher education of South West Africa is geared to the proposition that the White man is to be educated to govern his country and the Bantu is to be educated to govern his people?

Mr. RAUTENBACH: Mr. President, it is my sincere conviction that that is the objective of the programme of separation.

Mr. GROSS: And, Sir, would you, then, agree or disagree that this educational division, so to speak—the dual system, if I may call it that—would not be relevant or applicable if the policy were to prepare the citizen regardless of colour or race for life in a common society, a common economy?

Mr. RAUTENBACH: Various questions are being asked at the same time—a common society and a common economy.

Mr. GROSS: Would you break down the two? I did not realize there was a distinction, Sir. May I, then, break it down and ask a question with respect to a common society in which the various races work together and share common problems of a social, or economic, or political nature?

Mr. RAUTENBACH: Now, that explanation in between has somewhat removed the question from my mind. I am very sorry.

Mr. GROSS: Would you say, Sir, that the dual aspect of the educational system would be relevant and appropriate if the objective were to educate both White and non-White for a common society in which economic, political, social objectives were shared? May I put the question in that form?

Mr. RAUTENBACH: I still think that separate education at this stage, even if an integrated future was envisaged, would be the best way to further that objective. Even as in the case of the two language groups amongst the Whites, the fact of giving each of them their own school, teachers' training college, and university, through their own language, has removed dissatisfaction and has contributed towards national unity. Parallel streams can join.

Mr. GROSS: Does the system which you have just described visit hardship or involve sacrifice on the part of individual non-Whites who are not granted the same opportunities as Whites in the educational field?

Mr. RAUTENBACH: If they are not granted the same opportunities then that is an injustice but that is, as you say, suppositious.

Mr. GROSS: Suppose, Sir, that an individual (let us think of this, if I may invite you to do so, in human terms), a gifted non-White individual, in pursuing a study of physics or engineering or music, regards that a faculty at a certain institution has more to offer him than one at another institution and he is denied admission because of his ethnic or group background, do you regard that as a sacrifice which he is asked to make for the objective which you have set forth?

Mr. RAUTENBACH: Yes, I think there are occasions when the individual must sacrifice something for the greatest happiness of the greatest number, but I doubt whether that would be such a very serious sacrifice because the very gifted individual finds his own way wherever he is.

Mr. GROSS: Despite the obstacles, Sir?

Mr. RAUTENBACH: Despite the obstacles.

Mr. GROSS: I have no further questions.

The PRESIDENT: Thank you, Mr. Gross. Sir Gerald Fitzmaurice desires to put certain questions to the Professor. Sir Gerald.

Judge Sir Gerald FITZMAURICE: Dr. Rautenbach, I am sorry to keep you here any longer after your considerable ordeal, but you could help me in one or two ways. Several times during the course of your evidence you have mentioned (I think these were your words) "integration in the classroom and segregation outside". Perhaps I might read one or two passages from your evidence. I am looking now at the verbatim at page 404, *supra*, and then, later on, page 410.

On page 404 you said, near the middle of the page, "that the so-called open universities never at any time in their existence were in the fullest sense of the word 'open' universities—only the classrooms were open but not the other aspects of university life."

Then, on page 410 you said:

"His [that is to say, the Bantu student] relationship to the White students who comprise the totality of the student part of that university is that of a man who attends the same classes, the same lectures, works in the same laboratories, and his physical presence in a geographical sense is on that same campus, but he is deprived of quite a number of amenities, quite a number of privileges, which form part and parcel of the extra-curricular contribution towards education."

Now, all that gives me a certain impression but it does not form a very clear picture. Would one be right in saying that it means this, that in all matters appertaining to the actual work of the university—the courses, the classes, and everything else, the tuition, the supervision—the Bantu student at an open university, or at any university, is in the same position as the White student, but that in other matters, that is to say in what you might call the social life of the university, then he is as if he were not there and lives his own private life? Would that be about correct?

Mr. RAUTENBACH: Mr. President, that is precisely what I meant.

Judge Sir Gerald FITZMAURICE: To take a particular matter, where would he live? Would he live on the campus?

Mr. RAUTENBACH: No.

Judge Sir Gerald FITZMAURICE: No. Are these open universities, that are in question here, all situated in towns?

Mr. RAUTENBACH: Yes, in bigger and smaller towns. There are open universities in Johannesburg, that is our largest city in South Africa; the second largest is Cape Town, but the White population of Cape Town is more or less the same as that of Durban and Pretoria. The co-called open universities of Johannesburg (Witwatersrand), and Cape Town are situated in cities but Natal university has a double seat, a double-seated university—there was a university in Britain of the same type, Durham and Newcastle-on-Tyne, something of this kind—it is situated both in Pietermaritzburg and Durban.

Durban is a city with a White population of about 200,000, and with Indians and others more than that; I suppose the whole would be towards 600,000. Well, I have mentioned all of them now. Pietermaritzburg is smaller—the capital city but very much smaller; perhaps it is 20,000 people.

Judge Sir Gerald FITZMAURICE: Well, what it comes to is this then; he would live in lodgings outside the university campus. Would those be university lodgings found for him and allotted to him by the university, or would he find his own accommodation?

Mr. RAUTENBACH: No, in the case of the University of Natal, which I do not, in an unqualified way, call an open university, because it has segregated classes, residential facilities are provided, have been provided, by the university with Government aid for students of medicine. That is, then, a university dormitory or hall of residence for both men and women students, but, to my knowledge, the University of Witwatersrand, that is an open university, and the University of Cape Town, have not as yet or did not provide residence.

Judge Sir Gerald FITZMAURICE: So in those cases the Bantu students find their own accommodation?

Mr. RAUTENBACH: Their own lodgings, coming from the Bantu residential areas chiefly.

Judge Sir Gerald FITZMAURICE: This morning, Dr. Rautenbach, in

answer to a question of Mr. Gross, you said that you did not think that the contacts which might be made between White and Black students on the campus were of the most advantageous kind, and you said you could think of several more favourable methods. Had you any particular methods in mind?

Mr. RAUTENBACH: Mr. President, I had a method in mind which is now being exploited by the students of the Bantu College of the North and students of White universities, and that is to wait for a weekend and have an agenda, prepared beforehand, so that there could be some concentration on a subject of interest and just not talk, talk and talk. I forgot to mention that my university campus had a visit from a number of students from the Divinity Training School at the Bantu College of the North about three weeks ago. They came to my university campus but were received by students of divinity. There is a closer contact between the students of divinity there and at my university than, for instance, the students of politics at my university and those of divinity in the North, and that type of contact I regard as a very good type of contact—an *ad hoc* type of contact.

Judge Sir Gerald FITZMAURICE: Well, does it come to this, that in a way you think that arranged contacts are perhaps more fruitful than spontaneous ones?

Mr. RAUTENBACH: In certain respects, yes, in certain spheres, but there is a possibility of the other also being fruitful, but it is not always the best. There are times when other forms may be more suitable.

Judge Sir Gerald FITZMAURICE: In any case, if the student does not live on the campus I imagine that the opportunities for spontaneous contacts would be relatively few.

Mr. RAUTENBACH: They would be more limited; there is, of course, the refectory, where they may meet or sit at the same table, or in the sunshine, or during our winter days in South Africa. The University of Witwatersrand's building has a number of steps facing north: we live in the southern hemisphere and these students sit and loll there on the steps and they are usually half asleep—they are not very active at that time sitting in the sun. But I have seen them sitting there, I have visited Witwatersrand University and I have seen sitting there people of various groups.

Judge Sir Gerald FITZMAURICE: Now Dr. Rautenbach, referring again to your statement that the open universities never at any time were, in the fullest sense of the word, open universities, that means really, does it, that the chief difference between the situation as it existed some years ago and the situation as it exists now is that the open universities chose their own Bantu students, or granted them admission themselves, whereas now it has to be done by the Minister under the Act?

Mr. RAUTENBACH: That is so.

Judge Sir Gerald FITZMAURICE: Otherwise, you would say that there is no real difference between the two situations in the open universities?

Mr. RAUTENBACH: No, in that respect there is no real difference.

Judge Sir Gerald FITZMAURICE: Well, now I want to turn to something else, Dr. Rautenbach. I want to recall that part of your evidence which you gave a couple of days ago, I think it was, in which, quoting the Prime Minister, Mr. Verwoerd, you said that the ultimate aim of apartheid was complete political independence of the groups but economic interdependence. In connection with that, in your evidence yesterday, when

the question of voting was being discussed (I am looking at p. 418, *supra*), in answer to a question by Mr. Gross, who said:

"Now, Sir, with respect to those taxpayers who pay the piper, what role, if any, do they have in the selection of the Government which decrees their university apartheid system?"

And your answer was: "No, they have no say. The Black people have no votes for the members of Parliament. I think that is well known."

Now, supposing that this aim of complete political independence for the groups should ultimately be realized, would the Black people, as they were called in your answer, then have votes in their own areas? Or what kind of political rights are contemplated for them?

Mr. RAUTENBACH: Mr. President, I think I can refer to the Transkei, where they have votes and where they voted for the members of their legislative Council; and I think they had a second election, that is the beginning of that independence—a responsible government, home rule and then, what the Prime Minister called, political independence.

Judge Sir Gerald FITZMAURICE: They would have their own legislature?

Mr. RAUTENBACH: Yes.

Judge Sir Gerald FITZMAURICE: Their own organs of government?

Mr. RAUTENBACH: Yes, their own organs of government.

Judge Sir Gerald FITZMAURICE: So would it be correct to say that what is contemplated is something like what obtains inside a federal State?

Mr. RAUTENBACH: Yes, in a federal State, because the phrase used by the Prime Minister in London in 1961 was "a commonwealth of nations of southern Africa".

Judge Sir Gerald FITZMAURICE: I see. Well, now, just one more thing: on the same subject, that is to say with reference to the ultimate situation when apartheid is completely realized, looking at page 381, *supra*, you said this in answer to a question of Mr. Gross:

"That question cannot be answered without some qualifications, because with Whites in one area, in absolute separation, and others in another area, in absolute separation, that means there will not even be people who come from the one and work in the other.

Mr. GROSS: That is right, that would be exactly what would follow. Is that envisaged as a part of the doctrine of apartheid or separate development?"

Then you said:

"No, what I seem to remember about this is that we will always have people coming from over the border to work in the White area, as far as human vision stretches."

Mr. Gross then said:

"Then, on the basis of that response which you have so clearly stated, how, if at all, would you explain the Prime Minister's reference to the limitations imposed on the freedom of people falling away as soon as everybody can enjoy his own freedom in his own territory; what relevance, if any, does that statement have with respect to the non-Whites who will always be, from time to time or their life long, working, living alongside the Whites—what relevance does it have, if any, this statement?"

And then you said "I still cannot get the gist of your", and then, following

on an intervention by the President, I seem to detect that Mr. Gross passed away from that point, so that you never fully developed, I think, your answer to that question.

But what do you envisage exactly as regards the working on the part of one section of the population, say the non-Whites, in White sectors, or Whites in non-White sectors, when apartheid is completely achieved? Would it be very much the same as it is now or rather different?

Mr. RAUTENBACH: I think there would be this difference, that there would not be, or I think very few, Whites still working over the border, because the expectation is that as soon as Bantu people have been trained they will take over. May I again mention the case of the Transkei at present. The Chief Minister and his Ministers all are members of the Xhosa and related tribes, but the heads of departments, the Secretary for Education, or for Justice, or for the other, is still a White. The Minister of Justice is a brother of the Chief Minister, he is a trained lawyer, but as soon as a Bantu becomes available for that kind of office, then it is the understanding that the White man will retire. There are very few Whites still involved in the education system of the Transkei, to my knowledge, and I have an idea that there will be fewer Whites over the border than there will be Black people, Bantu people or Native people, coming to work in White areas.

Judge Sir Gerald FITZMAURICE: Quite so. Would you still contemplate that there will be a considerable number of Bantu coming to work in the White areas?

Mr. RAUTENBACH: Mr. President, I think that is a realistic approach. If demographers state 1978, from then onwards there will be a decline, but by the year 2000 we will be more or less where we were in 1946, or something of that kind. To my mind, as far as human vision takes us, I think we could as well say by the middle of the following century there will still be many people, unless automation takes over to such an extent that fewer workers are needed. But I think even then, for the economics of South Africa, automation should not be introduced at too great a speed, because that could mean many people being out of work.

Judge Sir Gerald FITZMAURICE: Well, leaving automation out of it for the moment, Dr. Rautenbach, do you then envisage a situation rather similar to that which exists in other parts of the world? For instance, in this country, Holland, you have a large number of foreign workers. You have the same in France and in Switzerland, and, to go across the Atlantic, I think I would be right in saying that considerable numbers of persons from Mexico, for instance, come over the border and work in the United States. Those people do not have full political rights, of course they have ordinary human rights, but they remain essentially foreign workers in another country. Now, is that the sort of situation that you have in mind?

Mr. RAUTENBACH: That is precisely, Mr. President, the sort of situation which I have in mind, and, if I may mention this, I was informed by people from the farming community in the northern part of this country, Groningen, that long before the European Economic Community was established, as far as this lady knew for centuries, at the times of harvests, workers from Germany had always come into that province of Holland and returned again after the harvest. It is, of course, now a much more prominent matter here, but I know about Mexican people going to the United States; there is now, of course, a limitation imposed upon the

numbers who can come in. I have just read that the Californian farmers cannot bring in their fruit harvests because they lack the hands.

Judge Sir Gerald FITZMAURICE: Yes, well of course all the different cases vary in their details, but that is the kind of situation. Thank you very much, Dr. Rautenbach.

The PRESIDENT: Sir Louis, I understand you desire to ask a question.

Judge Sir Louis MBANEFO: You were asked at page 379, *supra*, of your evidence on 5 October:

“... these limitations will, to use his term, fall away as soon as everybody can enjoy his own freedom and his own territory, do you agree with that evaluation of the . . .?”

Then there was an interruption and you said “yes”. Further on you were asked:

“Would you have any estimate at all, or basis for an estimate, as to when, if ever, the vision will be off the drawing board, so to speak?”

And you replied:

“I am very pleased with that question, Mr. President, because in the sphere in which I am active I set my target at not later than 1980. By then, the Bantu university colleges will be full fledged universities.”

So that when you talk of the target of 1980, you were thinking of the time when the Bantu universities would be fully established?

Mr. RAUTENBACH: Not only that, Mr. President, but also when the members of staff will be Bantu people to such an extent that the next stage can then emerge, and that is that the Advisory Senate becomes the Senate and the former Senate, if a few Whites are left, becomes the Advisory Senate and the Council the same and then with all the officials of the University—that is, not only will the size be of such a nature and the maturity be of such a nature, but the staffing will also be of such a nature, that overnight the change could be effected.

Judge Sir Louis MBANEFO: But the limitations on individual freedoms—would they fall away in 1980? It is the beginning of the question.

Mr. RAUTENBACH: Yes, Dr. Verwoerd’s expression—I take it that his successors in office will carry out his wish.

Judge Sir Louis MBANEFO: At that point, that is the point when you have your commonwealth of tribes?

Mr. RAUTENBACH: Commonwealth of tribes, yes. Well, we are all tribes. I think they should coincide and run parallel and one may come later than the other but they are part and parcel of the future which I hope will emerge.

Judge Sir Louis MBANEFO: And does it envisage common citizenship?

Mr. RAUTENBACH: No, it does not envisage common citizenship. I am of the impression that in the old Commonwealth there was not common citizenship because for years by legislation I was a Union national whereas formerly I had been a British national. To my knowledge, and I am not knowledgeable, the Commonwealth does not imply Commonwealth citizenship, perhaps a common federal parliament, some common body.

Judge Sir Louis MBANEFO: And it would also imply instituting customs barriers between the different States?

Mr. RAUTENBACH: Customs barriers? If you have a Commonwealth



they would probably be there but would be lower than as between foreign countries—that is my idea.

Judge Sir Louis MBANEFO: You said yesterday at page 406, *supra*, of the verbatim record:

“I hope in due time we will become more mature and overcome that, but bringing people together from various backgrounds may lead to conflict . . .”

I take it you are speaking there of bringing them together in the social field and not generally?

Mr. RAUTENBACH: I was thinking here, Mr. President—I mentioned up above the two language groups amongst the Whites, that bringing them together on a school campus as often as not led to conflict. I expressed in the course of what I said the sincere hope that we would come to greater maturity than we have come, and I would also sincerely hope that in the future South Africa there will be forbearance and more appreciation of each other. We will see the human-being first and not the colour.

Judge Sir Louis MBANEFO: Now, coming back to your apartheid policy, you said it is political separation with economic interdependence. That principle means that somebody has got to control the relationship in the economic field—is it envisaged that that should be shared between the Whites and the Blacks?

Mr. RAUTENBACH: I have an idea, I am not sure because I used the phrase used by Dr. Verwoerd but he has never expanded on that and I am far removed from being anything of an authority on constitutional issues, but I should just think that in some way or other, like the European economic community, there should be a community. That means, at some place people should meet each other, agree and put their approval on certain plans or arrangements—a federal form—it could also be very much like the Commonwealth.

Judge Sir Louis MBANEFO: If you cannot meet socially, do you think that you could have an atmosphere in which you could discuss objectively any issues on economic matters.

Mr. RAUTENBACH: If by socially is meant that wherever the meeting is the people will be in hotels, visitors to that part, whether it is the Black or the White part, and they will have the opportunity of dining together and wining together—I think that is part of it. They could dine together and speak together and visit together and attend the same opera together—I envisage that. At least I dream that, but it is my dream and I do not know what the Prime Minister dreams.

Judge Sir Louis MBANEFO: Then the answer is that really nobody can say yet what would eventually evolve from this?

Mr. RAUTENBACH: No, it is just a general indication, but which steps will be taken, how long it will take is not known but that is what is envisaged as a vision of the future.

Judge Sir Louis MBANEFO: So that when you speak of apartheid being a programme, a means to an end, you do not really know what the end is going to be?

Mr. RAUTENBACH: No, we do not know where it is going to end excepting with this idea—it should end in a state of justice for all and to use the phrase again “political independence and economic interdependence”.

Judge Sir Louis MBANEFO: Now, one more question, you stated that

"admission to open universities for students from South West Africa depended on the Minister giving consent in writing".

Mr. RAUTENBACH: Yes.

Judge Sir Louis MBANEFO: Why is it necessary for a Minister to interfere with admission of students?

Mr. RAUTENBACH: It is his duty under the Act of 1959.

Judge Sir Louis MBANEFO: Why was it necessary to make that provision?

Mr. RAUTENBACH: As I say, Mr. President, to put the Act into effect, to implement the Act he has that duty, that task to do so, to decide where the students should be placed.

Judge Sir Louis MBANEFO: Can you give the Court any explanation, any reason why that is necessary?

Mr. RAUTENBACH: No, it is the general reason lying in the programme of separation.

Judge Sir Louis MBANEFO: Don't you think that it is an unwarranted interference in the independence of a university?

Mr. RAUTENBACH: If I had been in another country with another situation, I would have agreed to that, but with South Africa, in its own peculiar situation and in its problems, it has to seek a kind of programme or solution where peaceful co-existence from day to day is more or less guaranteed.

Judge Sir Louis MBANEFO: Why wasn't he given the same power in respect of White students?

Mr. RAUTENBACH: I do not know. The penalty attached to entrance to Bantu universities by White students is the same as the opposite. I only know that, but I do not know why particularly he was not given the power but the implication is, of course, that the White students are by law excluded . . . Now I understand it, White students have all the opportunities but Bantu students do not have all the opportunities at Bantu colleges so that in certain cases their opportunities should be given in the White—the one is more privileged at the present moment than the other, and the under-privileged has to get his privilege somewhere else. The one measure is necessary, the other is not necessary. There is training in 11 faculties for Whites and there is training in five faculties for Bantus at Bantu institutions so that outside of that in the other six faculties, provision had to be made to enable the Minister to allow students to enter open universities. I don't know whether that answers the question of the learned judge, Mr. President?

Judge Sir Louis MBANEFO: Thank you.

The PRESIDENT: Any further questions, Sir Louis? Does any other Member of the Court desire to put a question to the witness? (There being no response the President continued.) There is just one particular subject-matter on which I would like to ask you one or two questions. In answer to Sir Gerald and also in the course of answering certain questions put to you by Sir Louis, you spoke about envisaging a federal system as the ultimate position which would be reached when the policy of apartheid had in itself been completely served. In answer to that question, you ventured an opinion that in the case of a federal system, there would be no common citizenship—is this venturing an opinion of your own or have you any foundation for so thinking from anything which has been issued as a matter of policy by the Prime Minister or in any other way by the Government of South Africa?

Mr. RAUTENBACH: Mr. President, it was just my own opinion I was expressing.

The PRESIDENT: Are you aware that in federal systems, where different states agree on a federal union, under conditions which they, themselves, work out before the union is established, it is common to have a common citizenship for the whole federal union?

Mr. RAUTENBACH: Mr. President, I had to learn history and that is years ago—well, I know that is so. I also know, Mr. President, that in the case of the Commonwealth, we had certain privileges over outsiders but we did not have common citizenship.

The PRESIDENT: I know, but in speaking about the Commonwealth you were using rather a figure of speech, when you compare it with a federal union—that is an example of the danger of reasoning by analogy.

Mr. RAUTENBACH: I must apologize. My knowledge of these terms is very limited and I may mix them up.

The PRESIDENT: Anyhow you are simply venturing your own opinion?

Mr. RAUTENBACH: Yes, I am venturing my own opinion.

The PRESIDENT: That is all I desired to ask you.

Judge Sir Louis MBANEFO: Mr. President, may I just ask a question?

The PRESIDENT: Pray do.

Judge Sir Louis MBANEFO: The British Commonwealth of Nations consists of the mother country and countries that have developed from colonial status to full independence. In South Africa, they have common citizenship with equal rights and they should have equal rights under the constitution—or are there second class people who have to be helped to come up to independence before they can be given self-government?

Mr. RAUTENBACH: If I follow the question . . .

Judge Sir Louis MBANEFO: Now in South Africa . . .

The PRESIDENT: Do you want an answer to that question, Sir Louis, or is it a statement you are making?

Judge Sir Louis MBANEFO: I want to make myself clear so that . . .

The PRESIDENT: Please put your question.

Judge Sir Louis MBANEFO: I would like to get his comment. Development of the Commonwealth in the British Commonwealth of Nations, as you know it, was a process which began with the mother country and colonial countries who have no right in the mother country and who were brought up to a state where they were considered fit to govern themselves. In South Africa, you have two peoples—you have the Whites and the non-Whites—who at the moment have a common citizenship.

Mr. RAUTENBACH: No, they have common domicile in one country.

Judge Sir Louis MBANEFO: At the moment?

Mr. RAUTENBACH: Yes.

Judge Sir Louis MBANEFO: Have they not got common citizenship in South Africa?

Mr. RAUTENBACH: I am not sure what the term "common citizenship" means.

The PRESIDENT: If you do not know, you cannot express an opinion. The witness is an expert and he has been asked a large number of questions in my opinion, not by you, Sir Louis, but in the course of the case, which did not seem to fall within his competence as a witness, but that is a matter for the Court to decide and if you are asking the witness for an answer, are you asking him as an expert in the field of your question or are you asking him as a question of fact which he can depose to?

Judge Sir Louis MBANEFO: What I am getting at is, would the development of the commonwealth you had in mind be different from the way the other commonwealth was developed.

Mr. RAUTENBACH: Yes, it would be different in this respect, that within the borders of the one South Africa, geographically you would have various nations, each one coming to nationhood. That is so—that is the difference. In the case of the British Commonwealth, the mother country is geographically on an island or two (one-and-a-half islands) and then there is India and others, and Nigeria and other countries coming in, geographically very separate. In South Africa we also have homelands which, from time immemorial, have been the home country of, let us say, the Xhosa people, in the Transkei, and where I was born, the Bahurutsi people (that is the west of Transvaal) who, when the first Whites came there, had their country; it later was called the Reservation and they still had that; they have been living and farming there ever since they came to South Africa, so that in South Africa one has embryonic states, like you have in Europe on the one continent next door to each other. So that you have no guarantee that if you have a commonwealth from this background, you develop in the same way as the British Commonwealth. No, I have no guarantee and I could not express my idea on that.

The PRESIDENT: Are there any further questions at all by any Member of the Court? If not, Mr. Grosskopf, do you desire to put any questions in re-examination?

Mr. GROSSKOPF: Yes, Sir, Mr. President, just one or two. Professor Rautenbach, you were asked questions about this publication by the American Sub-Committee on Africa, of the Committee on Foreign Affairs of the House of Representatives. Is that so?

Mr. RAUTENBACH: That is correct, Mr. President.

Mr. GROSSKOPF: I would just like, as a setting of this case for these questions, to read what questions were put to you by my learned friend, Mr. Gross, and I shall read first from the verbatim record at page 367, *supra*, where he referred to the number of South African students mentioned in this book, and the question was then asked if the presence of these students: "indicates a desire on the part of a certain number of non-White students from South Africa to study abroad." That was the question, was it not?

Mr. RAUTENBACH: That was the question.

Mr. GROSSKOPF: Then, I should wish to refer you to page 368 of the same record where you were asked:

"Now, Sir, this table to which I have referred, being an official publication of the Congress of the United States, the House Foreign Affairs Committee, sets forth that there are six students, non-White or 'African' students from South West Africa, who are at the present time studying in the United States."

That was the question put to you, was it?

Mr. RAUTENBACH: That was the question put to me and the situation which was sketched to me.

Mr. GROSSKOPF: Now, this morning you expressed the view that this report did not indicate whether these students were White or non-White, is that so?

Mr. RAUTENBACH: That is so, Mr. President. After my perusal of the booklet . . .

Mr. GROSSKOPF: I am going to put this booklet to you, if I may. What is the title of the booklet appearing on the outside?

Mr. RAUTENBACH: The outside is *African Students and Study Programmes in the United States*.

Mr. GROSSKOPF: Is the word "African" qualified at all there?

Mr. RAUTENBACH: No, the word "African" is not qualified.

Mr. GROSSKOPF: Will you look at the map right in the front of the book. What does that map indicate?

Mr. RAUTENBACH: The map indicates here where there are certain parts coloured in like Spanish Sahara, Angola, South West Africa, Bechuanaland, Southern Rhodesia and Mozambique . . .

Mr. GROSSKOPF: It is a map of Africa?

Mr. RAUTENBACH: It is a recognizable map of Africa.

Mr. GROSSKOPF: Now, the legend at the bottom—what do you find there?

Mr. RAUTENBACH: That the various countries are mentioned in alphabetical order, beginning with Algeria, Angola, Basutoland, Bechuanaland, Burundi, Cameroon . . .

Mr. GROSSKOPF: I do not think you need read them all.

Mr. RAUTENBACH: To Zambia, including South Africa—the Republic of South Africa.

Mr. GROSSKOPF: And in respect of each country, what information is given?

Mr. RAUTENBACH: Population and students in the United States.

Mr. GROSSKOPF: So you look at South Africa—what is the population figure given?

Mr. RAUTENBACH: South Africa, Republic of, 1910 (I don't know what that means), population 16,640,000; students in the United States 390.

Mr. GROSSKOPF: Now, dealing first with the population figure, to your knowledge does that include all groups?

Mr. RAUTENBACH: Yes, not only from what is before me, but from what I know of people of various groups being there.

Mr. GROSSKOPF: Looking at South West Africa, what is the population figure given there?

Mr. RAUTENBACH: Population 544,000; students in the United States 6.

Mr. GROSSKOPF: Now, from your knowledge, the population figure given, does that include Whites?

Mr. RAUTENBACH: Yes, according to Professor Wellington's article I read in *Optima*, it includes Whites.

Mr. GROSSKOPF: This morning, you referred to a certain passage at page 145 of that pamphlet. Have you had a look at that passage again?

Mr. RAUTENBACH: Yes, I have had a look at this passage here.

Mr. GROSSKOPF: Does that deal at all with the question of whether the number of students in the United States from South Africa and South West Africa are White or non-White?

Mr. RAUTENBACH: As far as I can make out, it has no bearing on that.

Mr. GROSSKOPF: Now that was a passage, Mr. Gross said, by a Mr. Hummell of the State Department. Will you look at page 152 of that same publication, where Mr. Hummell was asked a question, or a number of questions? Is there anything on that page which indicates to you whether the South African students in the United States were all non-White?

Mr. RAUTENBACH: And here Mr. Fraser asked the following: "You

mentioned earlier we are teaching, or we had here students from South Africa. That is separate from the refugee programme." Mr. Hummel said: "The students from South Africa who were brought here under our programme are White South African students, chosen and brought to this country with the concurrence and with the participation of the South African Government, Mr. Fraser."

Mr. GROSSKOPF: I do not think you need to continue any further, Professor.

Mr. RAUTENBACH: Although it is possible to bring non-Europeans from South Africa under this programme, etc., . . .

Mr. GROSSKOPF: As regards the comment you made this morning that, as far as you read this pamphlet, it refers both to non-White and White students. Do you have anything further to add to that?

Mr. RAUTENBACH: No, nothing has so far come forward which has made me change my mind, namely that it is doubtful whether the situation sketched some two days ago here to me is not subject to very serious doubt.

Mr. GROSSKOPF: Now, Professor, it was suggested to you that the presence of South African students in the United States was an indication of lack of facilities or lack of quality of facilities in South Africa itself. Will you look at table 1 of that document, please? What does that table indicate?

Mr. RAUTENBACH: African students shown in the home countries: 6; year the study in the United States began; financial support; academic status.

Mr. GROSSKOPF: Will you tell the Court, are there any students from Liberia mentioned in that table?

The PRESIDENT: What is the relevance of the question you are putting to the witness, whether there are students from Liberia, Mr. Grosskopf?

Mr. GROSSKOPF: Mr. President, I am really getting to the point whether any inference can be drawn from these figures?

The PRESIDENT: Any inference?

Mr. GROSSKOPF: As to the quality of facilities available—that is the point to which I am directing this re-examination.

Mr. RAUTENBACH: The numbers given here—the total students from Liberia is 315.

Mr. GROSSKOPF: And, Professor, also of most other countries in Africa?

Mr. RAUTENBACH: Yes, there seems to be quite a number of them.

Mr. GROSSKOPF: Do you consider that any inference can be drawn from those figures as to the nature of the educational facilities available?

The PRESIDENT: Mr. Gross.

Mr. GROSS: This has to be pursued. I would like to know, if the Court pleases, to what implications arising out of what question or statement I made is counsel referring. He has cited none, but has characterized my question or statement, as the case may be. Secondly, I do not know what kind of inference he is talking about, Sir. Inference as to what?

The PRESIDENT: Mr. Grosskopf, you are only entitled to re-examine in relation to a particular matter which was raised in the cross-examination of Mr. Gross. Where was anything said by him which would make the subject-matter of your question one for re-examination?

Mr. GROSSKOPF: If I may refer you, Mr. President, to the record at page 367, *supra*, where the suggestion is made to the witness that the presence of a certain number of students from South Africa would indi-

cate a desire on the part of these students to study elsewhere than in South Africa, with the implication that there was something deficient or lacking in the facilities available in their own country, and the only point I wish to come to is whether such inference would be a justifiable one.

The PRESIDENT: In other words, an inference has got to be drawn, so you say, from something Mr. Gross said, that these men had sought education in America because of a deficiency in education in South West Africa or the Republic of South Africa, is that the point?

Mr. GROSSKOPF: Yes, Sir.

The PRESIDENT: Mr. Gross.

Mr. GROSS: Mr. President, merely asking a question, it seems to me, with respect, does not justify the assumption that an inference is sought to be drawn; I asked a question for an opinion and an answer was given, Sir. I do not believe, Sir, with respect, that it is appropriate for counsel to suggest that a question I ask is intended to carry an inference. It is an attempt to elicit information for the benefit of the Court, Sir.

The PRESIDENT: Mr. Gross, I think it is important from time to time to determine whether questions are put for the purpose of asking the Court subsequently to draw an inference. If you indicate to the Court that you do not propose to ask the Court to draw any such inference, then I think the matter concludes there, but do you or do you not intend to ask the Court to draw the inference that because these students are found in America, the inference is or may be that it is due to deficiency of educational opportunities in the Territory or in the Republic?

Mr. GROSS: At page 367 of the verbatim record under discussion—I believe, Sir, this is with respect to your question—I asked the witness: "This, you will agree, would you not, indicates a desire on the part of a certain number of non-White students from South Africa to study abroad?" I was referring, Sir, to a certain number, unspecified. Subsequently, on page 369, I referred to the "six students, non-White or African students from South West Africa", and asked:

"Would that fact have any significance in your mind with respect to the choice of institution available in South Africa as distinguished from abroad?"

The only inference that I would respectfully request the Court to draw would be the validity and the credibility and the weight to be attached to the response given by the witness, and anything else in the record or in permissible comment relevant thereto.

The PRESIDENT: If that is so, Mr. Grosskopf, it does not seem to me that your re-examination is relevant.

Mr. GROSSKOPF: As you please, Mr. President.

The PRESIDENT: Is that the final question?

Mr. GROSSKOPF: That concludes my re-examination, Mr. President.

The PRESIDENT: Well, Professor, you will be released, you will be glad no doubt to hear, from further attendance, unless you are informed to the contrary during the course of the day; so you are released from further attendance. Mr. Grosskopf?

Mr. GROSSKOPF: Mr. President, the next witness will be Mr. Dahlmann who, with the Court's leave, will be introduced and led by my learned friend Mr. Muller.

The PRESIDENT: Mr. Muller, I think we may as well call the witness now, and have him make whatever declarations you desire him to make.

Mr. MULLER: As the Court pleases. Mr. President, before the declaration is made, may I indicate that the evidence of Mr. Dahlmann concerns the issues raised under Applicants' Submissions Nos. 3 and 4. We have notified the Applicants that the points to which his evidence will be directed will be the following: the nature, programmes and activities of, and the extent of support for, non-White political parties in South West Africa, the relations between such parties, and the circumstances and conditions in South West Africa which materially influence political developments amongst the non-White inhabitants of the Territory. May I explain, Mr. President, the particular respects in which this evidence is regarded as relevant by the Respondent are basically on two main aspects? The first is that the witness will indicate the support which there is for political parties amongst the indigenous people of South West Africa, whether that support is on a territorial basis, or whether the parties are divided on ethnic lines. Secondly the witness will indicate the connection between some of these parties and certain persons at the United Nations whom we have described in the pleadings already as a body of professional petitioners. This is relevant, Mr. President, when we come to deal later on in argument with the so-called law-creating processes or norm-creating processes referred to by the Applicants, that is, resolutions and reports of organs and agents in the United Nations. We will then submit and argue that to a very great extent the resolutions as well as the reports are based upon or largely influenced by statements made by this body of political petitioners. We have indicated already our treatment of this matter in later argument, and I refer the Court in this regard to the record, X, at page 77 and at pages 83 and 84.

The PRESIDENT: Mr. Gross.

Mr. GROSS: The letter to which reference has been made by counsel, dated 2 October 1965, is as read by him and as reaffirmed in the record. Sir, the points to which the evidence of the witness is intended to be directed do not include any reference whatever to connection between petitioners and United Nations processes, or anything with reference to law-creating processes (I think the phrase used by counsel) in respect of the Applicants' submissions. The question raised by the Applicants and which, Sir, accounts for this intervention, is doubt concerning the appropriate procedure for the reservation of rights in connection with the field of expertise of this witness, the relevance of the points to which counsel now asserts that his evidence, or certain of it, will be directed, and the Applicants' position that the field to which reference has now been made by counsel, that is to say, specifically with respect to individual persons or their relationship with parties or with each other, would in itself be a question upon which factual statements as a witness rather than as an expert would be pertinent. I am talking now about whether references are proposed to be made for good or ill, for purposes of praise or condemnation—that is irrelevant to my point that with respect to the protection of individuals from opinion testimony concerning their character or their relationship, this would be an area as to which the Applicants would feel it their duty to reserve full right to object to testimony being placed in the record except on a factual basis with respect to the information and knowledge of the witness rather than to any so-called expert opinion derived from the publication of a newspaper, Sir.

The PRESIDENT: I appreciate that, Mr. Gross. I think it might be better if the witness makes the declaration, and then we will receive his



qualifications, and then the objection might be taken in relation to a question asked the witness which would put in issue the matters which you have addressed the Court upon.

Mr. GROSS: Thank you, Mr. President. With your indulgence I merely wish to assure the reservation of the position, and I understand, Sir, your point and will follow it.

The PRESIDENT: I understand. Proceed, Mr. Muller.

Mr. MULLER: May I also indicate that the witness is German-speaking; he does speak English, but is not very fluent in that language, and if he goes rather slowly in answering questions, will the Court please bear with him? May I ask that the witness make both the declarations which are provided for in the Statute?

The PRESIDENT: Let the declarations be made.

Mr. DAHLMANN: In my capacity as a witness I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth. In my capacity as an expert I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

Mr. MULLER: Mr. Dahlmann, your full name is Kurt Dahlmann, is that correct?

Mr. DAHLMANN: That is correct.

Mr. MULLER: What is your occupation?

Mr. DAHLMANN: I am the Editor of the *Allgemeine Zeitung* in Windhoek.

Mr. MULLER: Is that a newspaper circulating in South West Africa?

Mr. DAHLMANN: That is a daily newspaper in South West Africa.

The PRESIDENT: Is that published in German?

Mr. DAHLMANN: Published in German.

Mr. MULLER: Since when have you been the Editor of this paper?

Mr. DAHLMANN: I am the Editor of this paper since 1960.

Mr. MULLER: How long have you been in South West Africa?

Mr. DAHLMANN: Since 1958.

Mr. MULLER: Did you hold another position with this particular paper before you became Editor?

Mr. DAHLMANN: I was the whole time with this paper.

Mr. MULLER: What are your academic qualifications?

Mr. DAHLMANN: I have a law degree at Kiel University.

Mr. MULLER: Were you a journalist before you went to South West Africa in 1958?

Mr. DAHLMANN: Yes, that is correct.

Mr. MULLER: Where?

Mr. DAHLMANN: At Kiel, at the *Kieler Nachrichten*.

Mr. MULLER: What is your special field of study relative to your occupation as the editor of a newspaper?

Mr. DAHLMANN: Politics in general, and African trends and movements of policy, in particular of course in South West Africa.

Mr. MULLER: Now can you tell the Court, briefly, how you gain your knowledge of the political activities in the Territory?

Mr. DAHLMANN: The political leaders of the various organizations use the newspaper the *Allgemeine Zeitung* as their forum for propagating their ideas. They transmit information in connection with their activities to me personally, they come to my office or they come to my home; then I travel extensively throughout the whole Territory by car and by air,

and I have discussions with the leaders of the political parties and also with the tribal authorities. I introduce the political leaders in South West Africa to visitors from abroad, and I arrange meetings for the politically interested visitors from abroad with the non-White politicians in South West Africa. I attend the meetings of the different political organizations whenever it is possible, and I study the publications of these organizations, for example *Freedom*, which is published for the South West African National Union in Cairo, *Solidarity*, published for the South West Africa People's Organization in Dar-es-Salaam, *South West Africa Today*, *Namib Today*, and also irregular publications in South West Africa, and circulars. I must also mention that I get the publications from the United Nations in which one finds many statements of the political leaders in South West Africa, and also statements from the political leaders who are living abroad.

[Public hearing of 8 October 1965]

Mr. MULLER: Mr. Dahlmann, before the adjournment yesterday you explained to the Court in what manner you gained knowledge of the political activities of the non-White inhabitants of the Territory. Now, will you tell the Court whether there are certain factors which influence the existence of and support for political parties amongst the indigenous population of the Territory?

Mr. DAHLMANN: There are a number of factors, Mr. President. One has to find one's way between seemingly impossible contradictions, and without keeping in mind certain basic facts and forces it is practically impossible to understand the attitude, activities and antagonisms which manifest themselves in the political sphere in South West Africa.

I would regard the following as the main factors and forces which interact with or counteract against each other in the political field. There is:

- (1) The existence of the large number of different population groups.
- (2) The nature of the traditional and historic political organization of the groups and the degree of political interest and consciousness on the part of the members of these groups.
- (3) The measure of political group identification, finding its expression in group nationalism.
- (4) The factor of Black nationalism or Pan-Africanism.
- (5) The measure of economic well-being in the Territory.

Mr. MULLER: Would you briefly explain to the Court how these factors affect the political situation in the Territory?

Mr. DAHLMANN: The factors themselves are not unduly complicated but the interaction of these factors and others makes the situation in South West Africa rather confusing, the situation in the field of the political parties. I think, Mr. President, it is common knowledge that there are large numbers of different population groups in South West Africa, which differ widely from each other as regards culture, social organization, language, general way of life and level of development.

I think it is also common knowledge that the vast majority of the non-Whites favour their traditional and historic political organization, and they are totally unfamiliar and far removed from the system of parlia-

mentary democracy known in the western world. Traditionally, the members of the different groups follow the lead of their chief and headmen. The level of real political interest is very low.

The third factor I mentioned, the group loyalty, is a very important one. The loyalty of the vast majority centres on their individual population groups. There is not only a tribal loyalty. Some of these population groups consist of a plurality of tribes and they can be regarded rather as a nation. There is a desire to active self-determination within the framework of such groups.

Another factor is, as I mentioned, the Black nationalism in Africa. That is, of course, a force behind certain political movements in South West Africa. The central idea is, Africa for the Africans. The leaders of certain political organizations in South West Africa who are living abroad are trying to import these ideas to South West Africa.

Another important factor is the economic well-being or economic stress. Economic stress leads to political dissatisfaction with the government in power, and economic well-being leads to satisfaction with the government, and in South West Africa we experience prolonged periods of drought—they are not unusual—and during these periods the dissatisfaction with the government might increase; and during these times people have an open ear for politicians who promise them a better and easier life, or even golden days.

Those are certain explanations of the five factors which I have mentioned.

Mr. MULLER: When you arrived in South West Africa in 1958, Mr. Dahlmann, were there any non-White political parties existing in the Territory?

Mr. DAHLMANN: In 1958, Mr. President, there was no real political party in South West Africa in existence. The political matters were dealt with and discussed by the traditional tribal authorities. Only in 1959 were the first political parties organized.

Mr. MULLER: Will you briefly indicate to the Court under what circumstances the first non-White political parties were formed in South West Africa?

Mr. DAHLMANN: The first political parties were formed mainly as a result of instigation by certain petitioners at the United Nations. One of the prime movers was Eric William Getzen, also known as Mburumba Kerina. He left South West Africa in 1953 under his name Eric William Getzen, and he has appeared since 1956 regularly as a petitioner before the United Nations.

Kerina felt that in order to strengthen his . . .

The PRESIDENT: Mr. Gross.

Mr. GROSS: Mr. President, I respectfully object to the testimony concerning what Mr. Kerina felt unless, Sir, there is some basis laid for personal knowledge, and I would respectfully request the right to file a general objection to any similar comment concerning the state of mind of any individual, Sir.

The PRESIDENT: Mr. Muller.

Mr. MULLER: Mr. President, the witness will within a few minutes indicate to the Court how he comes to know of the part played by Mr. Kerina in the formation of these parties. He will refer to documents written by Mr. Kerina, documents which are public knowledge and documents which have been admitted by the Applicants.

The PRESIDENT: Yes, Mr. Gross.

Mr. GROSS: Mr. President, I believe, Sir, that this would be the necessary foundation for the opinion evidence which is proffered, and I would respectfully request that if there is information within the knowledge of the witness, that the witness be requested to state the basis of the information as well as the information itself.

The PRESIDENT: Well, Mr. Gross, sometimes it is not easy to establish the knowledge of the witness in relation to each factual position beforehand in the presentation of the case. If counsel says that he will connect it up then, normally, the Court accepts the statement that he will do so. But I will suggest to Mr. Muller that if he can establish the factual basis first before the witness seeks to depose, that would be perhaps the better course to pursue. Mr. Muller.

Mr. MULLER: As the Court pleases: I will do so.

Mr. GROSS: Thank you, Mr. President.

Mr. MULLER: Mr. Dahlmann, you have indicated that the formation of the first non-White political party was brought about by instigations from people in America, and you mentioned the name Kerina. How do you come to know of the facts stated by you?

Mr. DAHLMANN: Mr. President, that came out during the sitting of the Commission of Inquiry into the occurrences in the Windhoek location on the night of 10-11 December 1959. I was present at that Inquiry. A number of letters written by Kerina and other petitioners at the United Nations to their associates in South West Africa were handed in as exhibits. The letters were read and the contents made public. The letters were referred to by the Chairman of the Commission of Inquiry, Mr. Justice Hall, in his report. Then again part of the letters are also quoted in the report.

The PRESIDENT: Mr. Gross.

Mr. GROSS: Mr. President, the letters in question are indeed in the record. They are, among other things, contained in a document which has been filed by the Applicants, the 1960 *Report of the Committee on South West Africa*. The Applicants would respectfully request the honourable President to establish, or permit the Applicants to establish, whether the Respondent has personal knowledge of the letters, the actual source, whether written by Kerina or written by somebody else, the circumstances under which they came into the hands of the Commission of Inquiry, and any other relevant circumstances, rather than having the witness read into the record or refer to what is already in the documentation, that is the Commission of Inquiry report which contains reference to certain letters purportedly written by Mr. Kerina, who himself was not present, Sir.

The PRESIDENT: Mr. Gross, there is a large amount of evidence which has been introduced into this case which is evidence the reliability of which depends upon circumstances. Normally, of course, in a municipal court the objection which you take would be well-founded. This Court is not bound by the strict rules of evidence applicable in municipal courts and if the evidence established by the witness does not sufficiently convey to the Court a moral certainty that the evidence is reliable in point of fact, then the Court, of course, deals with it accordingly when it comes to its deliberations.

I think the better course is to note your objection and for Mr. Muller to proceed, and then the Court will determine later on, if necessary, on

further objection; whether the witness is competent to speak to the facts to which he deposes.

Mr. GROSS: Yes, Sir. Thank you, Mr. President.

Mr. MULLER: May I, at this stage, explain that the witness has copies of these letters, and he has studied them. He will indicate to the Court how certain instructions in those letters were carried out. I think that, with respect, Mr. President, the witness will be entitled to say what the instructions were in the letters which are before the Court and have been admitted, for the purpose of indicating how those instructions were carried out, or otherwise. With respect Mr. President, I could indicate to the witness what the instructions in those letters were because they have been admitted, and the witness could then reply.

The PRESIDENT: Mr. Muller, you must take your own course. At the moment, there is no limitation placed upon your right to put your question to the witness. I have indicated to Mr. Gross, the approach that is made by this Court generally to evidence and, if you fail to connect it up, then it will mean that the value of the witness's evidence may fall to nil or fall to little.

Mr. MULLER: I just thought, Mr. President, that it was my duty to explain to the Court how I am going to proceed from now.

The PRESIDENT: I understand.

Mr. MULLER: Mr. Dahlmann, you have in your possession copies of the letters to which you have referred, have you not, Sir?

Mr. DAHLMANN: Yes, that is correct, Mr. President.

Mr. MULLER: Now, will you indicate whether instructions were contained in the letters with regard to the formation of the specific political parties in South West Africa?

Mr. DAHLMANN: There were instructions given mainly by Kerina and also by another petitioner, but mainly by Kerina. Kerina urged Toivo to form the Ovamboland People's Congress at the beginning of 1959. On 14 February 1959, he wrote a letter to Toivo in Ovamboland. Toivo is an Ovambo. I know him personally. He is a shop-owner and is living in the vicinity of Ondangua. On 14 February 1959, Kerina wrote to Toivo:

"Please Toiva, do this, organize an OVAMBOLAND PEOPLE'S CONGRESS, make all the Chiefs of various tribes the Vice-Presidents. In other words make them First Vice-President, Second Vice-President, Third Vice-President, etc., etc., etc., this will break the inter-tribal rivalry that may come about."

Mr. GROSS: Mr. President, the only reference to a letter which has been made (this is simply for the information of the Court, in principle, witness may be able to supply some other basis) in the Commission of Enquiry report, is at page 61 of the 1960 *Report of the Committee on South West Africa, General Assembly Document, 15th Session, Supplement No. 12, A/4464*. The text of the letter, from which, I believe, the witness is reading, if I understood him correctly, does not contain the language which he has just quoted, which is apparently in a portion that is indicated here by three dots. It would be appreciated, Sir, if the President would be gracious enough to request the witness or counsel to indicate the source of the text which has been read, since it is not available to the counsel.

The PRESIDENT: Mr. Muller, this is one of the documents to which you referred on 4 October, is it not?

Mr. MULLER: Yes.

The PRESIDENT: At the moment, I haven't that document and I do not think any Member of the Court has that document.

Mr. MULLER: I can assist the Court, Mr. President . . .

The PRESIDENT: For the purpose of understanding the objections raised, I would be very glad if a document could be handed to me.

Mr. MULLER: These documents are before the Court and they are referred to, and quotations given, in the Counter-Memorial (IV). If I may assist the Court with regard to this particular letter, it is referred to in the Counter-Memorial, IV, at page 40.

The PRESIDENT: Thank you very much.

Mr. GROSS: Mr. President, I thank counsel; this is the source that I had overlooked.

The PRESIDENT: Would you proceed, Mr. Dahlmann, please?

Mr. DAHLMANN: Mr. President, I continue to quote from this letter:

"Be the General-Secretary of the Congress. Be very shrewd. Work with the nominated Chiefs very carefully. Pretend as if you are with them. But also take into serious account the other promising young people and Elders and please make Father Hamtumbangela the President of the Congress. The first task of the Congress should be a petition to the Prime Minister of South Africa with copies to the Windhoek Advertiser, New Age, United Nations, Cape Times, and a copy to me, the American Committee on Africa, Africa Weekly, Rev. M. Scott, etc. This petition should ask four things. Of course a copy should be sent to the Chief Native Commissioner. These four things should be as follows: Ask for

- (a) Direct African and Coloured People representation in the Government of South West Africa.
- (b) Introduction of universal suffrage in South West Africa irrespective of Colour, Creed, Religion and National Origin.
- (c) Immediate liquidation of South West African Representation in the Parliament of South Africa.
- (d) Immediate placing of South West Africa under the United Nations Trusteeship System.

Toivo, I urge you not to accept part of these demands. Tell the Prime Minister of South Africa that you want all four to be granted and no compromise whatever."

Mr. MULLER: Now, Mr. Dahlmann, you can stop there. Will you tell the Court whether the Organization referred to in that letter was, in fact, formed and, if so, when?

Mr. DAHLMANN: This Organization was formed in April 1959 under the name "Ovamboland People's Organization".

Mr. MULLER: What was the Organization referred to by abbreviations?

Mr. DAHLMANN: OPO.

Mr. MULLER: Who were the principal figures in this Organization?

Mr. DAHLMANN: Sam Nujoma, an Ovambo living in Windhoek, became President, and he still is the President of this Organization, although this Organization exists now under a different name. Jacob Kuhangua is also a very prominent leader within this Organization, who is living abroad; Herman Toivo, also a prominent politician with this Organization living in Ovamboland, and Mburumba Kerina was the Chairman of this Organization until 1962.

Mr. MULLER: Did Kerina, in the letters which you have with you, indicate what his objectives were in having an organization of this nature formed?

Mr. DAHLMANN: Mr. President, from his letters it is clear that Kerina wanted African rule for South West Africa, no multi-racialism and no partnership.

Mr. GROSS: This expression of opinion is entirely unfounded. The letter read by the witness refers to introduction of universal suffrage in South West Africa, irrespective of colour, creed, religion and national origin. This is a purely spontaneous, unsupported allegation made by the witness and it would clearly be beyond the range of any expertise.

Mr. MULLER: My question to the witness was whether in the letters—I did not refer to the particular one. I was going to deal, as I have indicated, with another letter in which this will come out. If I may ask the witness—I was going to ask him to indicate the letter in which a particular passage indicates what he has said now.

The PRESIDENT: Mr. Muller, if you undertake to the Court to connect it up with a letter on each occasion which supports the statement made by the witness, I think you may proceed.

Mr. MULLER: As the Court pleases. Having indicated the objectives of Kerina, will you state in which particular letter you find any evidence to it?

Mr. DAHLMANN: On 4 March 1959.

The PRESIDENT: Will you look again?

Mr. DAHLMANN: It is 5 March. I am sorry.

The PRESIDENT: If you could, as you proceed, give a reference to the Counter-Memorial, it would . . .

Mr. MULLER: I can do this straightaway. I refer, at this moment, to the Counter-Memorial, IV, at page 39. The letter is quoted in the first half of the page.

Mr. DAHLMANN: On 5 March 1959, Kerina wrote to Muundjwa. Muundjwa is an Herero, also a prominent politician, living in Windhoek:

“Let the stupid Africans and Coloured agitators such as Kloppers, etc., etc. encouraged by deceptive White settlers stop preaching multi-racial or partnership in South West Africa at the expense of the African people. We have had enough of these nonsense. Our position should be made clear to the Whites. We want South West Africa back no more no less.”

Mr. MULLER: Did Kerina, in any of the letters, indicate what should be done with regard to petitions to the United Nations?

Mr. DAHLMANN: Mr. President, in some of his letters, Kerina urged for a combined action to strengthen his position at the United Nations. He urged his associates in South West Africa to send petitions to the United Nations and he indicated that he was prepared to draft them for them.

Mr. MULLER: Will you refer to letters before you in which such instructions or suggestions were made; I think the first letter is one dated 14 February 1959? I may indicate to the Court that that is referred to, and portions quoted from, in the Counter-Memorial, IV, page 40.

Mr. DAHLMANN: There is a letter written by Kerina to Toivo:

“Please remember Toivo, I will play this up here at the U.N.O. But to make it effective, the Congress [that means the Ovamboland

People's Congress] should petition the President of the United States Government and the Prime Minister of Russia for immediate military action against South Africa collectively or individually to enforce the decisions and authority of the United Nations. Boy this will make the British to even force South Africa at the U.N.O. to place South West Africa under the Trusteeship because they are afraid of Russia. But if you want me to draft this petitions please inform me, because they have to be legal and specific and also non-committal on our part. I can consult with some of my legal friends here. A copy shall be sent to the U.N.O. and other sources for a world-wide publicity." [And in the same letter Kerina says to Toivo] "Listen the two petitions to the big boys should be timed. They should reach them just a month before the U.N.O. Assembly starts so that the matter could become a world wide one."

Mr. MULLER: Are similar or like instructions or suggestions made in other letters?

Mr. DAHLMANN: Yes. On 21 April 1959 Kerina wrote to Toivo . . .

Mr. MULLER: May I indicate there, Mr. President, that the letter is quoted and extracts cited in the same volume of the Counter-Memorial, at page 41?

Mr. DAHLMANN: "I am working hard on the 2 Big Boys petitions. I am sure we'll get them through . . ." And in another letter written by Kerina to Kapuuo, Kerina writes . . .

Mr. MULLER: On what date?

Mr. DAHLMANN: 30 April 1959.

Mr. MULLER: Mr. President, that letter is referred to and portions quoted in the same volume of the Counter-Memorial, at pages 41-42.

Mr. DAHLMANN: May I explain that Mr. Kapuuo is the right hand of Hosea Kutako? Hosea Kutako, whatever his official title is, can be called the leader of the Herero nation. Mr. Kapuuo, a former teacher and now a shop owner in Windhoek was and is, the right hand of Hosea Kutako, and he calls himself Chief Designate. On 30 April 1959 Kerina wrote to Kapuuo "Mr. Toivo requested me to draft few petitions for the Ovamboland People's Congress", and later in this letter:

"I am arranging for Kozongwizi and I to meet with (no va Russa) privately to see as to whether they could help us. But, please if we take a stand in that direction here, stand firm all of you at home and support us. Your position should be very simple e.g.

'Your petitioners to the UNO are the only one authorized to take measures that would help to solve the question and that you have nothing to say publicly until you hear from them.'

On 16 September 1959 Kerina wrote to Sam Nujoma . . .

Mr. MULLER: Before you read, may I indicate to the Court—the same volume of the Counter-Memorial, at page 42.

Mr. DAHLMANN: Sam Nujoma was at that time, in September 1959, the President of the Ovamboland People's Organization. Kerina in his letter:

"Please send cable to United Nations expressing your opinions, not air letters. Address them to the Chairman, Fourth Committee, United Nations, New York."

And on 9 December 1959 Kerina writes again to Sam Nujoma . . .



Mr. MULLER: Before you read I will indicate to the Court the letter is referred to and extracts quoted in the Counter-Memorial, IV, page 43.

Mr. DAHLMANN:

"Several hundred petitions should flood the U.N. immediately!!! We leave the rest to you—please also inform the people at Walvis Bay to follow this same course. As many petitions as possible should be despatched to U.N. as soon as possible . . ."

Mr. MULLER: Mr. Dahlmann, I shall deal later with the nature of the petitions which were in fact sent, but will you at this stage indicate whether Kerina and his associates at the United Nations also urged further or other action to be taken by people in South West Africa?

Mr. DAHLMANN: In a number of other letters the petitioners at the United Nations urged for further action; for example, public demonstrations should be organized and the South African Government should be defied.

Mr. MULLER: Will you refer to the letters which you have, and indicate to the Court where you find what you have just told the Court in passages in the letters?

Mr. DAHLMANN: I have a letter before me written by Kerina to Mr. Sam Nujoma dated 25 September 1959.

Mr. MULLER: Mr. President, that letter is referred to in the same volume of the Counter-Memorial, at page 42.

Mr. DAHLMANN: "Mr. Nujoma, continue to attack the Government openly in public. Do not stop." And in the same letter: "Also try to organize Mass Public Meetings every Saturday."

Mr. MULLER: Is any further action suggested?

Mr. DAHLMANN: There are also further actions suggested. On 14 February 1959 Kerina writes to Toivo in Ovamboland:

"Just tell our people in Ovamboland to keep together and not to say anything. If those nominated Chiefs say a word tell our people to burn their places at night secretly of course."

Mr. MULLER: Mr. President, that letter is in the same volume of the Counter-Memorial, at IV, pages 40-41.

Mr. DAHLMANN: In another letter dated 21 April 1959 Kerina writes to Toivo . . .

Mr. MULLER: Mr. President, may I indicate before the witness reads, in the same volume of the Counter-Memorial, at IV, page 41.

Mr. DAHLMANN: "Do not talk in public, talk behind the scenes. Befriend those nominated Chiefs, pretend as if you like them." Now I have another letter written by Jariretundu Kozonguizi. Kozonguizi is the President of the South West Africa National Union. On 14 September 1959 Kozonguizi writes to Sam Nujoma . . .

Mr. MULLER: Mr. President, may I indicate, the same volume of the Counter-Memorial, at IV, page 44.

Mr. DAHLMANN:

"Please try to organize people at home:

- (1) Against the Removal to the Location;
- (2) Hold a big S.W.A. Day to coincide with our petitioning the U. Nations."

And again Kerina, on 25 September 1959, writes to Nujoma . . .

Mr. MULLER: Mr. President, that letter is referred to and portions quoted in the same volume of the Counter-Memorial, IV, at page 42.

Mr. DAHLMANN:

"Refuse to move to the new location. Tell the people not to move. I will send you a statement which you should read to them and translate it into Ovambo, Herero, Nama, etc."

And on 17 October 1959 Kerina writes again to Sam Nujoma . . .

Mr. MULLER: Mr. President, at page 43.

Mr. DAHLMANN: "Do not move from the location. Refuse completely."

Mr. MULLER: Mr. Dahlmann, can you tell the Court whether to your knowledge trouble eventually did arise with regard to the proposed removal from the old location at Windhoek to the Katutura Township?

Mr. DAHLMANN: Yes, trouble did arise. The inhabitants of the location in Windhoek created a disturbance which gave rise to a riot on the night of 10-11 December 1959.

Mr. MULLER: As a result of the riots, was a commission of enquiry appointed?

Mr. DAHLMANN: Yes, that is correct.

Mr. MULLER: Can you tell the Court what the finding of the commission was with regard to the riots?

Mr. DAHLMANN: I have got the report here. In paragraph 26 the report says:

"The letters from which quotations are set out in paragraph 24 form only a small part of the letters and documents which came from New York to South West Africa, and many of the exhibits are in the same strain. It is clear that the occurrences in the location on the night of 10-11 December must be viewed in the light of these letters. Kerina, or Getzen, by which name he is better known in South Africa, had always been closely connected with the Reverend Michael Scott and the other people and societies whose aim and object it is to ensure that the control over South West Africa should be taken out of the Union's hands. It would appear that Kerina is the mouth-piece of these people. It appears from the letters to Toivo that it was his advice which led to the formation of the O.P.O. [that is, the Ovamboland People's Organization]. He repeatedly incited the office-bearers of both these political organizations to defy the Union Government and to oppose the removal of the Windhoek location. He suggested to the O.P.O. that it should petition Russia and America to attack the Union, and by force of arms to make it submit to United Nations demands. From September 1959 he continually urged the leaders of the Native population in South West Africa to oppose in every possible way any attempt to remove people from the old location to Katutura."

And in paragraph 27:

"To my mind these letters prove that the opposition to the removal from the existing location to the new one was organized by the Hereros in Windhoek at the instigation of their protagonists in New York. The passages which I have quoted from these letters urged repeatedly that opposition to the removal was to be made a cardinal point in the campaign of resistance which was to be set on foot. The letters establish too that the opposition to the location

removal must be maintained with the object of strengthening the hands of those who were endeavouring to achieve their political aims through the intervention of the United Nations. It was for this latter purpose that the Administration of South West Africa was to be forced to use violence and to shed African blood."

Mr. MULLER: Mr. Dahlmann, to get back to the Ovamboland People's Organization, the OPO, as you have called it, what was the membership of that organization at the time, that is, in 1959?

Mr. DAHLMANN: Initially this organization enjoyed very limited support. This organization was almost unknown at that time in Ovamboland. It was created in Windhoek and spread to Walvis Bay.

Mr. MULLER: Does this party or organization still exist?

Mr. DAHLMANN: No, it does not exist any more under that name. The name has been changed to South West Africa People's Organization.

Mr. MULLER: How did it come about that the name of the organization was changed?

Mr. DAHLMANN: Again, Kerina was well acquainted with the situation in South West Africa—he could not expect that, to give an example, the Hereros would support an Ovamboland people's congress or an Ovamboland people's organization. He realized that a number of organizations had to be formed for the different population groups. On the other hand, he was obviously interested not to give the impression abroad that these organizations were formed on a tribal basis.

Mr. GROSS: I wonder if the witness could give the source of the opinion concerning Mr. Kerina's state of mind?

Mr. MULLER: I have already undertaken that the witness will give that and he will proceed to do so immediately.

The PRESIDENT: Very well. Proceed Mr. Muller.

Mr. MULLER: Will you complete your answer Mr. Dahlmann, I do not know whether you have completed it.

Mr. DAHLMANN: No, Mr. President, not yet. He was obviously interested not to give the impression abroad that these organizations were formed on a tribal basis. He therefore urged associates in South West Africa: (1) to form a Herero party under the leadership of Hosea Kutako; (2) that the name of the Ovamboland Peoples Organization should be changed.

Mr. MULLER: Now will you indicate to the Court where you find that in the letters which you have before you?

Mr. DAHLMANN: May I refer to the letters concerned—it is again the letter written by Kerina on 5 March 1959 to Muundjwa in Windhoek.

Mr. MULLER: Mr. President, may I connect that with the Counter-Memorial, IV, page 39, it is to Mr. John Muundjwa in Windhoek:

Mr. DAHLMANN:

"John, please help to organize an African National Congress in South West Africa which should be represent of all the tribes of the country. In order to break the tribalistic element that is coming to South West Africa, first, make Chief Kutako the President, and then the rest of the other Chiefs from other tribes should become: First Vice-President, Second Vice-President, Third Vice-President, etc., etc."

Mr. GROSS: Mr. President.

The PRESIDENT: Yes, Mr. Gross.

Mr. GROSS: I beg the Court's indulgence but I have tried to follow the letter on page 39 of the Counter-Memorial and regret to say I do not find the language just quoted. Did I misunderstand the page number?

The PRESIDENT: I expect the explanation is that the extract on page 39 is not the full letter but what is the position, Mr. Muller?

Mr. MULLER: That is correct, Mr. President.

The PRESIDENT: Of course, it does connect up with certain parts of it, Mr. Gross.

Mr. GROSS: Yes Sir, it does. I just did not know . . .

Mr. MULLER: The witness is quoting from the letter itself.

Mr. GROSS: And that is in evidence is it, Mr. President?

Mr. MULLER: The whole letter has been handed in and the whole letter has been admitted.

Mr. GROSS: Thank you, Sir.

Mr. MULLER: Would you proceed please, Mr. Dahlmann.

Mr. DAHLMANN:

"If we must have our freedom we must be strong and be well-organized, the Whites in South West Africa are in constant fear because of what is happening in other parts of Africa. They know that South West Africa is next . . . Look at the Mau Mau today, they are represented in the Government and soon they will govern their own country." (IV, p. 39.)

Mr. MULLER: Have you any other letters in which the suggestion you mentioned earlier, the question of changing the names of parties, is mentioned?

Mr. DAHLMANN: In regard to the Ovamboland People's Organization, Kerina writes to Nujoma, President of the said Organization, on 16 September 1959.

Mr. MULLER: May I mention the same volume of the Counter-Memorial, page 42.

Mr. DAHLMANN:

"After careful and thoughtful consideration of our situation I think it is advisable for you Mr. Nuyoma and your friends to think about the possibility of turning your organization into a full fledged national organization representing every body in the whole territory. I further suggest that it would be to our advantage if you can change the name of the Ovamboland People's Organisation to THE SOUTH WEST AFRICAN NATIONAL CONGRESS. *This can mean that we who are representing you at the United Nations now have power behind us.* It was very good to start with a regional organization but now your tactics should be geared to the achievement of something greater for South West Africans. *Other African states would support us strongly if we can have such a national organization.* Please do inform the United Nations if you change the name of the present organization to that of South West African National Congress, this is very important for our position here. *I am sending you under separate cover a copy of a constitution for the Congress that I have proposed and a manifesto to be distributed widely if you approve of the idea.*"

And then Kerina writes to Toivo on 17 November 1959.

Mr. MULLER: At page 43, Mr. President.

Mr. DAHLMANN:

"Toivo, listen. I have been urging Mr. Nujoma to change the name of the Ovamboland People's Organization into the *South West African National Congress*. This will give the organization a national character which can be of great use to our position here. *I have also drawn up a draft constitution for him for this purpose.* He informed me recently that this Congress will be formed next year. Would you please get in touch with him and tell him that he should try to see that you Toivo or Him be the president. Or one of you the President and a Herero a Vice-President etc. You see what I want to say is that *do not allow the OPO when it is changed into South West African National Congress to be dominated by other groups.* Be very careful about this very much. But please even if other groups do not want to co-operate with the OPO to form the Congress just go ahead and change the OPO to the new Congress. *Please write or talk to Mr. Nujoma about this and keep it very secret do not tell any one of this idea it should just between you two.*" (IV, p. 43.)

Mr. MULLER: Now after these suggestions were made was the name of the OPO changed?

Mr. DAHLMANN: Yes, Mr. President, that is correct. The name was changed in June 1960.

Mr. MULLER: What is the new name of that organization?

Mr. DAHLMANN: The new name is—South West Africa People's Organization.

Mr. MULLER: Is it very often referred to in an abbreviated form?

Mr. DAHLMANN: SWAPO.

Mr. MULLER: Now, did any other non-White organizations come into existence after these two that you have just referred to, or the one which had its name changed?

Mr. DAHLMANN: Yes, Mr. President. A large number of other organizations were formed. SWAPO could not hope to attract wide support from other population groups, it was an Ovambo organization. Group identification was and is strong in South West Africa and as was clear from the last letters quoted, it was also the intention to keep the South West Africa People's Organization under Ovambo control. Other parties were therefore formed on a tribal basis to seek the support of the respective non-White population groups. Later attempts to achieve unity led to the creation of a number of further organizations.

Mr. MULLER: Will you, Mr. Dahlmann, mention the different political organizations and tell the Court, when you mention the name, what the abbreviation is of the party to which you refer? Just name them first of all.

Mr. DAHLMANN: The following are the political organizations which came into being, directly associated with or opposed to the campaign against the Government: (1) Ovamboland People's Organization, OPO (already mentioned); (2) South West Africa Peoples Organization, SWAPO (already mentioned); (3) The South West Africa National Union, SWANU; (4) the so-called Chiefs Council—the Chiefs Council I must say had existed before as the Council of Hosea Kutako but I think one must mention this Council in this connection because it is a driving force on the political field in South West Africa; (5) The South West Africa United National Independence Organization, SWAUNIO; (6) The South West Africa Democratic Union, SWADU; (7) The Caprivi African National Union, CANU; (8) The Damara Tribal Executive Committee,

no abbreviation; (9) The South West African Coloured Organization, SWACO; (10) Die Volksorganisasie van Suid-West Afrika; (11) The Burghers' Association—this organization is a semi-political organization, it existed also before 1959.

Mr. MULLER: I am sorry, are you going to explain further?

Mr. DAHLMANN: Yes. This organization, Mr. President, is limited to the Rehoboth Gebiet.

The PRESIDENT: This is the Burghers' Organization?

Mr. DAHLMANN: The Burghers' Association. (12) The South West Africa National Liberation Front, SWANLF; (13) The National Convention Independence Party, NALIP; (14) The United Namib Independence People's Party, UNIPP; (15) The National Unity Democratic Organization, NUDO.

Mr. MULLER: Now except for the Chiefs Council, referred to amongst the Hereros and the Burghers' Association, were all of the others formed after 1959?

Mr. DAHLMANN: All the other ones were formed after 1959.

Mr. MULLER: Now, I want you to deal very briefly with each one of these parties to indicate whom they represent, whether they are still in existence and what their aims are.

Mr. DAHLMANN: Mr. President, I have already mentioned SWAPO and the purposes for which it was created. In spite of the change of name, it remains an Ovambo organization. 1961-1962, it gained a foothold in Ovamboland. At that time, the whole territory experienced a long period of drought and in 1962 SWAPO was at its strongest in Ovamboland. However, the vast majority of the Ovambos followed the traditional chiefs and headmen who never supported SWAPO. Since 1962, the membership of SWAPO is decreasing, I think one of the main reasons is the economic well-being in Ovamboland and general progress in the whole territory.

The chiefs and headmen in Ovamboland support, more or less, the Government. The chiefs and headmen even asked for the implementation of the political part of the Odendaal Plan. A number of chiefs and headmen toured the Republic and the Transkei at the beginning of this year and they came back very enthusiastic about what they had seen. The result of this trip to the Republic was that, only a few weeks ago, 145 teachers, ministers and nurses of the Kuanyama tribe wrote to the Prime Minister of South West Africa and indicated that they were highly interested in a similar tour to the Republic of South Africa. I might mention here that the Kuanyama tribe is the biggest tribe in Ovamboland.

Under these circumstances the support for the South West Africa People's Organization has weakened and the support for the chiefs is widespread.

Mr. MULLER: Mr. Dahlmann, would you deal next with the Chiefs Council of the Herero, that was the fourth on your list?

Mr. DAHLMANN: Mr. President, the Chiefs Council is an undoubtedly very important political organization within South West Africa. Generally speaking, the Herero, constituting 8 per cent. of the total population of South West Africa, can be regarded as a separate nation. They call themselves also the Herero nation. Their traditional political system centres around their headmen. Their tribal tradition and the discipline are very strong. The majority of headmen follow Hosea Kutako, who

can be regarded, as I have said already, as a leader of the Herero nation, although there are some headmen who are in opposition to Hosea Kutako and who have their own supporters.

The so-called Chiefs Council of Hosea Kutako is the strongest non-White anti-government group in South West Africa. The most outstanding personalities in this Council, as I mentioned already, are Mr. Kapuuo, the right hand of Hosea Kutako, and the Reverend Kanaera, whom I regard as the chief ideologist of the Chiefs Council.

The Chiefs Council is striving primarily for a greater role for the Herero nation. The fact of group nationalism among the Hereros is paramount. They claim the central part of South West Africa for themselves and they are trying to undermine the Government whenever and wherever it is possible. They are mainly responsible for the internal campaign against the Government. They have transmitted a large number of petitions to the United Nations and Michael Scott, Mburumba Kerina and Kozonguizi appeared before the United Nations as petitioners for the Chiefs Council of Hosea Kutako.

Mr. MULLER: Next, will you please deal briefly with the South West Africa National Union, the abbreviation being SWANU?

Mr. DAHLMANN: The South West Africa National Union was supposed to serve the same purpose as the Ovamboland People's Organization or SWAPO. It was supposed to be the political party of the Hereros. It was formed in September 1959. Clemens Kapuuo presided at the inaugural meeting, which took place in September 1959 at the location in Windhoek and Kozonguizi was elected President. He was a petitioner together with Kerina at the United Nations. The President of the Ovamboland People's Organization became a committee member of the South West Africa National Union at this inaugural meeting. SWANU could possibly have gained substantial support amongst the Herero if it had retained the backing of Hosea Kutako and the Chiefs Council, but Kozonguizi's ideas did not coincide with the views of the Chiefs Council. Kozonguizi was dedicated to a militant African socialism, he was opposed to the traditional tribal system and group loyalties. Within a few months' time after the creation of SWANU, a total split occurred between the SWANU leadership and the Chiefs Council.

The tribal discipline amongst the Hereros is very strong. The Chiefs Council retained the support of the majority of headmen and, due to this tribal discipline, the support of the majority of the Herero nation. SWANU carried on as a small group with strong and vociferous leadership overseas but very little popular support. It is the only non-White political party in South West Africa which, in truth, is opposed to tribal loyalties and SWANU propagates militant revolution and pan-African ideas. Its support in South West Africa is numerically negligible.

Mr. MULLER: The next party mentioned by you was the South West Africa United National Independence Organization—SWAUNIO, as you referred to it in abbreviation. Would you kindly deal with that very shortly?

Mr. DAHLMANN: SWAUNIO, the South West Africa United National Independence Organization, was created to advance the campaign during the years 1960 and 1961 against the Government and it was intended to get the support of the Nama. It has not succeeded in gaining any real support and it is at present inactive. One can say that the influence of SWAUNIO on the political field of South West Africa is negligible. The

Reverend Markus Kooper appeared before the United Nations as the petitioner of SWAUNIO.

Mr. MULLER: Would you kindly next deal with the South West Africa Democratic Union—SWADU?

Mr. DAHLMANN: The South West Africa Democratic Union was also created to advance the anti-Government campaign, but this was an organization among the Damara people in the north of the Territory. It had, and still has insignificant support and membership. This organization is politically completely inactive.

Mr. MULLER: I did not quite understand. You say that this organization was intended for the Dama population?

Mr. DAHLMANN: That is correct. For the Damara people.

Mr. MULLER: You also mention the Caprivi African National Union—CANU. Would you kindly indicate what association that is?

Mr. DAHLMANN: The Caprivi African National Union was formed in 1963 in the Eastern Caprivi. It was, as prominent members confirm, influenced from across the border by Zambia. A strong attempt was made from the other side of the border to support the Caprivi African National Union by means of intimidation and boycotts. At present, the Caprivi African National Union enjoys very little support. The people in Eastern Caprivi, belonging to two different tribes, more or less follow the traditional chiefs so the party is completely inactive.

The PRESIDENT: Mr. Muller, boycotts against whom?

Mr. MULLER: Yes. Will you kindly explain? You referred to "boycotts". Would you kindly indicate to the Court against whom those boycotts were?

Mr. DAHLMANN: There is only the Zambesi between Zambia and the Eastern Caprivi. The people cross the Zambesi and the people from South West Africa, from the Caprivi strip, sell cattle and other goods in Zambia. The people in Zambia indicated that they were only prepared to accept these goods from South West Africa if the people from the Eastern Caprivi strip could produce their CANU membership cards.

Mr. MULLER: You also mentioned the Damara Tribal Executive Committee. Would you kindly deal with that?

Mr. DAHLMANN: The Damara Tribal Executive Committee is, as the name indicates, a tribal organization. It is primarily concerned with the attempt to consolidate the Damara people. Due to historic reasons, the tribal discipline amongst the Damaras is very weak. The vast majority of the Damaras show very little interest in political matters. There is not much co-ordination between the different groups. There are a number of headmen and one chief. The Damara Tribal Executive Committee is in opposition to the Damara Chief, to the Government and most outspoken in opposition to the Hereros and the Chief's Council.

It is very difficult to assess at the moment what the influence of the Executive Committee is at present. The Damara population is divided into different groups and only the future can establish whether the Committee will succeed in what it wants.

Mr. MULLER: Mr. Dahlmann, you mentioned two parties, or organizations, representative of the Coloured people in South West Africa, namely the Suid-West Afrikaanse Kleurlings Organisasie (SWAKO) and the Volksorganisasie van Suid-West Afrika (VOSWA). Will you deal with those two?

Mr. DAHLMANN: Yes, Mr. President. There are two organizations, the



South West Africa Coloured Organization is semi-political with Coloured membership. Its main purpose is to advance the well-being of the Coloured people. In the main it supports the Government and one can say it is the strongest organization amongst the Coloured people.

There is another organization—VOSWA—Volksorganisasie van Suid-West Afrika, created to seek support among the Coloured and Baster population.

The Volksorganisasie van Suid-West Afrika is in opposition to the Government. It has not succeeded in gaining any real support and it is at present completely inactive.

Mr. MULLER: And then there is the Burghers' Association of the Rehoboth. Kindly just tell the Court very briefly what that organization is and how it operates.

Mr. DAHLMANN: The Burghers' Association is also a semi-political association because each Baster burgher of the Rehoboth Gebiet with Burgher citizenship is *per se* a member of this organization. The Burghers' Association is an organization for the discussion of local affairs of the Rehoboth Gebiet. As I have mentioned, the Rehoboth Burghers' Association is only for the Rehoboth Gebiet and it advises the Advisory Council, the Basterraad, of the Rehoboth Gebiet.

Mr. MULLER: Thank you, Sir.

Mr. Dahlmann, you have indicated to the Court that certain political parties were formed amongst some of the population groups. Were there attempts also to form political parties representative of the Territory as a whole, or of more than one of the population groups?

Mr. DAHLMANN: Yes, Mr. President, I mentioned a number of organizations which came into existence on tribal lines. At a later stage, one can say since 1963, vigorous attempts have been made to create unity between the different anti-government organizations. I will now proceed with the discussion of the united front and parties which were intended to bring all the anti-government organizations together. This movement was necessary because the liberation committee of the Organization of African Unity had indicated that no financial aid should be given to splinter groups or tribal organizations but only to a united front.

Under these circumstances, SWANU (the South West Africa National Union) approached SWAPO (the South West Africa Peoples Organization), the Chiefs Council, the South West Africa United National Independence Organization, and VOSWA to be members of one united front. The name of this front was supposed to be the South West Africa National Liberation Front. This front came into existence in October 1963, but only SWANU and SWAPO members served on the committee. Within a few weeks' time it became clear that the Chiefs Council rejected this front completely and in April 1964 the SWAPO President, living abroad, and other SWAPO leaders abroad disassociated themselves from this front. A rather confused situation arose. The SWAPO and SWANU committee members of SWANLF stated that they were prepared to continue to co-operate.

Since the middle of 1964 nothing has been heard from this front. As mentioned before, the Chiefs Council was not prepared to co-operate within the South West African National Liberation Front. Therefore it is quite understandable that the Chiefs Council tried to create a unity party under Herero control or Herero leadership in order to get outside support.

I must mention that Kerina who was at that time in Bechuanaland had broken with SWAPO in 1962. He issued a press statement that he resigned as Chairman and he left the party.

A new attempt to come to a co-operation with SWAPO failed. Within South West Africa, Kapuuo, the Chief designate of the Hereros, tried to organize a national convention. As many non-White personalities as possible should participate. The national convention was supposed to take place in May 1964. The convention had to be postponed. Nevertheless, Kerina issued a press statement in June 1964 that a united front of all population groups had been formed and the name of this united party was NACIP—National Convention Independence Party. In fact this party had never been formed and, consequently, never existed except on paper and one did not hear any more about this party.

The PRESIDENT: Where was the press statement issued, Mr. Muller?

Mr. MULLER: Will you tell the Court, Mr. Dahlmann, where the press statement was issued?

Mr. DAHLMANN: The press statement was issued in Bechuanaland and sent to papers in the Republic, that I know. I do not know whether it was sent to papers in London; I was told so, but that I cannot prove.

In August 1964 two letters written by Kerina to the United Nations and by Kapuuo to the Liberation Committee of the Organization for African Unity announced the creation of United Namib Independence Peoples Party. In South West Africa this organization was completely unknown. In his letter Kapuuo strongly attacked the South West Africa National Liberation Front, SWAPO and SWANU. May I quote from this letter . . .

Mr. MULLER: Before you quote from the letter, Mr. Dahlmann, will you tell the Court how you came into possession of the letter, or a copy of the letter?

Mr. DAHLMANN: Moses Katjihuangua, the Director of SWANU Foreign Mission in Dar-es-Salaam, wrote to me, a press statement, which should appear in the *Allgemeine Zeitung* as soon as possible. In this letter Katjihuangua refers to the letter written by Kapuuo to the Assistant Secretary of the African Liberation Committee in Dar-es-Salaam.

According to Katjihuangua the letter was dated 14 August 1964, and it was (the whole letter) written by Kapuuo to the Assistant Secretary of the African Liberation Committee, and there Kapuuo said:

“Our Party, the United Namib Independence Peoples Party, is composed of progressive elements drawn from all previously existing political groups dedicated to the non-tribal unification of our people and it is the only organization which has already achieved a degree of popular support from all sections of the African population. It is now our urgent responsibility to organize and mobilize our people for a discipline and militant struggle.”

Mr. MULLER: Was the letter published as requested?

Mr. DAHLMANN: The letter and the comment were published as requested.

Mr. MULLER: Did that draw any reaction?

Mr. DAHLMANN: Yes, Mr. President, the letter drew most violent reaction especially from SWANU and the Damara Tribal Executive Committee; and from United Nations documents I learn that another letter has been written to the United Nations in the name of this party,

the United Namib Independence Peoples Party. This party has disappeared completely.

Mr. MULLER: You also mentioned a party by the name of NUDO—National Unity Democratic Organization. Can you tell the Court briefly something about this party?

Mr. DAHLMANN: Yes, Mr. President, this party, the National Unity Democratic Organization, still exists. In September 1964, Kapuuo issued a press statement announcing the formation of the National Unity Democratic Organization. He gave us a list of the Committee members and there appear a number of leaders of tribal as well as political organizations in South West Africa. But all prominent non-Hereros mentioned as Committee members of the National Unity Democratic Organization subsequently denied membership not only of the Committee but also membership of the party. The Nama Chief, Hendrik Samuel Witbooi, quoted as assistant party leader, denied that he had been informed about the formation of the party and asked that his name be removed.

May I explain, Mr. President, that Hendrik Samuel Witbooi is not the Nama Chief in South West Africa. He is the Chief of the Krantzplatz Namias; Krantzplatz is a small spot a few miles away from Gibeon. Chief Samuel Witbooi, whom I know personally, said himself that his tribe consists of 500 people altogether. Though Witbooi denied that he was a Committee member, the same applied to Allan Louw—Allan Louw is the Chairman of the Rehoboth Burgher Association. The same applies to David Gertze; Gertze is a Nama and he is the President of the South West Africa United National Independence Organization, SWAUNIO. And the same applies to Chief Frederick Izaak; Chief Izaak is also a Nama Chief, living at Berseba—I also know him, and I know Allan Louw and Gertze.

Mr. MULLER: Did any of these people to whom you have now referred indicate that they were not members or office bearers of this party, NUDO?

Mr. DAHLMANN: Yes, Mr. President, they did so by means of press statements and Chief Witbooi and David Gertze wrote a letter to the United Nations on 10 October 1964, that is United Nations document A/AC.109/Pet. 368 of 13 April 1965. In a letter to the Secretary-General, Witbooi and Gertze state:

*“Re: The National United Democratic Organization,  
S.W.A.*

Information is hereby given that we do not know anything about the above-named Organization. Viz. “NUDO” witch came into existence recently.

Someone may send you reports of how it came to establish such an organization. But without consulting the Nama people. Even the names of the people were used and undersigned who were not present at the meeting and when the constitution were composed.

We thus beg to state that the establishment of this ‘NUDO’ is not approved by us.

Such method is for our Nama people catastrophic.

Bear this in mind that we cannot be used as tools.

We shall not tolerate this treatment any longer.

And we cannot be regarded as members of the said ‘NUDO’.

In the hope that this will find your favourable consideration.

Sincerely yours,

(Signed) H. S. Witbooi

(Signed) J. D. Gertze

President South West Africa National Independence Organisation."

Mr. MULLER: Now, what has happened to NUDO: does it still exist? And what support has it?

Mr. DAHLMANN: NUDO does still exist. The Damaras are strongly opposed to NUDO. No prominent Damara is serving on the NUDO Committee. SWAPO, SWANU and SWANLF are also strongly opposed to NUDO. Actually, NUDO is nothing else but the Chiefs Council under a different name. NUDO is working in collaboration with Kerina, who is Chairman of NUDO and who has, as I mentioned, with the exception of small periods, acted as petitioner on behalf of the Herero at the United Nations.

The result is that NUDO is a pure Herero party. The reason might be that the tribal and party leadership is identical—the tribal leadership of the Herero and the party leadership of NUDO. Hosea Kutako is the party leader and Klemens Kapuuo is the party president.

Nevertheless, this tribal discipline within the Herero nation and the combined tribal and party leadership make NUDO the strongest non-White political party within the Territory.

Mr. MULLER: Just to sum up, Mr. Dahlmann, you have dealt with various political parties. Can you tell the Court whether these parties or organizations enjoy the support of more than one of the different population groups or are they representative respectively only of one population group?

Mr. DAHLMANN: They represent mainly one population group with the exception of SWANU and, to a certain extent, SWANLF.

But, Mr. President, I wonder whether it is advisable to stress the NUDO programme a little bit further, because it is the most important organization in South West Africa?

Mr. MULLER: Yes, please do, if you think it is important, but very briefly, please.

Mr. DAHLMANN: The Hereros are faced with the difficulty that they are a small minority group and it is quite understandable that they fear the overwhelming numerical strength of the Ovambos. Kapuuo has therefore, in his interviews, explained that tribalism in South West Africa has got to be accepted as a reality for a long time to come. The Chief's Council, NUDO, thus wishes to divide South West Africa into a number of regions with regional parliaments and a federal government. The number of regions is not quite certain. At the time of the Carpio visit in 1962 the Hereros suggested three regions, today they (NUDO) suggest four to five regions. These will be Ovamboland, in the north, Damaraland for the Damaras, Hereroland, which means the whole central part of South West Africa for the Hereros, Basterland as it is, for the Rehoboth Basters and Namaland in the South. NUDO does not envisage any region for the Whites.

They are in favour of a federal government in which each region shall have equal representation irrespective of their numerical strength. This would, of course, neutralize the threat of Ovambo domination.

A new rift within NUDO seems imminent. Kerina personally is strongly opposed to tribalism and group loyalty. As Chairman of NUDO, he indicated in his latest petition to the United Nations that he is in favour of a scheme which is totally different from the NUDO policy at home. He wants to create one single political union on the basis one man one vote, with 80 constituencies in South West Africa. This could have the result that the Hereros would be swamped by the Ovambo numerical strength.

When I asked Kapuuo to comment on this petition to the United Nations he stated that he had no knowledge of it. He had not received a copy.

Mr. MULLER: Now, if we can get back to the question which I asked—I interrupted you then—as to whether, in summing up, any of these political parties are representative of more than one of these population groups in South West Africa?

Mr. DAHLMANN: Most of the parties are formed on a tribal basis. All attempts to achieve unity proved a failure. There is one exception—that is the South West Africa National Union—which has only a small following. Neither the leaders nor the followers are able to rise beyond the borders of group nationalism and therefore SWANU consists only of a small number of intellectuals, but from various population groups. You find there Ovambos, Hereros (especially Hereros) and a few Damaras.

Mr. MULLER: What are the relations between the various parties?

Mr. DAHLMANN: Most are extremely antagonistic towards each other. The leaders accuse each other of being traitors. The Chiefs Council and NUDO especially are violently accused of attempting to achieve Herero domination over other population groups.

Mr. MULLER: How representative are the different parties of the groups amongst which they do seek support?

Mr. DAHLMANN: Most of the political parties and organizations command very little support within their own population groups. The only exception is NUDO, the Herero organization. I mentioned this before, because of the tribal and party leadership being identical and, due to the tribal discipline, they enjoy quite a lot of support within the Herero nation.

SWACO—the South West Africa Coloured Organization—enjoys quite remarkable support within the Coloured community of South West Africa. The Burghers' Association in Rehoboth is, of course, not a real political organization. Each and every burgher is *per se* a member of this organization. It reflects various trends in the Rehoboth community. The Damara Tribal Executive Committee does not reflect the situation within the Damara tribe at present. SWAPO—the South West Africa People's Organization—enjoys at present only small support from the Ovambos. SWAUNIO—the Nama organization—has no significant support and is more or less inactive. CANU, the Caprivi African National Union, enjoys only negligible support. SWADU, the South West Africa Democratic Union, is, I think one can say, not existent any more. VOSWA, the Volksorganisasie van Suid West-Afrika, enjoys also very little support and is inactive. SWANU, the South West African National Union, does not seek support on the group basis.

I may add that in the Okavango there is no political party. The population follow the traditional chiefs and headmen and there is also no political organization whatsoever amongst the Bushmen.

Mr. MULLER: Mr. Dahlmann, I want you to divert now to the

petitioners at the United Nations. Do they still play a leading role in the various parties in South West Africa?

Mr. DAHLMANN: Yes, Mr. President, I think one can say yes. Although Kerina broke with SWAPO, or SWAPO with him, in 1962, he was still the co-founder of NACIP, UNIPP and NUDO. He is the present NUDO Chairman.

Kozonguizi is the SWANU President. Sam Nujoma is still the SWAPO President. Kuhaungua is still a leading personality within SWAPO. Although he is abroad he is the Secretary-General. Markus Kooper appears for SWAUNIO, the inactive Nama organization, and Chief Witbooi; Michael Scott, who has not been in the Territory since the late forties, appeared in the past for the Herero Chiefs Council. There are a number of other petitioners overseas who are also connected with the organizations within South West Africa.

The petitioners overseas are actually continuing with their campaign without much reference to their associates in South West Africa, and the majority of cases these party leaders have brought are apparently independent from their respective parties in South West Africa. They are issuing often policy statements which are unknown in South West Africa. One example, as I have already mentioned, is the Kerina petition to the United Nations about the political programme of NUDO. Kerina is in favour of one unit and Kapuuo, the party President in South West Africa, stated that he is in favour of a federation, in favour of regionalism, and he said that his party knew nothing about this petition and had not received a copy.

Mr. MULLER: May I just ask you there—you have referred to this petition—have you a copy of the petition there?

Mr. DAHLMANN: Yes, I have got a . . .

Mr. MULLER: Would you give the Court the number of that particular petition and the date?

Mr. DAHLMANN: The number: A/AC.109/DEB.371, Add./4, 14 September 1965.

Mr. MULLER: Was that petition circulated as a United Nations document?

Mr. DAHLMANN: Yes, Mr. President, that is correct. A special committee on the situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples.

Mr. MULLER: Now, in that petition, is there any reference to this particular Court action?

Mr. DAHLMANN: Yes, Mr. President.

Mr. MULLER: On what page?

Mr. DAHLMANN: Page number 5.

Mr. MULLER: Will you read what is stated there?

Mr. DAHLMANN: May I mention that Kerina asks in this petition for a Security Council meeting in order to discuss the situation in South West Africa? I quote from the document:

"It will similarly have a great psychological effect on the International Court of Justice and to hasten the proceedings in regard to the rendering of the judgment. Meanwhile, we in South West Africa are embarking on a nationwide positive-action campaign in defiance of the South African Government."

Mr. MULLER: Now the "it" referred to in that passage . . . Does that refer to the suggested resolution of the Security Council?

Mr. DAHLMANN: Excuse me, I did not understand the question.

Mr. MULLER: You read a paragraph which starts with the word "it". Now, it is not clear what the "it" means. Would you not rather read the whole of it, starting off with the paragraph which precedes it and makes it clear?

Mr. DAHLMANN:

"... convening of the United Nations Security Council on the question of South West Africa at this moment before the General Assembly will help to highlight the situation in South West Africa and to mobilize the international public opinion."

Mr. MULLER: Read on.

Mr. DAHLMANN:

"It will similarly have a great psychological effect on the International Court of Justice and to hasten the proceedings in regard to the rendering of the judgment. Meanwhile, we, in South West Africa are embarking on a nationwide positive-action campaign in defiance of the South African Government."

Mr. MULLER: Now, will you just look at the front page of the petition and tell the Court on whose behalf the petition was supposed to have been?

Mr. DAHLMANN: This petition . . . The United Nations document says: "Two petitions from Mr. Mburumba Kerina, Party Chairman and Chief Hosea Kutako, leader, National Unity Democratic Organization, Nudo, concerning South West Africa."

Mr. MULLER: I think you have indicated to the Court that when this petition came to be known to you, you contacted Kapuuo. Is that correct?

Mr. DAHLMANN: That is correct, Mr. President.

The PRESIDENT: Yes, Mr. Gross?

Mr. GROSS: I regret the interruption, but for the sake of accuracy at this point, Sir, the document to which the witness is referring is entitled "Two petitions from Mr. Kerina and Chief Kutako." The first petition is signed by Mr. Kerina and that is the one to which reference is made in the second petition, which is attached to the document, is signed by Chief Kutako and is unrelated to the first petition, Sir.

Mr. MULLER: Mr. Dahlmann, you have already indicated what the heading of this petition is. It reads as follows: "Two petitions from Mr. Mburumba Kerina, Party Chairman, and Chief Hosea Kutako, leader, National Unity Democratic Organization. Now, . . ."

The PRESIDENT: Does that description coincide with the official copy, Mr. Muller?

Mr. MULLER: Mr. President, I have the official copy circulated in the United Nations and I am reading from that. Concerning South West Africa, now, just to get this clear, who is the Party Chairman of NUDO?

Mr. DAHLMANN: The Party Chairman, Mr. President, is Mburumba Kerina and the party leader is Hosea Kutako, but there are two petitions in this document. The first comes from Kerina, from the Party Chairman and another, different one comes from Hosea Kutako, in his capacity as party leader.

Mr. MULLER: Now, I am going to make the position clear. Will you turn to page 10 of the document and see on whose behalf Mr. Kerina signs this document?

Mr. DAHLMANN: Mr. Kerina signs this document in his capacity of Party Chairman of NUDO.

Mr. MULLER: Now you say you contacted somebody in the NUDO organization at Windhoek?

Mr. DAHLMANN: Mr. President, yes, when I learned about this petition by means of a press agency report, I 'phoned immediately Mr. Kapuuo and . . .

Mr. MULLER: Who is Mr. Kapuuo?

Mr. DAHLMANN: Mr. Kapuuo is the Party President of NUDO. I asked him whether he would like to comment on this statement made by the Party Chairman, Kerina, and he stated he had no knowledge of this petition. He had not received a copy.

Mr. MULLER: Mr. Dahlmann, generally speaking, are you aware of the contents of petitions that are submitted to the United Nations by petitioners? Do you generally come to hear of them or read them?

Mr. DAHLMANN: Yes, I am aware of the contents of many petitions. I receive copies of many of them from the senders, also from the United Nations and of course, also, from press agency reports. We regularly report the contents of these petitions in our newspaper.

Mr. MULLER: Do the allegations in these petitions always reflect the truth of situations in South West Africa, as you know them?

Mr. DAHLMANN: To us in South West Africa, it is sometimes very hard to understand these petitions. Many of them, whether they come from within South West Africa or from abroad, contain false statements and serious distortions and exaggerations of the real situation. Only to name a few which are made very often, for example, that there is a large scale of militarization in South West Africa, there is a missile tracking station, that the non-Whites within the Territory live in conditions of slavery, that genocide is committed against the non-Whites, that they are being exterminated or murdered, that they have no schools, no hospitals. On one occasion, one petitioner was Mrs. Appolus, who gave evidence to the effect that the infant mortality rate amongst the non-Whites exceeded 99 per cent. and I think these allegations mentioned are unfounded.

Mr. MULLER: One final question, Mr. Dahlmann. From your experience, can you state as your opinion whether the different non-White political parties will be able to co-operate and form, or work in, a single political party unit?

Mr. DAHLMANN: I would like to associate myself with Mr. Kapuuo, who said, in an interview with Mr. Christian Herter, Jnr., in Windhoek, that tribalism and group loyalties are things which you have to take into account in South West Africa for many years to come. So I cannot see any possibility for a unification within the foreseeable future.

Mr. MULLER: Thank you. Mr. President, I have no further questions to put to Mr. Dahlmann.

The PRESIDENT: Thank you, Mr. Muller. Mr. Gross?

Mr. GROSS: Mr. President, I have rather full notes, here, Sir, with many names, some of which I got and some of which I did not get. I could, if the Court pleases, begin without being able to organize my notes on certain qualifying questions, but in justice to the Applicants' case, I hesitate to get into cross-examination at this moment respecting the many aspects of the political organizations which have been named, described, and from which inferences have been drawn. With exception to that, Sir, if it pleases the Court, I should like to begin by asking what



might be described as questions regarding the witness' qualifications, Sir.

The PRESIDENT: Mr. Gross; you may proceed to do so. It is now half past twelve, if you reach the stage when you would prefer to have an adjournment until Monday, the Court will accede to that, since you state that you wish to organize your cross-examination on what is a detailed presentation of the political situation in South West Africa.

Mr. GROSS: Thank you, Mr. President.

The PRESIDENT: Very well, proceed.

Mr. GROSS: Mr. Dahlmann, would you please state when you were born, Sir?

Mr. DAHLMANN: 4 March 1918.

Mr. GROSS: You have testified, Sir, that you were born in Germany and you left for South West Africa in 1958?

Mr. DAHLMANN: In 1958.

Mr. GROSS: At the age, then, of 40, I take it, Sir?

Mr. DAHLMANN: Yes.

Mr. GROSS: Did you attend schools in Germany throughout your educational career?

Mr. DAHLMANN: In the free city of Danzig.

Mr. GROSS: In Danzig. I think you said you qualified for a lawyer's degree at the University of Kiel, is that correct?

Mr. DAHLMANN: No, that is not correct, Mr. President, I got a law degree at the Kiel University, that means that I completed my studies and passed the final examination.

The PRESIDENT: Having done the preparatory work elsewhere? Is that correct? Did you do all your course in law at Kiel?

Mr. DAHLMANN: All my courses in Kiel, yes.

Mr. GROSS: Mr. Dahlmann, then was it after graduation from the University of Kiel that you entered the profession of journalism?

Mr. DAHLMANN: Yes, Mr. President, that is correct.

Mr. GROSS: Had you engaged in any other occupations or professions other than journalism in Germany?

Mr. DAHLMANN: I was the editor for politics at the *Kieler Nachrichten* in Kiel.

Mr. GROSS: Were you in any respect active in political affairs in Germany?

Mr. DAHLMANN: I was not a member of any party, Mr. President.

Mr. GROSS: Were you affiliated with any organization of a public nature?

Mr. DAHLMANN: No, Mr. President.

Mr. GROSS: Were you a member of the Hitler Youth for example, Sir?

The PRESIDENT: What has that to do with the case, Mr. Gross?

Mr. GROSS: I would stress the relevance of questions which might fairly be related to bias, as an expert, Sir.

The PRESIDENT: Bias?

Mr. GROSS: Bias, Sir, yes.

The PRESIDENT: In what way would it establish bias if he were a member of the Hitler Youth?

Mr. GROSS: I think, Sir, for the information of the Court, I should like . . .

The PRESIDENT: Psychological bias?

Mr. GROSS: Psychological bias, since the heavy race aspects of this case . . .

The PRESIDENT: Well, this Court is removed from psychological bias, Mr. Gross.

Mr. GROSS: Sir, may I pursue the line of enquiry with respect to other than possible Nazi party affiliation?

The PRESIDENT: Please do so. You may ask him, if you wish to, having said that, if he is a member of the Nazi party or if he is a member of the Hitler Youth, if you think it is going to help the Court.

Mr. GROSS: Well Sir, naturally if the witness does not wish to answer . . .

The PRESIDENT: No, he has not said that at all.

Mr. GROSS: I mean I do not wish to press it if he does not . . .

The PRESIDENT: You may press your question.

Mr. GROSS: Would you answer the question, Sir?

Mr. DAHLMANN: Yes, Mr. President, I was a member of the Hitler Youth between 1934 and 1936.

Mr. GROSS: Did you ever make any public statements on racial questions?

Mr. DAHLMANN: I did not make any statements but I wrote many articles in which I condemned most violently racialism in Germany, if you refer to that time, and I have not changed my mind.

Mr. GROSS: Were these articles written, Sir, during the period when you were a member of the Hitler Youth?

Mr. DAHLMANN: No, Mr. President, of course not, because at the age of 15 or 16 years, I did not write any articles.

Mr. GROSS: The articles to which you refer in which you expressed your convictions and sentiments on racial questions, were written when, Sir, for the first time?

Mr. DAHLMANN: Mr. President, that was only after I joined a newspaper.

Mr. GROSS: And that was after . . . excuse me, Sir, please continue.

Mr. DAHLMANN: And that was then 1948.

Mr. GROSS: And that was after the war, Sir?

Mr. DAHLMANN: It was after the war.

Mr. GROSS: Incidentally, would you have any objection to stating whether you served in the German Armed Forces during the war?

The PRESIDENT: Would that also be relevant to his testimony, do you think, Mr. Gross?

Mr. GROSS: Sir, if it were in a political capacity, I thought . . .

The PRESIDENT: Well, why don't you ask him in a political capacity?

Mr. GROSS: I did not want to assume that he had so served, Sir.

The PRESIDENT: I see. Well, witness answer—did you serve in the German Army during the war?

Mr. DAHLMANN: Yes, Mr. President, I did.

Mr. GROSS: In what branch, Sir?

Mr. DAHLMANN: In the Air Force.

Mr. GROSS: With what rank, Sir?

Mr. DAHLMANN: At last as a major.

Mr. GROSS: That was in the Luftwaffe, Sir?

Mr. DAHLMANN: Yes, Mr. President, that is correct.

Mr. GROSS: And as a major in the Luftwaffe, Sir, did you have occasion to participate in political discussions or organizations?

Mr. DAHLMANN: None whatsoever.

Mr. GROSS: You left Germany in 1958 to reside permanently in South West Africa, Sir?

Mr. DAHLMANN: No, Mr. President, actually not. It was not my intention at the beginning to reside there permanently, it was more or less to gain more knowledge in African affairs and to gain more knowledge of world affairs.

The PRESIDENT: Mr. Gross, have you finished your questions in relation to his association with the German Army, etc.?

Mr. GROSS: Yes, Mr. President.

The PRESIDENT: Will you be suggesting to the Court in any way that that bears upon the reliability of the witness's testimony or his expertise?

Mr. GROSS: I would suggest to the Court, Sir, that it might be taken into account by the Court in weighing the credibility or degree of expertise, in connection with certain questions which I might pose in the cross-examination and which I should then try to connect up, Sir.

The PRESIDENT: Very well, Mr. Gross, continue.

Mr. GROSS: Will you state, Sir, what the circulation of your newspaper is?

Mr. DAHLMANN: The circulation is limited—5,000 copies—that covers the German population of South West Africa. The German-speaking population amounts roughly to 20,000 and that means one newspaper for every four people.

Mr. GROSS: How large an editorial staff do you have on the newspaper?

Mr. DAHLMANN: Four altogether.

Mr. GROSS: Do you, Sir, yourself, if I may put it this way, handle the political coverage of the paper in journalistic terms?

Mr. DAHLMANN: Yes, Mr. President, I do.

Mr. GROSS: In your investigations or coverage, as a journalist, do you have occasion, Sir, to visit the northern territories?

Mr. DAHLMANN: Yes, Mr. President.

Mr. GROSS: When were you in Ovamboland last, Sir?

Mr. DAHLMANN: I think it was in June-July this year.

Mr. GROSS: And how long did you stay there, Sir?

Mr. DAHLMANN: At that time, only one day, but I paid quite a number of visits to Ovamboland as well as to the other Reserves in South West Africa and the north as well as in the south.

Mr. GROSS: With respect to Ovamboland, on what other occasions, besides this one day that you have just mentioned, were you there?

Mr. DAHLMANN: Once I went to Ovamboland in 1962 shortly after Mr. Carpio had gone there and since then I went, I can say, regularly to Ovamboland, sometimes for a period of two or three days, sometimes shorter and whenever I go to these places, I am trying to have discussion with the tribal authorities as well as with the political leader there.

Mr. GROSS: Sir, in your discussion with the tribal authorities, what language do you speak?

Mr. DAHLMANN: That depends whether the tribal authorities are able to understand English or Afrikaans or German. If they understand one of these languages, then I use these languages, otherwise I must ask for an interpreter, who is always non-White. I never use a White interpreter.

Mr. GROSS: Has it been your experience, Sir, that the majority, roughly speaking, of the persons with whom you converse in Ovamboland do speak either English, German or Afrikaans?

Mr. DAHLMANN: Mr. President, that is a difficult question because I discuss matters more or less with the more educated people. I am mainly interested in discussing matters with them and not all of them speak Afrikaans, English or German, but a number of them of course speak

English or Afrikaans and I must say that the political leaders, that does not apply only to Ovamboland that applies to the whole Territory, prefer to speak English.

Mr. GROSS: Sir would it be your opinion as a political observer that the facility in a common language in Ovamboland, let us say specifically, would be of help to a political organization of a mature nature?

Mr. DAHLMANN: Mr. President, the Ovambos understand each other and although they speak different dialects, they have their Ovambo language which is the common language there and I think no Ovambo would get the idea to speak to another Ovambo in Afrikaans or English and that applies to Ovamboland.

Mr. GROSS: Now Sir, with respect to my question on a somewhat broader scale—as a political observer would it be your opinion, Sir, that the knowledge of only one of the dialects of Ovambo would impede, let us say, discussions between Ovambo political leaders and political leaders of other tribes?

Mr. DAHLMANN: Mr. President—number one, the Ovambos are more or less able to understand a Herero, although it is a different language but they can make themselves understood. The Ovambos do not understand the Namas and the Hereros also do not understand the Namas, but the political leaders also speak the other tribal languages or understand them at least, this applies especially for the Ovambos and Hereros.

Mr. GROSS: Would you say, Sir, again as a political observer or analyst, that the use of a common language by various ethnic or tribal groups would facilitate understanding among them in the sense of political organization and discussion?

Mr. DAHLMANN: A common language is always useful, Mr. President.

Mr. GROSS: Would you regard the absence of a common language as an obstacle or hindrance to political consultation and correspondence among various groups?

Mr. DAHLMANN: As I said before, that is not actually the case because this correspondence takes place more or less between the political leaders and the political leaders understand each other.

Mr. GROSS: In the political system prevailing in South West Africa are there political leaders without political followers?

Mr. DAHLMANN: There are political leaders without political followers or with a very limited number of followers.

Mr. GROSS: Now Sir, with respect to those political leaders with more than a limited number of followers, would it, in your opinion, be important that the followers be able to understand those who speak different languages in other tribes and other areas?

Mr. DAHLMANN: Well, that might be useful but as far as I heard this question never arose and I attended a lot of political meetings and the procedure is as follows: on some occasions there was a Herero speaker, or one speaker used the Herero language, another one Nama, a third one—Coloureds—prefer Afrikaans, and there are always interpreters and therefore it is not difficult for the followers to understand what a respective speaker is talking about; that is the procedure existing.

Mr. GROSS: Just one more question on that point: from the point of view of political analysis would you regard the necessity, or the practice, or the procedure of using interpreters as facilitating or impeding understanding and co-ordination of a political nature among political organizations, leaders and followers?

Mr. DAHLMANN: It is of course easier if an interpreter is not necessary.

Mr. GROSS: Do you find, in terms of political analysis, whether the tribal languages contain the words and phrases which correspond to, let us say, abstract political ideas?

Mr. DAHLMANN: I do not speak any Native language. I can deduct the answer from the fact that if you listen to the interpreters you find very seldom, in Afrikaans or English, words in their interpretation, so there must be terms and words within the Native languages which cover all these terms and expressions.

Mr. GROSS: Have you ever heard it asserted as an argument against granting votes on a qualified or other basis to non-Whites that they have not yet reached the stage of development in which they should be permitted to participate in the franchise?

Mr. DAHLMANN: That is a very serious problem. If one refers to the level of development of a whole group, then of course one must say they have a completely different political organization and, as I stated in my evidence, they are far removed from the idea of parliamentary democracy known in the western world.

Mr. GROSS: During your sojourn in South West Africa, analysing political problems and developments, have you encountered non-White, let us say, persons classified as Natives in the census whom you regarded as of requisite political maturity and sophistication to be entitled to vote on a merit basis?

Mr. DAHLMANN: Yes, I must say I could think of a few political leaders who would be capable, I would say, to sit in the Legislative Assembly of South West Africa. If you take into consideration only the so-called Police Zone without the Reserves there are roughly 150,000 non-Europeans or non-Whites and roughly 70,000 Whites; there are 18 seats in the Legislative Assembly. I really do not think that there are 12 non-Whites who would be capable to sit in this Legislative Assembly, according to their number roughly, and who would be able to govern the country, but I can think of course of a few individuals who are capable to sit there or to take part in the administration of the country, regardless of what their educational qualifications might be. I would not hesitate to say that a man like Hosea Kutako, for example, who is illiterate—he belongs to that generation, and he is almost 100 years of age—could sit in the Legislative Assembly, or a man like Kapuuo or Karnaera or, to mention one of the leaders abroad, Kozonguizi, whom I regard as highly intelligent, whatever his political ideas are; but these people are, in my personal opinion, really mature, but the great problem and greatest difficulty is these people do not want to sit in the Legislative Assembly under the qualified franchise system. They have stated again and again that they only accept majority rule—that means one man, one vote—nothing less, and they are so dedicated to their own nation or to their own group and to group loyalty that they do not think of this qualified franchise. On the other hand, their respective nations or groups would regard them as traitors. I might mention one name again, and that was Kozonguizi; and Kozonguizi is of course for multi-racialism and against group loyalties and tribalism in any form, but he is even more outspoken against participation within, if I may say so, White-led parliament, and he went so far as to say that he is against any sort of co-operation with the White liberals within the Territory.

Mr. GROSS: You say Mr. Kozonguizi has made that statement?

Mr. DAHLMANN: Yes.

Mr. GROSS: Can you cite the occasion on which he made the statement?

Mr. DAHLMANN: Yes, it was, if I remember correctly, an article written by Mr. Kozonguizi himself which appeared in *Freedom*, the international organ of the South West Africa National Union. This article appeared in November 1964 under the heading "National Liberation Struggle in South West Africa", and I would like to be very short because there is a long chapter about the White liberals and the liberals:

"Another important development in the politics of South West Africa which may have caused the downgrade of the once powerful SWAPO Council opposition to SWANU had been the role of the White liberal and liberals.

Today the truth of reality is that the excesses of White nationalist extremism in South West Africa can only be checked by an orthodox policy based on aggressive nationalism initiated and guided by Africans themselves, nothing in between. The Whites in South West Africa must remember that it is their own saying that one cannot have one's cake and eat it. The choice is between the White nationalists on the one hand and the African nationalists and socialists on the other; no room for liberals, or liberals be they White, Yellow or Black. That is the political situation inside the country, having considered that we shall now turn our attention to the politics of South West Africans abroad . . .",

and so on.

Mr. GROSS: You have testified, have you not, that this same gentleman, Mr. Kozonguizi, is Chairman of SWANU?

Mr. DAHLMANN: He is President of SWANU, the South West Africa National Union, yes, that is correct.

Mr. GROSS: And is it your testimony that this organization does not favour co-operation with Whites, or whatever the phrase you used was, with respect to Kozonguizi's alleged beliefs?

Mr. DAHLMANN: This organization, as I have mentioned, is most outspoken against White rule, and it favours a militant, revolutionary way.

Mr. GROSS: My question was whether it is your testimony that the SWANU organization, of which Mr. Kozonguizi is President or Chairman, is opposed to co-operation with the Whites.

Mr. DAHLMANN: SWANU within the Territory is opposed to co-operation with the Whites.

Mr. GROSS: In achieving a political system in which the non-Whites have participation?

Mr. DAHLMANN: They want African rule—one man, one vote.

Mr. GROSS: With respect to the description you have just given of the SWANU programme in terms of the asserted policy not to co-operate with Whites, could you cite any specific examples by way of declarations or statements of SWANU in that respect? Do you know whether you have any with you of that category?

Mr. DAHLMANN: Yes, I most certainly have statements like that.

Mr. GROSS: Could you readily find one that you regard as representative, or more if you wish, so that the Court may evaluate your analysis or appraisal of their language?

[Public hearing of 11 October 1965]

Mr. GROSS: Mr. Dahlmann, at the conclusion of the proceedings on Friday, 8 October, you will recall that we were discussing the position of SWANU with respect specifically to the question of co-operation with the Whites, and, if I may refresh your recollection on that, and the honourable Court, on page 486, *supra*, of the verbatim record the following colloquy took place. My question was whether it was your testimony that the SWANU organization, of which Mr. Kozonguisi is President or Chairman, is opposed to co-operation with Whites, and your reply was: "SWANU within the Territory is opposed to co-operation with the Whites."

I asked "In achieving a political system in which the non-Whites have participation?"; and you answered, "They want African rule—one man, one vote". And I think the colloquy paused there. If I may ask, have you, over the weekend, had sufficient time to search the files for the type of statement or position of SWANU which you had in mind, and if so, do you care to present it to the Court, Sir?

Mr. DAHLMANN: Yes, Sir. Mr. President, I have a statement to that effect; that means SWANU is opposed to co-operation with the Whites within the framework of qualified franchise.

The PRESIDENT: That was the actual point which you asked him, Mr. Gross. You asked him:

"With respect to the description you have just given of the SWANU programme in terms of the asserted policy not to co-operate with Whites, could you cite any specific examples by way of declarations or statements of SWANU in that respect?"

Mr. GROSS: Yes, Sir; quite so.

Mr. DAHLMANN: Mr. President, am I allowed to make a few other remarks in regard to the policy of the non-White political organization?

The PRESIDENT: No, Mr. Dahlmann, if you will produce the particular items that you are asked by Mr. Gross, but subject to that you . . .

Mr. DAHLMANN: There is one statement issued by the South West Africa National Union, issued by the national conference held at Windhoek from 30 May to 1 June 1964. If I may read the statement:

"This national conference rejects the Odendaal Commission Report, the blueprint for apartheid in South West Africa, engineered and to be implemented by the fascist Government of South Africa and the most unwelcome central administration in South West Africa; approves the decision of the national Executive Committee to expose the hollowness of the evil document which is nothing but a colossal fraud, intended to sabotage the development of our country and pervert the movement for national independence; authorizes the external mission to prepare its reply to this subversive piece of misinformation; reiterates that it will accept nothing less than complete national independence under majority rule as a first step towards socialist reconstruction; resolves to leave no stone unturned to achieve this goal; dedicates itself to destroy the evil of tribalism and racialism which breeds fascism; applauds the accession to independence of many African countries; registers its achievement of work for true principles African unity as a means by which the socialist evolution in Africa will be achieved and the development of the African Continent and the well-being of the people promoted."

And there is another document—that was a press statement which I received in my capacity as editor of the *Allgemeine Zeitung*: it has been published, as far as I know, in two newspapers in South West Africa.

Mr. GROSS: May I ask, Mr. President, was it a press statement by SWANU, Sir, and if so, by which office? Would you mind identifying the document, with the President's permission?

The PRESIDENT: You are only asked the question, Mr. Dahlmann, to identify the document—by whom was it issued? Is there anything to indicate, on the document you received, by whom it was issued?

Mr. DAHLMANN: There is a name—"Nathaniel", something like that, that is the first name and the surname is unreadable.

Mr. GROSS: Sir, I have no objection to continuing the reading of the document, although it is not attributed to SWANU, as I understand from the witness. If you wish to read it, subject to connecting up, I would have no objections.

The PRESIDENT: Is there anything to indicate on the document that it emanates from SWANU?

Mr. DAHLMANN: From SWANU.

The PRESIDENT: Where does that appear on the document?

Mr. DAHLMANN: In Windhoek.

The PRESIDENT: No, where does it appear in the document?

Mr. DAHLMANN: Here, Sir.

The PRESIDENT: Would you indicate, by reading it, where it appears in the document that it emanates from SWANU.

Mr. DAHLMANN: Yes, Sir, it is the letterhead "South West Africa National Union: Main and Basic Resolution. This national conference held at Windhoek from 30 May to 1 June 1964 rejects . . . [and so on]".

Mr. GROSS: Thank you, Sir.

Mr. DAHLMANN: And then may I refer to a United Nations document, A/AC.109/Pet. 215, 13 April 1964. It is a combined petition from SWANU and SWAPO, and at the end of this petition the authors say:

"Our recommendations—

1. Recommend that the Secretary-General U Thant should now send the United Nations Police Force, composed of military personnel drawn from the Afro-Asian States, immediately, whose tasks will or should be the following:
  - (a) to disarm all European mercenaries who have moved into the Territory, including all White settlers and civilians, most of whom of course are South African;
  - (b) to repatriate all South African citizens;
  - (c) to save and protect the lives and property of all the inhabitants in the Territory until a duly elected African majority peoples government is elected."

Mr. GROSS: Is that all, Sir? Now, in the document to which you have just referred, the Petition 215 which you have cited, is it not correct, Sir, that on page 8 of that same joint Petition the following statement appears:

"We urge every western country which is opposed to apartheid to join the United Nations call, to end South Africa's Mandate over South West Africa, in support for an African non-racial democratic government, that would be voted for by all peoples of the Territory



without distinction on the basis of colour, but on the basis of one man one vote."

That is in the document to which you have referred, is it not, Sir, on page 8?

Mr. DAHLMANN: I have not seen it, but I assume that it is perfectly correct.

Mr. GROSS: Is it your interpretation of the failure or refusal of an organization in the Territory not to co-operate with Whites, that declarations or statements are made by the organization or individuals which centre upon the policy of apartheid, and the call for one man one vote? Is that the basis upon which you frame your analysis, that these organizations, this one in particular, is not prepared to co-operate with Whites, to use your expression?

Mr. DAHLMANN: Mr. President, most of these organizations are prepared to co-operate with Whites under one condition, and this one condition is majority rule. Certain organizations advocate qualified franchise for Whites, and others are going so far, they advocate to kill the Whites.

Mr. GROSS: Now, Sir, would you consider, and I will not prolong this point beyond this question, unless you wish to add to it, the failure or refusal on the part of the Whites to deal with the non-Whites on a basis other than denial to the non-Whites of a franchise, to be a refusal to co-operate with the non-Whites?

Mr. DAHLMANN: No, Mr. President, attempts have been made especially to consult the political leaders. That has been the case with the Odendaal Commission. The Odendaal Commission invited everyone in the Territory to have discussion with the Commission, and the Administrator of South West Africa wrote twice to Hosea Kutako, who is the leader of the biggest opposition group, and invited him, for discussion, to the administration. The first invitation was refused by Hosea, he said he was not prepared to come, and to the second invitation the Administrator did not get any reply.

Mr. GROSS: Now, Sir, I would like to know, just for the completion of this story that you have just reported, whether you are familiar with the reasons which were given by Chief Kutako for refusal to participate in the consultations on the basis proposed?

Mr. DAHLMANN: On the first occasion, that was in January 1964, Hosea Kutako said that he did not have time enough to discuss this matter with his headmen; and the second rejection of the invitation I cannot judge because there is no reaction whatsoever from the side of Hosea Kutako.

Mr. GROSS: You are not aware of any imposition of restriction based upon the pass laws and the length of time for which he was offered opportunity to stay for consultations? Are you aware of that?

Mr. DAHLMANN: No. He is entitled to stay as long as he wishes in Windhoek as he is, as far as I know, exempted from the pass laws, and he is entitled to stay as long as he wishes in Windhoek, and the same applies to his driver and, I think, to his cook, and it might be to one or two of his servants, but I am not sure of that; but I am pretty sure that it applies to him personally, to his cook and to his driver.

Mr. GROSS: One more question—would you have information concerning whether Chief Kutako made clear in writing to the Administrator that the Hereros were opposed to the proposed Bantustan or homeland proposal?

Mr. DAHLMANN: I am not quite sure whether he wrote a letter to that extent to the Administrator, but he issued a number of press releases, and it is I think well known in the Territory that he is opposed to these Odendaal plans. Although I know he has received a written invitation from the Odendaal Commission to appear before the Odendaal Commission and to discuss matters with the Commission, he refused to appear before that Commission.

Mr. GROSS: I will turn now to your testimony on Friday last in the verbatim record to which I have referred at page 474, *supra*. You referred there at that page, Mr. Dahlmann, to what I may fairly characterize, may I not, as abortive attempts on the part of SWAPO and Kapuuo of the Hereros to organize a national convention. Perhaps it might be clearer if I read the two or three sentences to which I refer. In response to a question by learned counsel you stated as follows:

"A new attempt to come to a co-operation with SWAPO failed. Within South West Africa, Kapuuo, the Chief designate of the Hereros, tried to organize a national convention. As many non-White personalities as possible should participate. The national convention was supposed to take place in May 1964. The convention had to be postponed."

Then you went on with reference to a statement issued by an individual. Now the postponement of the convention was occasioned by what circumstance, if you know?

Mr. DAHLMANN: Yes, I am aware of that. The first convention was supposed to take place in Rehoboth, and the organizers did not get permission to hold this convention in Rehoboth. I was told by the authorities that the Basterraad—that is, the local authority there—had objected to this national convention being held at Rehoboth; and then the second convention was supposed to take place some weeks later in Okakarara, in the Waterberg East Reserve, and on that occasion the magistrate in Otjiwarongo issued only permits for Hereros because it is an Herero Reserve; and then the Hereros said "Under these circumstances we are not prepared to hold this convention in Okakarara". At a later stage, as I said in my evidence, Kapuuo, I think it was in August-September, issued this press statement that this certain meeting had taken place in Windhoek, and after that NUDO came into existence. He was attacked by one of his opponents, by Kozonguizi, and Kozonguizi said "Why didn't they have this meeting in Windhoek?" because, round about the same time, SWANU had its annual national conference in Windhoek—it was actually exactly at the same time, at the end of May-beginning of June.

Mr. GROSS: So that is it not correct to say that the reason for the postponement—in fact, it was a double postponement—was denial of permission on the part of the Government in both situations?

Mr. DAHLMANN: No, that is not quite so—I said the postponement of the first meeting was due to the fact that the Basterraad in Rehoboth objected to that meeting, and I think one of the reasons was the possibility of trouble there because another national liberation front was already in existence at that stage—that was the South West Africa National Liberation Front, this combination of SWAPO and SWANU, and the Chiefs council refused to co-operate with this National Liberation Front, although he was invited to participate; and so one could have

expected some disturbances, or something like that, in Rehoboth. Rehoboth is only 60 miles south of Windhoek, and it would have been possible that these SWANLF people would have been interested in disturbing this meeting.

Mr. GROSS: Do you wish the Court to infer from your testimony on this point, Mr. Dahlmann, that the organization had difficulty in organizing a national convention because of any reason other than difficulties of finding a suitable place and time and requisite permission, for whatever reason?

Mr. DAHLMANN: It is a fact that the magistrate in Otjiwarongo, or the assistant magistrate, as it was actually, only allowed Hereros to take part, and it is also known that I personally was not in agreement with this restriction, and you will find in our paper a leader to the effect that I was of the opinion that permission should have been granted.

Mr. GROSS: Was one of the reasons, perhaps, why you objected to it that you considered that it encouraged or fostered inter-tribal unity—is that the reason you assigned for your opposition to the ruling?

Mr. DAHLMANN: No—why shouldn't they have their meeting?—that is my attitude, and I did not expect any difficulties, although I was of the opinion that not many tribal or political leaders would attend that meeting, but why shouldn't they try that?

Mr. GROSS: You know of no reasons why they were not allowed to do so, then. Did you receive any response to your communication, or was it a communication? This was an editorial, was it?

Mr. DAHLMANN: That was an editorial, yes.

Mr. GROSS: I see. Did you at that time, or shortly thereafter, come across in your study of the petitions filed with the United Nations, as to which you have testified, a communication from Chief Kutako, Chief Witbooi and Mr. Louw (the Chairman of the Rehoboth Burghers), a letter of 11 May 1964 to the Secretary-General of the United Nations—this is in document A/AC.109/Pet.211/Add.1? Are you familiar with this letter to which I call your attention?

Mr. DAHLMANN: No, I am not.

Mr. GROSS: In that petition or communication to the Secretary-General, these three gentlemen—is it not correct, incidentally, to say that Chief Kutako is an Herero, the Herero Chief?

Mr. DAHLMANN: Yes, correct.

Mr. GROSS: Chief H. S. Witbooi is of what tribe?

Mr. DAHLMANN: Nama, Krantzplatz Nama.

Mr. GROSS: And Mr. Louw, as it appears here, is Chairman of the Rehoboth Burghers?

Mr. DAHLMANN: Chairman of the Rehoboth Burghers' Association.

Mr. GROSS: And how are they classified under the census classification, the Rehoboth Burghers—what race or ethnic grouping are they under the census classification—are they Coloureds, or Basters, or . . . ?

Mr. DAHLMANN: No, they are Basters.

Mr. GROSS: Yes. Now, these three gentlemen who signed this petition were not all of the same party or racial group, I take it. Is that correct?

The PRESIDENT: Do you know at all, witness? Can you give an answer, one way or the other, to the question which is put: were they of different tribal or of different political associations?

Mr. GROSS: These three gentlemen.

Mr. DAHLMANN: At that stage Hosea Kutako had no political organiza-

tion behind him except the Chiefs council. NUDO was not in existence at that time. Allan Louw was the Chairman of the Burghers' Association—that is a semi-political organization, and each Rehoboth citizen belongs to that Burghers' Association; and Chief Hendrik Samuel Witbooi is the Chief of 500 Krantzplatz Namas.

Mr. GROSS: Would you say, as a political observer and analyst, that this represented an attempt on the part of these chiefs or leaders to form an inter-tribal political organization in the form of a convention? Would you agree to that statement?

Mr. DAHLMANN: Many attempts have been made to form a united front, one party, to which all the other organizations should belong—that was SWANLF and again NUDO—and may I add that I have said it in my evidence: later, after NUDO had been formed, Chief Witbooi wrote a petition to the United Nations that he had nothing to do with NUDO, although he appears on the committee member list as the Assistant Party Leader.

Mr. GROSS: I am sure that if you misunderstood my question you would wish to answer it directly, if possible, although as fully as you wish; my question was whether as a political analyst you regarded this as an attempt on the part of these three gentlemen to form an inter-tribal political movement through a national convention—can you answer that yes or no?

Mr. DAHLMANN: Yes, they were trying to do that.

Mr. GROSS: In this letter to the Secretary-General to which I have referred, these three gentlemen whom we have now identified said as follows, and I quote from the document, beginning on page 2—this is to the Secretary-General of the United Nations, 11 May 1964:

“We have the honour to inform you that the people of South West Africa decided to hold a National Convention at Rehoboth, South West Africa, on May 7 1964 to bring about political unity among the people of South West Africa. The administrator for South West Africa refused to allow the holding of a convention saying that he would not allow ‘White ants’ to assemble at Rehoboth. After the administrator had refused to allow the people to convene at Rehoboth, the people asked to be allowed to hold the National Convention at Okakarara in the Waterberg Native Reserve but the Government replied that only the Hereros would be allowed to hold a meeting at Okakarara (see enclosures). As the convention was intended for all the people of South West Africa and not for the Hereros alone, the Hereros refused to hold a meeting for the Hereros alone. The South African Government is fond of making the propaganda that the tribes in South West Africa are hostile towards one another and that is why the Government is dividing them to prevent war. To prove that this propaganda is false is that the tribes themselves called for a national convention and it was the South African Government which refused in order to divide the tribes.

A national convention in South West Africa is absolutely necessary and we ask the United Nations to intervene so as to enable the people of South West Africa to hold the said National Convention soon.”

And then it was signed by these three gentlemen. Now the enclosures to which the letter refers—to complete the record here—is a telegram to

the Magistrate at Otjiwarongo from Chief Hosea Kutako and Chief Samuel Witbooi—"Kindly give us permission to hold national convention at Okakarara Waterberg Native Reserve May 7 to 10 1964". The answer, enclosure I in the document, Windhoek, 1 May 1964 addressed to Kutako—"Permission granted to Hereros only, report Magistrate Otjearwongo", signed, "Magistrate Fig".

Now Sir, would you regard this, in your capacity as an expert, political analyst and observer, as an attempt on the part of the Government to prevent a meeting at which more than one tribe would be present?

Mr. DAHLMANN: Mr. President, may I refer to certain parts of this document. I am convinced . . .

The PRESIDENT: Do you have the document in front of you?

Mr. DAHLMANN: No.

The PRESIDENT: You must have a very good memory if you can remember it. What did you want to say?

Mr. DAHLMANN: The administrator has been quoted in this document as having said "White ants"—that he does not allow "White ants" to meet there. I think it is more or less impossible because the administrator is trying to get the co-operation of the different groups and I think it is not the policy of the Government to prevent the different parties from uniting because there is one example—SWAPO and SWANU have formed the National Liberation Front. Although the leaders abroad, SWAPO and SWANU leaders are highly antagonistic towards each other and I think it is not fair to say that the Government is always trying to divide the different tribes because then one should think that the leaders abroad would be united but we are far away from that situation, they are even more hostile towards each other than the leaders within South West Africa. I would not like to refer to or rely on statements made on the occasion of political meetings—there is always an emotional effect or the politicians are excited—I would only rely on written statements to the United Nations or within their publications and statements to the press.

Mr. Gross: Now Sir, I would like to call to your attention another petition. This is likewise from Chief Kutako and Chief Samuel Witbooi and is in document A/AC 109 Petition No. 211, dated 13 April 1964. In this Petition is included the following exchange on page 4: There is an enclosure in the form of a letter dated 30 January 1964 from Chief Kutako to the Administrator which I will read:

"His Honour the Administrator,  
Government Buildings, Windhoek.

Sir, I hereby wish to apply for permits for myself and fifteen other persons to go to Ovamboland, Kaokoveld and Okavango Native Reserves for the purpose of propagating the idea of one political party for South West Africa. Our aim is to leave Windhoek on 15 February 1964 and to return on 15 March 1964. Yours faithfully, Hosea Kutako."

Enclosure 3 in the United Nations document which I have cited is dated Windhoek, 4 February 1964, and is addressed to Senior Headman Hosea Kutako, Windhoek—

"Sir,

Subject request for permits for yourself and fifteen others to visit Ovamboland, Kaokoveld and the Okavango Bantu areas.

In reference to your letter of 30 January 1964 addressed to: His

Honour the Administrator for South West Africa, a copy of which has been referred to me for attention, I regret to have to inform you that your request cannot be acceded to. Yours faithfully, Chief Bantu Affairs Commissioner for South West Africa."

Now Sir, do you have any reason to question the authenticity or veracity of the exchange?

Mr. DAHLMANN: No, Mr. President. One explanation is that before a permit is granted to go to any Reserve the authorities within the Reserve are consulted—that means the Black authorities, the Chiefs and Headmen. From my personal observations I know that these Chiefs and Headmen are highly opposed to the party of Hosea Kutako and that applies also to the political organization which exists in Ovamboland with minor support at the moment—this organization had quite remarkable support in 1962. The SWAPO organization is highly opposed to Chief Hosea Kutako's NUDO. So there is the possibility that the Chiefs and Headmen were consulted—the Government is consulting them regularly if these occasions arise—and they might have been opposed to it.

Mr. GROSS: Is this purely conjecture on your part, Sir, or do you have any information on . . . ?

Mr. DAHLMANN: Not about this specific case. I only know about the general attitude and that applies to all the Reserves. These decisions are only taken after consultations with the local non-White authorities.

Mr. GROSS: So that Sir, on the basis of your knowledge of the Territory and the distance, speed in communications and the like, your assumption would be, as an expert or otherwise, that between the letter dated 30 January and the response dated 4 February, in that interval the Chiefs in Ovamboland, Kaokoveld and the Okavango Native Reserves have been consulted and have advised the Administrator of their objection to this proposed visit. Would that be your understanding, on the basis of your knowledge of the Territory, as a probable situation?

Mr. DAHLMANN: It is technically possible.

Mr. GROSS: I would like now to turn to a broader line of your testimony and would like to tie it in with what we have been discussing—to which I propose to return—that is, the attempts to form inter-tribal or national political organizations and the reasons why they have aborted. I should like first, however, so that you and the honourable Court may follow more closely the line and purpose of my questions, to refer to your testimony in the verbatim record on page 458, *supra*, and thus your analysis as a witness and/or an expert concerning what you described as the factors behind the political developments in South West Africa—obviously a matter of great concern in this case. On page 458 of this verbatim record, you testified as follows:

"... without keeping in mind certain basic facts and forces it is practically impossible to understand the attitude, activities and antagonism which manifest themselves in the political sphere in South West Africa".

And then later on at the same page, you referred among other things to—"the factor of Black nationalism or Pan-Africanism". Sir, as related to that, on page 459 you stated as follows in, I believe, the same context:

"Another factor is, as I mentioned, the Black nationalism in Africa. That is, of course, a force behind certain political movements in South West Africa. The central idea is, Africa for the Africans.

The leaders of certain political organizations in South West Africa who are living abroad are trying to import these ideas to South West Africa."

That is a correct version of your testimony as you recall it, Sir? Then specifically with respect to certain aspects of the situation, you testified on page 470, *supra*, of the same verbatim record that the Chiefs and Headmen, you were referring to Ovamboland at that point—"even asked for the implementation of the political part of the Odendaal Plan". Then on page 471, you referred to the Chief's Council of Hosea Kutako and you testified:

"The so-called Chief's Council of Hosea Kutako is the strongest non-White anti-government group in South West Africa . . . They are mainly responsible for the internal campaign against the Government."

I put to you, if I may, Sir, the following questions: in the first place, could you advise the Court what is the civil status of Natives in South West Africa? Are they citizens so far as you are aware, Sir?

Mr. DAHLMANN: Mr. President, for non-Whites we have different, as I explained in my evidence, nations in South West Africa, for example the Herero Nation, the Ovambo Nation and the Namas are more or less divided into different tribes and the same applies to the Damara. If you ask one of the non-Whites in South West Africa: what are you, they say I am a Herero, I am an Ovambo, or I am Damara, or sometimes they say I am a Kaffir or I am a Rehoboth Burgher. That is actually the answer you get from the non-Whites themselves.

Mr. GROSS: Can you answer my question whether by law the non-Whites are citizens in South West Africa, or do you not know, Sir?

Mr. DAHLMANN: No, definitely not.

Mr. GROSS: They are definitely not citizens?

Mr. DAHLMANN: No South West African citizenship exists. It never existed.

Mr. GROSS: Now, Sir, are the non-Whites of South West Africa citizens of South Africa?

Mr. DAHLMANN: Whenever non-Whites from South West Africa leave South West Africa and need travel documents, as far as I know, they get a South African passport.

Mr. GROSS: Sir, are non-Whites resident in South West Africa citizens of South West Africa or do you not know, Sir?

Mr. DAHLMANN: I can only repeat what I said.

Mr. GROSS: But do you know what legislation, if any, governs this subject, as part of your political studies of the situation, Sir?

Mr. DAHLMANN: The Minister for Bantu Affairs in South Africa.

Mr. GROSS: I beg your pardon, Sir. Let me talk about a person, a non-White person in South West Africa, who has not applied for a passport to South Africa, has no intention of going there, but wants to find out whether or not he is a citizen of the Republic of South Africa. Could you answer that question, on the basis of your own knowledge, Sir?

The PRESIDENT: What is that question, Mr. Gross?

Mr. GROSS: Pardon me, Sir?

The PRESIDENT: I did not follow the question.

Mr. GROSS: Yes, Sir. I beg your pardon, Sir. I will try to clarify it. If a non-White, himself resident in South West Africa, does not apply for a

passport, but merely wishes to know what his status is in South West Africa, do you, or do you not know, whether he is, or is not, a citizen of the Republic of South Africa?

Mr. DAHLMANN: Mr. President, he himself knows what he is and he knows: "I am a Nama, I am a Herero, I am Ovambo", and I have never heard that this question arose.

Mr. GROSS: Do you regard it as—I ask you as a political expert and analyst—a factor in an individual's relationship to the political life of his community to know whether or not he is a citizen?

Mr. DAHLMANN: He is part and parcel of his own nation, in the first instance, and there are these close tribal and national links, however one wants to call them, within this community and he cannot regard himself as anything else than he is.

Mr. GROSS: Sir, you, I believe, have testified that you yourself came to South West Africa in 1958 from Germany. Is that correct?

Mr. DAHLMANN: That is correct.

Mr. GROSS: Now, Sir, have you acquired citizenship since your arrival in South West Africa?

Mr. DAHLMANN: Yes, Mr. President, I have.

Mr. GROSS: Do you know, Sir, then if you are a citizen of the Republic of South Africa? You obviously do.

Mr. DAHLMANN: Yes, I know that.

Mr. GROSS: Now, in the case of a non-White, who, let us say, was born in Windhoek, has lived there all his life—I am taking that as a hypothetical example—and he wishes to know whether he is, or is not, a citizen of the Republic of South Africa, how can he find out and what will he be told—if you know, Sir?

Mr. DAHLMANN: He can find that out from the Department of Bantu Affairs.

Mr. GROSS: And what would the Minister of Bantu Affairs tell him—if you know, Sir?

Mr. DAHLMANN: I do not know.

Mr. GROSS: You do not know, Sir, what he would be told?

Mr. DAHLMANN: No.

Mr. GROSS: Are the non-Whites regarded as, to use a phrase that has been used in the testimony, *sojourners*, or *temporary residents* in the southern sector irrespective of the length of time which they have lived, or may live, in that sector?

Mr. DAHLMANN: Mr. President, that applies especially, doubtless, to the Ovambo, to the migrant labour and that is not a Government law, that is a tribal law. The Chiefs are interested in keeping these tribal or national links. They, therefore, do not allow families to leave Ovamboland, only the men are allowed to go to the southern sector and the men have to go back to Ovamboland to look after the family after a certain period. The length of this period is discussed with the tribal authorities and so he regards himself as an Ovambo, as belonging to his nation, to his Ovambo nation.

Mr. GROSS: Now, Sir, during the period after you had arrived in South West Africa and prior to your obtaining citizenship of South Africa—that was, incidentally, for how long a period? For how long a period prior to the conferment of South African citizenship?

Mr. DAHLMANN: Five years.

Mr. GROSS: During that period of five years, what rights—let me



exclude voting, if I may—if any, were you denied because you were not a citizen of the Republic of South Africa?

Mr. DAHLMANN: Voting rights, of course, and some other rights, but the same restrictions apply also to South African citizens. For example, I cannot go, no White is allowed to go to the non-White townships without a permit. Although the non-Whites are entitled to come to my office or to my house without a permit. I am not allowed to go to the Native Reserves without a permit.

Mr. GROSS: You are not allowed to go as a White or is the fact that you are not allowed to go without a permit because you are, or were not, a citizen? I am not certain, Sir, that I understood the point of your response.

Mr. DAHLMANN: I said that applies also to South African citizens.

Mr. GROSS: Yes, Sir. Can you, for the benefit of the Court, indicate what, if any, rights, other than voting, you were denied by reason of the fact that you were not a citizen during those five years?

Mr. DAHLMANN: For example, when I was supposed to leave Windhoek, I had to go to Immigration and tell them: "Now I am going to Cape Town", for example. I could not take another employment for a certain period. I was not allowed to do that; I think for three years I had to stay in this employment. At the moment, that is all I can think of.

Mr. GROSS: With respect to the requirement, for example, of remaining in that employment for three years, is that a rule of general application to Whites and non-Whites alike, if they were not citizens? Did you understand my question, Sir?

Mr. DAHLMANN: Yes, I understand it. That applies only to foreigners.

Mr. GROSS: To White foreigners?

Mr. DAHLMANN: I think to White foreigners.

Mr. GROSS: Alone, Sir?

Mr. DAHLMANN: I think so.

Mr. GROSS: With respect to the rights which pertain to, let us say, owning or leasing of land or rights pertaining to advancement or promotion, you were not subject to any restrictions because you were not a citizen, were you, Sir?

Mr. DAHLMANN: No, there were some restrictions, as I mentioned.

Mr. GROSS: Of the sort I have indicated, Sir?

Mr. DAHLMANN: One could not be promoted, because you had to remain in the same job and you had to get permission, for example, when I became the editor . . . I came to South West Africa and was Assistant Editor and after a short time I had to become Editor because there was nobody else any more and so we had to apply for that.

Mr. GROSS: This is what I was leading to. I think you testified that when you came to South West Africa, you came as Assistant Editor?

Mr. DAHLMANN: Correct.

Mr. GROSS: And I think you testified that in about two years, that is to say, while you were still a foreigner, a non-citizen, you were promoted to Editor?

Mr. DAHLMANN: Yes.

Mr. GROSS: There was obviously, then, no obstacle placed to your promotion by reason of your non-citizenship, Sir? It would follow, would it not?

Mr. DAHLMANN: The authorities had to be informed about it.

Mr. GROSS: But there were no restrictions placed upon it?

Mr. DAHLMANN: They did not refuse permission.

Mr. GROSS: I am interested in the aspect of your testimony which relates to what you described, on page 470, *supra*, of your testimony, as the "political part of the Odendaal plan" and the factor which you apparently had in mind, Sir, in connection with the attitude of the Chiefs in Ovamboland to whom you referred and of the Herero Chiefs, to whom you referred, as, in the one case apparently favouring the plan, and in the other case strongly opposing it. This is your testimony, is it not, Sir? With respect to the attitudes toward the political part of the Odendaal plan—again to use your words—would you say, Sir, that such attitudes are properly to be regarded as materially influencing political development among the non-White inhabitants of the Territory?

Mr. DAHLMANN: You mean the attitude of the Ovambos?

Mr. GROSS: Let me clarify my question. Mr. Muller, at page 465, *supra*, of the verbatim record asked you a very broad question which included your comments—your testimony. The reference which I have in mind is that the points to which your testimony would be directed would include the circumstances and conditions in South West Africa which materially influence political developments amongst the non-White inhabitants of the Territory. Then, as I believe I have read before, in the testimony of Friday Mr. Muller asked you, at page 458, *supra*:

"Now will you tell the Court whether there are certain factors which influence the existence of and support for political parties amongst the indigenous population of the Territory?"

Now, my question to you, and I think I can state it quite simply, is would you say, Sir, that the attitudes for or against the political section of the Odendaal plan, as you called it, would be one of the factors which materially influence political attitudes in South West Africa among the non-White inhabitants?

Mr. DAHLMANN: No, I think that they are completely different subjects.

Mr. GROSS: Sir, the attitudes toward the Odendaal plan, to which I shall invite your attention shortly—do they, in your expert opinion, materially or otherwise influence political movements, political activities, political attitudes in the Territory?

Mr. DAHLMANN: As far as the parties which are in opposition are concerned, yes.

Mr. GROSS: As far as the parties are concerned who have any attitude toward the plan, for or against, was my question. Do you regard this as a material and relevant factor in connection with political attitudes and developments in the Territory?

Mr. DAHLMANN: I think I mentioned in my evidence that most of the political parties are against the implementation of the Odendaal plan. The only semi-political organization in favour of the Odendaal plan is the South West Africa Coloured Organization. I also mentioned that all these parties, except NUDO, do not enjoy the support of the majority of the respective groups which they represent.

Mr. GROSS: Now, Sir, with respect to the petition to which you have referred—the A/AC 109 Petition 215, 13 April 1964, which is a petition from the South West Africa National Union and the South West Africa Peoples Organization and was addressed to the Special Committee at the United Nations. That is the document to which you referred is it not, Sir, in your testimony today?

Mr. DAHLMANN: That is correct.

Mr. GROSS: Now, Sir, is it not a fact that the joint petition by these two organizations stated in very strong terms the common opposition of both of these organizations to the implementation of the political sections of the Odendaal plan?

Mr. DAHLMANN: Yes.

Mr. GROSS: Is it correct to say that on page 2 they said, after referring to the plan in the report, the following:

"The report of this prejudiced Odendaal Commission has caused expectedly serious tension among the African population of South West Africa. The fundamental reason for this Verwoerd South Africa Commission has been to further intensify apartheid policies, entrench the position of the White settlers, the majority of whom come from South Africa. They have remained South African citizens and to regularize their position of dual citizenship they are encouraging their South African Government to annex our motherland South West Africa into South Africa, by force if that should ever become necessary."

I pause there, Sir. I am not asking you to comment, unless you wish to, on whether this is a correct legal, political or practical statement, I am addressing it to you for my subsequent question as a statement of attitude, right or wrong, on the part of these organizations.

The next sentence is, is it not, Sir—I will go back to read each of these, if the President permits me to do so?

The PRESIDENT: Has the witness got a copy of this petition in front of him?

Mr. GROSS: It is the one he cited.

The PRESIDENT: You have it?

Mr. DAHLMANN: Yes.

Mr. GROSS: To complete the thought, I will go back over it. There will be plenty of opportunity to comment, Sir, if you wish.

"It was further to pave the way for the introduction of the most abhorrent Bantustan programme, or partition scheme, that will follow their trail. The sketching of the country into Bantustans has one result: promoting a racial war between the indigenous peoples and the White settlers. The Odendaal Commission scheme, described as the Five-Year Plan, is just a five-year plan of apartheid to introduce Bantustan apartheid programme in South West Africa much against the wishes of the African majority peoples in the Territory."

Now, Sir, I will break this down for you if you wish and the President permits—I take it that you would agree that this is a strongly worded and rather emotional statement concerning the attitude of these party leaders toward the plan? You would agree to that, Sir, would you not?

Mr. DAHLMANN: Yes, Mr. President, that is correct. Many of these petitions are very strongly worded and I could refer to a petition with even stronger wording where it suggests that the White settlers should be killed, but I think I also said that SWANU and SWAPO enjoy very limited support in South West Africa and I only want to mention one example. When these chiefs and headmen of Ovamboland wrote to the Prime Minister and the contents of the letter were published, there was no reaction from SWAPO within the Territory. The Acting President of

SWAPO in South West Africa, Nathaniel Mahuiriri in Walvis Bay, wrote at that very stage to me and he complained about the behaviour of the Superintendent of the Walvis Bay Location.

Although I admit it is completely impossible to say how many members these organizations have, because one should have access to the membership lists, if they exist, these political leaders of course claim that the majority of their respective people are behind them. If I may stress that point a little, to show what support they claim to have: if you take only three organizations, that is SWAPO, SWANU and UNIPP, which is unknown in South West Africa and which does not exist any more, but for all practical purposes one can say NACIP—National Convention Independence Party—UNIPP—United Namib Independent Peoples Party—and NUDO—National Unity Democratic Organization—are the same. Then you come to the fantastic figure that these three organizations have support of 345,900 members. The General Secretary of UNIPP, for example—SWANU says that this person does not exist at all, but he claims in a petition to the United Nations that UNIPP has 245,000 members.

If I may quote this petition to the United Nations (Doc. A/AC 109 Petition 279 Add. 3), a petition from Izilima Sokokoina, Secretary-General of the United Namib Independent Peoples Party (UNIPP) concerning South West Africa.

“Please allow me to explain the information of UNIPP to your esteemed organization. In every colonially oppressed country in Africa the liberation movement of the indigenous masses has always needed a spark of life which can only be inspired after contact with a great national leader—a leader with a love for the soil of his mother-country. In this country, South West Africa, here after to be called the land of Namib, such a leader has at least succeeded in gaining the recognition of his people. At last the people of Namib have acclaimed as a great shining star that illustrious, beloved son of the land Dr. Mburumba Kerena. To us our mighty Kerena is as Nkrumah of Ghana, the Banda of Malawi, he is our redeemer, forced to a lonely exile in the desert of Bechuanaland; our leader has incessantly pleaded with his countrymen to stop the age-old bickerings and suspicions inherent in his strife-torn tribal country. With his great knowledge of international and human affairs, our leader could see that freedom would come to Namib only after all rival political parties had disappeared and one liberation movement formed. In vain he pleaded with the leader of SWAPO, SWANU, and different tribes, to stop being sectional and to form only one national movement . . .”

The PRESIDENT: Mr. Dahlmann, what is the purpose of quoting this in all the detail in answer to the question which was put to you by Mr. Gross? What is the inference or the conclusion you are seeking to draw from all this?

Mr. DAHLMANN: To give an impression of how the other parties, also the United Front, were thinking about the support of SWAPO and SWANU. Mr. Gross referred to these two organizations and their opposition to the Odendaal plan, and I said in my evidence that I am of the opinion that these two organizations, SWAPO and SWANU, enjoy only limited support—numerically limited support.

The PRESIDENT: What do you mean by limited support numerically? Have you got any figure in your mind at all?

Mr. DAHLMANN: This organization, which does not exist any more, and that is why I quote it from this document, the Secretary-General of this party later makes the statement that his party represents 245,000 people.

The PRESIDENT: Is that, in your opinion correct?

Mr. DAHLMANN: That is completely incorrect. SWAPO claimed to have 90,000, according to a statement made by the Acting President of SWAPO, in 1962; at the beginning of this year, he claimed that SWAPO had a membership of only 60,000. His opponents, the same people who are co-operating with SWAPO within SWANU, deny that and . . .

Mr. GROSS: Mr. President, I have no objection to this response of question, if the Court please. It is completely unresponsive to the intent of my question, Mr. President, and if I could reframe my question to clarify it, it would save a lot of time.

The PRESIDENT: The great difficulty, Mr. Gross, is that you ask a witness to comment upon a long statement, well then he gives a comment, and I do not think it assists the Court to give great detail on the strength of it, but nonetheless, if I may be forgiven for saying so, it is because you do not put your questions specifically to him, you invite a comment and you get it, that is why I am seeking to find from the witness what his conclusion was.

Can you not finish what you have got to say on this particular matter fairly quickly, Mr. Dahlmann?

Mr. DAHLMANN: Yes, very quickly, Mr. President, I only want to quote one sentence from *Freedom*, SWANU international organ, June-August 1965, page 9:

"SWAPO is fighting. It has 90,000 members—bigger and older than SWANU. One can now safely say that all this hypocritical nonsense was and is merely for journalistic and outside financial backers' consumption purely and simply."

The PRESIDENT: I suppose it all adds up to this: the claims by various parties as to the numbers of adherents they had, are in your opinion unreliable and not correct.

Mr. DAHLMANN: That is correct, Mr. President.

The PRESIDENT: Well, that could have been said in very simple language.

Mr. GROSS: Mr. President, may I revert to my intended question? I have observed the admonition and respect it deeply, Sir, because I get myself into difficulty otherwise. I had not realized that I had asked for comment, I thought that I had learnt better, Sir. I thought I had asked the witness, and now intend to pursue it in this form, to express agreement or disagreement, or indicate in what respects, if any, information is wrong.

I will now refer to a second petition which relates to the opposition to the Odendaal Commission report and the political plan to which you referred in your testimony, Sir, at the page I have cited. I refer now to a petition from members of the tribal committee of the Damaras, concerning South West Africa, A/AC.109/Pet.217. 13 April 1964, and at page 6, this is a very brief excerpt which I shall read:

"With reference to the communication that the Damaras [p. 4],

by means of Chief Gorseb, gave their approval with the intentions for Bantustans as resumed [I think that means as summarised] in the Odendaal Report, and as explained by the Minister to Vet Nel at Okombahe, the tribal committee of the Damaras wished to declare as follows:

1. The Damaras are against the procedure which was followed *before and during the meeting of the named Minister at Okombahe on 24 February 1964, and declare that meeting to be non-official.*"

It goes on to say:

"... at the meeting there was no occasion for question or discussion with members of the tribal committee which consists of 10 members who unanimously were against the Bantustans ...".

Now, Sir, do you have any information which would indicate that these ten members of the tribal committee did not send this petition to the United Nations?

Mr. DAHLMANN: Mr. President, I have no doubt that these members of the committee did send this petition to the United Nations, and I know some of them personally and I know their attitudes; I also know that they cannot claim to represent the whole Damara tribe. I have said quite clearly in my evidence, I think, that they are in opposition to the Government and the Odendaal plan (the Damara Tribal Executive Committee) and also in opposition to the Damara chief in Okombahe; but they cannot claim that they have a majority support of the Damara tribe, they are trying to re-organize the Damara tribe which is scattered and the tribal links are not very strong due to the history of this specific tribe.

The PRESIDENT: Well, if they cannot claim a majority support, can you give the Court some indication as to what support they can claim?

Mr. DAHLMANN: Mr. President, it is difficult to establish because they are travelling from place to place—from Windhoek to Tsumeb to Walvisbaai—wherever Damaras are living, to the whole of the Territory to have discussions with their people, and are trying to persuade them in two directions: (1) against NUDO, against the Herero dominated NUDO; (2) against the Government and against the Odendaal plan. There is no doubt about that.

Mr. GROSS: Mr. Dahlmann, would you say that there is any political party, regardless of its size or claims, among the Natives which has expressed support for the Odendaal Commission's political plan, as you describe it?

Mr. DAHLMANN: There is only one political organization which supports the Odendaal plan, that is the South West Africa Coloured ...

Mr. GROSS: I said other than Coloured ...

Mr. DAHLMANN: No other organization but, as I explained, all these organizations except NUDO enjoy a very limited support among their group.

The PRESIDENT: I think you have told us that before, Mr. Dahlmann.

Mr. GROSS: I think you have made that contention very clear, Sir. With respect to the question I asked you, I take it that the answer is, no. There are no Native groups, political organizations, which have supported or express support for the Odendaal plan?

The PRESIDENT: Mr. Muller.

Mr. MULLER: With respect, Mr. President, I think it should be clear whether he refers to political parties, political organizations or groups. He has mentioned all three now in one sentence.

Mr. DAHLMANN: Political organizations, yes; political parties, no—no political parties except SWACO support the Odendaal plan; but I would say the political authorities, the traditional chiefs and headmen of the different groups, support the Odendaal plan and that applies especially to the greatest nation in South West Africa, to the Ovambos.

Mr. GROSS: Yes, Sir. Now, would you say, Sir, that in the testimony which you have given, in which you have referred several times to anti-government as a description of the objectives or policies of political parties, that the phrase "anti-government", as you use it, refers, among other things, to whether or not the party is against the Odendaal Commission plan?

Mr. DAHLMANN: These parties are against the Government and against anything the Government is doing; for example, this applies to NUDO—they are even against economic development. Kapuuo said in an interview, for example, and the interview I refer to is an interview with Christian Herter, Jr., that he is against the Kunene Scheme, against this hydro-electric power scheme near the Ruacana Falls, because that comes from the South African Government.

Mr. GROSS: Sir, is the opposition to the Odendaal plan based upon the policies of the political parties, opposition to the apartheid policy generally?

Mr. DAHLMANN: I did not get that quite clear.

Mr. GROSS: Is the political opposition, to which you referred, to the Odendaal plan related to, or an aspect of, the general opposition of political parties to the apartheid system generally?

Mr. DAHLMANN: The opposition is against the denial of African majority rule.

Mr. GROSS: Is that the extent of your answer to my question? You would not say, Sir, or would you agree, that there is a general opposition of the political parties that do exist to the apartheid policy?

Mr. DAHLMANN: It amounts to this effect, that all these parties are against anything except African majority rule.

Mr. GROSS: Now, Sir, with regard to the Odendaal plan itself, and the basis of the opposition felt to it and expressed to it, would you advise the Court, on the basis of your knowledge of the Odendaal plan, which I assume you have studied, have you, Sir?

Mr. DAHLMANN: Yes, I have.

Mr. GROSS: How many Natives would be moved in order to accomplish the recommendations of the plan?

The PRESIDENT: "Moved" in what sense?

Mr. GROSS: How many Natives would be moved to accomplish the homelands recommendations of the plan? Shall I be more specific, Mr. President?

The PRESIDENT: Mr. Muller.

Mr. MULLER: With respect, Mr. President, I would object to that. There is nothing in the Odendaal Commission plan about people being moved, as far as I know.

Mr. GROSS: Well, I will attempt to enlighten counsel, Mr. President.

Mr. DAHLMANN: My answer, Sir—*nobody*.

The PRESIDENT: Is there anything in the report, Mr. Gross, which

says that there is a certain number, or that a number will be moved?

Mr. GROSS: No, Sir, there is not. My question was related to the witness's knowledge—how many people would be moved if the political recommendations of the Odendaal plan were to be accomplished, Sir.

The PRESIDENT: Moved, or resettled, or would themselves transfer?

Mr. GROSS: However they might be physically moved, relocated or persuaded, or otherwise, Sir. My question was directed to the accomplishment of the Odendaal Commission recommendations, to which I shall now turn to clarify my learned friend's analysis of the report. I refer to an article by Mr. Gordon Laurie, published in *African Studies*, Volume 23, Nos. 3 to 4 of 1964. Do you know who Mr. Laurie is, Sir? You have heard of him?

Mr. DAHLMANN: Yes.

Mr. GROSS: Mr. Laurie is Director of the South African Institute of International Affairs in Johannesburg, according to the head-note in this article. He has analysed the plan, and has a heading "Population Movements Implicit in the Homelands Proposal". He states that "the Report does not explicitly state how many persons will need to move if its recommendations are fully implemented"—that is a correct understanding, is it, of the report, so far as you know? It does not explicitly state how many persons will need to move if its recommendations are fully implemented?

Mr. DAHLMANN: No, I think a different thing has been stated—that nobody (that applies to Whites and non-Whites) will be forced to go to another place.

Mr. GROSS: Will you please, if I may invite you, answer my questions "yes" or "no" where possible? The statement is "the Report does not explicitly state how many persons will need to move if its recommendations are fully implemented". Is that correct, or is it not?

Mr. DAHLMANN: That is correct.

Mr. GROSS: That is correct. Now then, his analysis goes on to say:

"Part D, which deals with homelands, gives 1960 population figures for each ethnic group, but these figures refer [and he has this in italics] not to the actual population of the proposed homeland area, but to the total membership of the group concerned, irrespective of where individuals are at present living."

I will pause there to ask whether you have heard it complained of, or the view expressed in your consultations and conferences, that there is a potentially misleading aspect of the way the Odendaal Commission report sets up the population figures? Have you ever encountered that question or query?

Mr. DAHLMANN: Never.

Mr. GROSS: You never have. Now let me take as an example, at page 95, with respect to Hereroland.

The PRESIDENT: Mr. Dahlmann, would you look at the report which is before you there?

Mr. GROSS: Page 95, paragraph No. 6 on the left-hand column—Chapter 6—is headed "In Respect of Hereroland" and states "Herero population 1960: 35,354". It is a fact, is it not, that this actually refers to the entire Herero population throughout the Territory? Is that not correct, at the present time?

Mr. DAHLMANN: That is correct.



Mr. GROSS: In order to avoid any possible confusion by the editorial form in which this is placed and to which attention is called by Mr. Laurie in his study, the actual fact is, is it not, that in the proposed Hereroland there is at the present time a population of approximately 11,000? Is that correct, so far as you know?

Mr. DAHLMANN: I am not familiar with that figure.

Mr. GROSS: That will be found in the Odendaal Commission report in table XX and is undisputed by the Applicants. I would prefer, Mr. President, with your indulgence, to make the exact citation—tables XIX and XX on page 41 tell the whole story. It will be found in table XX that there are in home areas 15,000 Hereros. Table XIX shows that in the urban areas there are 9,000 Hereros and in the rural areas 10,000. Therefore, by a simple process of deduction, is it not so, that by subtraction, which is the method used by Mr. Laurie, there are 11,000 only out of the 35,000 Hereros that are presently living in what is to be the new Hereroland—is that correct, or would you have any reason to dispute the figure?

The PRESIDENT: How do you arrive at that, Mr. Gross? At the moment I don't see it.

Mr. GROSS: Sir, the figures are broken down this way: there is set forth in table XIX on page 41 the number of Hereros living in the urban areas, and that totals 9,192; there are 10,606 Hereros living in the rural areas. Then when you move over, so that you subtract those approximately 20,000 Hereros from the total population, you have a balance of . . .

The PRESIDENT: 15,000.

Mr. GROSS: 15,000. We are dealing with these 15,000; now I am coming to the demonstration that of these 15,000, 4,000 live outside what is now the proposed Hereroland. That demonstration arises from still another table in another portion of the report which shows the present Herero population in three of the Reserves from which they would be expected to depart and go to the new Hereroland. That is shown at table XX, page 41, with respect to the three home areas in which Hereros now live which they would be persuaded to leave. These are at the top of page 97—Aminuis, Otjohorongongo and Ovitoto—those three Reserves would no longer be occupied by Herero who now live in them if the new recommendations were adopted. With respect to those three Reserves there are, according to table XX on page 41, in Aminuis 1,911 Hereros, in Otjohorongongo 1,840 Hereros and in Ovitoto 1,000 Hereros; that group totalling something of the order of 4,000 do not now live in what will be Hereroland, Sir, and this leaves the figure of 11,000.

The PRESIDENT: Thank you—that is the way in which you arrived at this figure?

Mr. GROSS: That is right, Sir.

The PRESIDENT: Then perhaps you might direct your question to the witness along those lines.

Mr. GROSS: Yes, Sir, and I apologize for the difficulty of building it up, or extrapolating it, but this is the derivation.

The PRESIDENT: Does the witness agree with that?

Mr. DAHLMANN: Shall I answer the question? No. 1, no one is forced to go to these future homelands, and No. 2, I am sorry to say so, but this is a bad example, to my mind, because as I mentioned before the Hereros were not prepared to discuss things with the Odendaal Commission, so there was no common ground for consultations; and the

Odendaal Commission could not possibly leave the Hereros out of their plan and of their recommendations, so they had to propose something after consultations with all the other groups, and I think the door for consultations about this future Hereroland is still open.

Mr. GROSS: Now Sir, we turn to Damaraland. With respect to Damaraland as to which there were some consultations—I think you are aware of that, are you?

Mr. DAHLMANN: Yes, Sir.

Mr. GROSS: Now with respect to Damaraland, on the basis of the same tables, and first with reference to the Odendaal Commission report, to avoid any possible confusion by the editorial format which has been said to occasion some confusion, there is on page 89, Section V, of the Odendaal report, the following under the heading of paragraph 5—“In respect of Damaraland, Population 1960: 44,353. From the format, Sir, it might be inferred or implied that the population of Damaraland is 44,353 but is it not the fact, Sir, that the 44,353 set forth here as the population of Damaraland in fact represents the population of Damaras widely scattered through South West Africa in the southern sector? Is that not correct?

Mr. DAHLMANN: That is correct, Mr. President.

Mr. GROSS: And do you know, Sir, whether it is a fact that despite the impression that might be created that 44,000 more Damaras live in what is called Damaraland here, that when the analysis is made of the health section of the Odendaal Commission report, which is at page 183, paragraph 794, it is found that there are a mere 5,000 people living in the whole of the proposed new Damaraland? Is that correct so far as you are aware, Sir?

The PRESIDENT: Do you know one way or the other, witness?

Mr. DAHLMANN: I do not know exactly. Shall I refer only to this figure or to what shall I refer?

Mr. GROSS: May I simplify it, with the President's permission, and ask you whether you have taken into account, in your analysis of the factors underlying the indigenous political movements and attitudes, the result in terms of movement of population which would be in Mr. Laurie's phrase, “implicit in the accomplishment of the Odendaal recommendations”? Have you taken this factor into account in your analysis, Sir?

Mr. DAHLMANN: I have taken different factors into account.

The PRESIDENT: Have you taken this one, that is the point.

Mr. DAHLMANN: Including this one.

Mr. GROSS: And have you thought it significant enough to make any sort of study or analysis of the number of persons who would be removed voluntarily or otherwise in the accomplishment of this plan?

Mr. DAHLMANN: Mr. President, that will depend on the opportunities offered to these people within the future Damaraland, whether they will be attracted by these opportunities or not and they are free to choose whether they will move or not.

Mr. GROSS: That is the extent of the answer to my question of whether you considered the factor of the numbers of people who would be moved in the accomplishment of this plan?

Mr. DAHLMANN: But they will not be moved, they are free to do whatever they prefer.

Mr. GROSS: Now Sir, we turn to Namaland. With respect to the proposed Namaland, the Odendaal Commission report at page 101 in this

same editorial format, sets forth that—"In Respect of Namaland, Nama population 1960: 34,806". Now, Sir, by reference to another and apparently unrelated section of the Odendaal report, which is page 187, at paragraph 818, you will find, Sir, that the proposed Namaland presently carries a population of only 4,100. Do you have any reason to doubt the accuracy of that figure, Sir?

Mr. DAHLMANN: I do not know personally the exact figure of Namas living in future Namaland.

Mr. GROSS: Thank you, Sir. Let us take another illustration—Tswanaland. You will find, Sir, in the Odendaal Commission report, page 99, in this same format, section 8—"In Respect of the Tswana. Population 1960: 2,632." Now, Sir, in paragraph 378 on page 99, you will find that there are 425 Tswanas. These, Sir, are not in what would be Tswanaland at all but in the adjacent territory of Aminuis, which is not to be included in the new homeland of Tswanaland. Do you have any basis for disagreeing with or questioning those figures?

The PRESIDENT: Mr. Gross, it is quite obvious that you draw certain conclusions from the figures and those conclusions may be perfectly correct but it is a little difficult to put to a witness, when it takes you some time yourself to find out how it is arrived at: have you any reason to disagree with those figures? I have no reason to disagree, and nobody else has because they have not been checked precisely yet but they will be checked. In each particular case, it will be seen that when reference is made to Namaland it is the future Namaland, or when to Hereroland it is the future Hereroland, and the total figure given in respect of each coincides precisely with the figures given on table XIX. The point which is being put to you, Mr. Dahlmann—I think there is some cross purposes between you—in each of these cases, there is involved the carrying out of the scheme of the various homelands in the report, the movement of substantial numbers of people to get to the homeland which is to be marked out for them. The question, Mr. Gross I understood was directing his attention to was—did that create any political opposition and was it one of the reasons why the people of South West Africa or a number of them objected to the Odendaal report. That is really the question, isn't it?

Mr. GROSS: Yes, Mr. President.

Mr. DAHLMANN: Mr. President, a number of people within South West Africa objected against the Odendaal report but as far as the different groups are concerned and the homelands—some of them are existing and others will be or are supposed to be created—the vast majority of the non-Whites in South West Africa are not in opposition with the Government because of the future implementation of the Odendaal plan. There are small groups which are definitely in opposition and which are, as I explained, in opposition to any plan which this Government is going to introduce.

Mr. GROSS: With respect to the Natives who reside in the urban areas of the southern sector, which is described as the modern or exchange economy of the southern sector, is it your understanding, as an analyst and political expert, that the Odendaal Commission plan contemplates that those Natives residing there will be persuaded or urged to go to the homelands physically?

Mr. DAHLMANN: Mr. President, all these non-Whites who are living in the so-called Police Zone have their links and relations with people in their Reserves, most of them own cattle or have their families there and

they are very closely connected to the present Reserves. That does not only apply to the migrant labour to the Ovambos, but also to those who permanently earn their living in the Police Zone. These people are free to stay there, or they might find it more attractive to go to the Reserves or to their homelands, because these homelands might offer much better opportunities than they had under the present situation where they have to face the competition from the Whites. I think the Odendaal plan makes it more or less clear, and I can only repeat, that these individuals or groups will not be moved, they can stay there or, if they think they have better possibilities in their homelands then they are free to go to their homelands. It is, of course, important that the parts are of South West Africa which are not very highly developed. At present only this nucleus, this centre part is further developed than the other areas, and it is quite obvious that the Government is interested in developing further parts of the country. Therefore, the Government might be interested and might persuade those who are living in the Police Zone to develop underdeveloped areas.

Mr. GROSS: Sir, you referred to as one of the possibly motivating factors the desire, I am paraphrasing loosely, to avoid the risks or disadvantages of economic competition with the Whites. Are you aware, from your studies and political observation, of the nature and extent of the limitations imposed upon the freedom of economic opportunity in the case of Natives in the urban areas?

Mr. DAHLMANN: I am aware of certain restrictions, certain laws, which I must say are not very important in practice.

Mr. GROSS: You mean, Sir, that the limitations upon a Native obtaining jobs in certain industries, or certain positions above the rank of common labourer or semi-skilled labourer are not important? Is that what you mean?

The PRESIDENT: Not important in practice he says.

Mr. DAHLMANN: No, Mr. President. The factual position is that many jobs are offered and only a few non-Whites are qualified to apply for these jobs. That is actually the position.

Mr. GROSS: Yes, Sir. There has been repeated testimony on this point and in fairness to you I will make that clear and, to spare the Court's time, I will not press you to elaborate that particular answer. I would like to ask you, Sir, if you can explain to the Court why it is necessary to impose job restrictions upon non-Whites if there are too few applicants to fill the demand?

Mr. DAHLMANN: Mr. President, there might be some reasons for that. First, I know only of a few restrictions and within not only the Native area, the homelands and Reserves, but also within the townships the non-Whites have almost unlimited opportunities and it is sad that only a few are taking these chances and opportunities which are given to them. But we have already one doctor in Windhoek and in Katutura there are butchers, shop-owners, garage-owners and so on.

Mr. GROSS: Katutura being the so-called Native township I take it? Is that correct?

Mr. DAHLMANN: Katutura is . . .

Mr. GROSS: That is the Native township is it not, Sir?

Mr. DAHLMANN: Well, it is one Native township, one can say. It is the modern Native township.

Mr. GROSS: Yes, Sir. With respect to the economy, and I am now

referring not merely to the Native township but to the economy as a whole in the southern sector in the urban areas, would you (or do you consider that you have answered this question already) explain to the Court why there are restrictions imposed upon non-Whites in respect of employment and jobs—job reservations—if they would suffer from competition with the Whites?

Mr. DAHLMANN: Mr. President, that might be to avoid social friction, for example. On the other side there are also restrictions imposed on the Whites and the reason, I think, will be more or less the same—to keep the peace and to avoid social friction.

Mr. GROSS: Sir, would you testify that the “social friction” to which you refer would be that friction which would be created by Whites being concerned with non-White competition for jobs?

Mr. DAHLMANN: It can happen on both sides and there might be another reason, Mr. President. For example, the Government policy might be to discourage certain non-Whites from taking certain jobs or getting the qualifications for certain jobs because there is no demand for these jobs at the present time or in the near future. That might also be a possibility.

Mr. GROSS: So that if there is a limited demand is it your analysis that the White achieves and is entitled to the automatic priority for the limited number of jobs available, Sir?

Mr. DAHLMANN: No, Mr. President, that is not quite correct. The aim is to develop further parts of the country, that is the big aim, and you need, for example, bricklayers, people who are able to build roads, who are able to drive engines or these road construction machines, and so on. We have these people, trained and skilled labour.

The PRESIDENT: Are you speaking of non-Whites?

Mr. DAHLMANN: Yes, of non-Whites. Only of non-Whites at present. There might be other professions—teachers, of course. We desperately need teachers in these territories and in the whole of the Territory. But, to give you an example, we do not need historians or professors of art or anything like that. We only need motor mechanics on a limited scale because there are not very many cars driven by non-Whites in the whole Territory. So I think it is the policy of the Government to get trained people for all the jobs which will become available within the near future.

Mr. GROSS: Sir, has your newspaper—I believe it is called the *Allgemeine Zeitung*, is that correct?

Mr. DAHLMANN: Yes, that is correct.

Mr. GROSS: You are the editor, are you not?

Mr. DAHLMANN: Yes.

Mr. GROSS: And that has a circulation among an important element of the White population, does it not, Sir?

Mr. DAHLMANN: It is a German language paper, as I have stated.

Mr. GROSS: I assume that you would agree that the persons to whom the paper circulates are important members of the community economically and otherwise and among the leadership in the community? Would you agree, Sir?

Mr. DAHLMANN: I think so.

Mr. GROSS: Now, has the editorial policy of your newspaper been directed, at any time during the last two or three years for example, toward the question of job reservation on a racial basis?

Mr. DAHLMANN: No, Mr. President. I have already explained to you

that in practice this question is not important in South West Africa. There are so many jobs offered and we would be very happy, especially under the present conditions, if we could have qualified people for the jobs offered.

The PRESIDENT: What kinds of jobs are they that you are speaking about?

Mr. DAHLMANN: Clerical jobs, drivers, nurses, teachers, people who are able to handle road construction machinery and so on.

Mr. GROSS: Now, Sir, would there be any reason for the limitation of opportunity to the type of jobs you mentioned or what would be the reason for not advocating, in the case of your newspaper for example, a wide-open unrestricted opportunity to all on the basis of merit and irrespective of race?

Mr. DAHLMANN: Mr. President, the main task at present is to encourage these people, the non-Whites, to get any training at all and only at a later stage, when we have quite an amount of semi-skilled and skilled labour, then we can go a step forward and we can say, right, now we need doctors and professors, university teachers and so on.

Mr. GROSS: And you think that is an explanation for these reservations and restrictions being applied on a racial or ethnic basis?

Mr. DAHLMANN: Mr. President, I have testified already and I cannot add much to what I have said, that it is to avoid friction because, as far as I know (it was before my time), there was some friction along that line.

Mr. GROSS: Now, Sir, having made clear the extent of population movement which would be implicit in the carrying out of the Odendaal Commission homelands recommendations, I should like, by way of a brief summary on that, Sir, to read from the study to which I referred by Mr. Gordon Laurie—a South African study—in which he says:

“If we, as it were, set population movement against gain in land area we find that:

74 per cent. of the Herero population will move and Herero land will increase in area by about 45 per cent.;

87 per cent. of the Namas will move and Namaland will be more than doubled in area;

94 per cent. of the Damaras and 95 per cent. of the Bushmen will move, but each will, for the first time, have a homeland of their own.”

Now, Sir, with respect to the percentage of the various populations that would be moved in implementation of this plan, may I come back again and specifically now to the Herero, Nama and Damara residing in the urban areas and ask you, Sir, whether you regard it as a policy of the Government and of the Odendaal Commission report to encourage a large-scale movement of these people from the urban areas to the new homelands?

Mr. DAHLMANN: Mr. President, the future will prove that. I can only state that, from my own observation, I think we should leave Hereroland out because, as I have said before, it is a rather bad example since the Hereros refused to be consulted. As far as the other future homelands are concerned, I can only state from my own observation that these future homelands—I refer only to Damaraland and Namaland—offer, I would not say unlimited possibilities and opportunities, but they are, agricul-

turally speaking, the two best areas we have got within the Police Zone. There might be one other area which you could compare with the future Damaraland and Namaland as far as agriculture is concerned and that is the Rehoboth Baster Gebiet. But Namaland and Damaraland are, from the point of view of agriculture, extremely good areas.

The PRESIDENT: How do the new Namaland and Damaraland compare in terms of quality, carrying capacity and productive capacity, with the Reserves from which they would have to move to go to them?

Mr. DAHLMANN: Mr. President, if I might give you one example: it is said in the Odendaal plan that the people from Warmbad should go to the future Namaland, I think that is correct, and this future Namaland cannot be compared because it gives a much better opportunity than this dry place in the south of South West Africa—the Warmbad area, where you have no grass sometimes after these prolonged periods of drought—and the future Namaland offers these people, especially from the Warmbad area, much better opportunities, much better farming opportunities.

Mr. GROSS: Sir, with respect to the honourable President's question, looking again at table XIX on page 41 and referring to Damara, there are, are there not, 18,499 Damara in the urban areas and 20,260 in the rural areas? That is a total, Sir, is it not, of approximately 38-39,000? In the Reserves or home areas on that same table, there are only 5,285? Is that correct, Sir?

Mr. DAHLMANN: Yes.

Mr. GROSS: My questions, Sir, have been directed and are directed still, first of all to the 18,500 Damaras in the urban areas—I am referring now to Damaras—I had before been referring to Damaras, Namas and Hereros—but let us take one at a time. Now with respect to this sizeable population of Damaras in the urban areas, did I understand your answer to my question with regard to political policy and objectives of the Government to be that these 18,500, approximately, would be encouraged to move to the proposed homeland from the urban areas?

Mr. DAHLMANN: Yes, there is no reason why they should not be encouraged to develop this area of the country, which is also a very good area from the agricultural point of view and there is a mine in that area already. I cannot say much more than that, only the future can prove that and it would be only too good if the non-White could keep the present development which has already taken place, or if they could develop these parts of the country better in future.

Mr. GROSS: What, Sir, would you feel would be the economic consequences in the economy of the urban area if the 18,500 Damaras should leave the urban areas for their bright prospects in that homeland?

Mr. DAHLMANN: Mr. President, I would not know all these implications at present, I cannot tell.

Mr. GROSS: Do you think, Sir, that by reason of automation, or otherwise, the urban area economy will be able to get along without Native labour, or does that take you into the field of economics and beyond your ken, Sir?

Mr. DAHLMANN: I am not an expert in the field of economy and only one thing I can say—the urban areas would be able to survive or to live with much less non-White than we have there at present. You see, the position is that as such we employ much more non-White than we have to, to give them the opportunity to earn some money. It is not necessary to employ as many as that.

Mr. GROSS: Sir, are there any non-White employers in the southern sector, in the urban areas?

Mr. DAHLMANN: Yes of course, Mr. President.

Mr. GROSS: Outside of Katutura and, let us say, in the case of the Windhoek area?

Mr. DAHLMANN: Also outside of Katutura. That applies to the whole Territory. We have, for example, boat-owners in Walvis Bay, I think that is a job of an employer—a good one because they earn . . . I cannot give you any figures but they earn a terrific amount of money.

Mr. GROSS: Sir, when you say "we", meaning the Whites, employers offer more opportunities than the demand or requirement, that is a paraphrase of your testimony, is it?

Mr. DAHLMANN: When I said "we", at present, I meant South West Africa.

Mr. GROSS: Now, Sir, would you say that, from a political point of view, the political parties and organizations such as they are, and may exist, are influenced, and even perhaps deeply affected, by the uncertainty concerning the future of their place of residence and their status? Would you say this was a factor, in your expert analysis, which would account for some agitation or emotion in their position?

Mr. DAHLMANN: No, definitely not. Mr. President, I think the outside world takes these organizations a little bit too seriously. As I tried already to point out, they have very limited support and people—as we say, the man on the street—are not much interested in these political parties and organizations. As I said in my evidence, they are much more closely linked to their different tribes and there is no uncertainty whatsoever, I think the present good economic conditions are the main factor why these organizations enjoy so little support.

Mr. GROSS: With respect to the lack of uncertainty to which you have just testified, would you say, Mr. Dahlmann, that you could indicate any projection over what you would regard as a realistic nature, from a political point of view, of the method and time by which this major development may take place. First taking the question of time, when do you envisage this programme being accomplished?

Mr. DAHLMANN: Mr. President, that depends on the people themselves and we, and I mean now political observers, in South West Africa are sometimes of the opinion, or they ask themselves, whether this development is not even too fast at present, whether the non-Whites can understand all these things which are going on at present, but I cannot say or judge how long that will take.

Mr. GROSS: Are you, Sir, also able to express an opinion from the political point of view as to what methods of persuasion have been used or may be used to accomplish this move?

Mr. DAHLMANN: Nothing has been used so far but I think it is common knowledge that the implementation, of the political part, of the Odendaal plan has been set aside.

Mr. GROSS: It would be purely speculative to make an estimate as to type of persuasion which would be necessary to accomplish the move, I take it?

Mr. DAHLMANN: I think the Government is very serious about saying they do not want to force anybody.

Mr. GROSS: Yes, I have no doubt, Sir. In the *Hansard* House of Assembly debates, to which reference has been made in earlier proceed-



ings, No. 15, 4 May-8 May 1964, which is the Third Session of the Second Parliament, at column 5516, the Deputy Minister for South West Africa Affairs, in the debate on the Odendaal Commission report, stated as follows:

“The honourable leader of the opposition said in his speech at Windhoek that they were opposed to moving people by force. Is there one word in the Report to suggest that those people should be forced to go to those homelands? It says the opposite. They must be persuaded to go there. I am convinced we should be able to persuade those people to go.”

Now, Sir, I am not asking you to read the mind of the Deputy Minister, but from your own observation, let us say, of the Katutura events, would you express an opinion concerning the methods by which persuasion would be exerted?

Mr. DAHLMANN: What do you mean by Katutura events, may I ask?

Mr. GROSS: Yes, indeed, with the President's permission, I would be glad to clarify my question to you.

The PRESIDENT: By all means.

Mr. GROSS: Thank you, Sir. The Katutura events have been referred to by you in your testimony, Sir, in connection with the report of the Commission of Enquiry, have they not?

Mr. DAHLMANN: You mean the occurrences at the old location?

Mr. GROSS: I mean the incidents in which several persons were killed, yes, Sir.

Mr. DAHLMANN: Yes.

Mr. GROSS: And the December 1959 occurrences.

Mr. DAHLMANN: Yes.

Mr. GROSS: And you testified, did you not, that you were familiar with the circumstances attending that matter and the report of the Commission of Enquiry?

Mr. DAHLMANN: Yes, I am familiar with it. I did not know what you meant by “Katutura events”.

Mr. GROSS: I am attempting to explain, Sir, with the President's permission. The question relates to the methods of persuasion which have been used in respect of the attempt to obtain the removal, by persuasion, of some thousands of persons from the old quarters to the Katutura township. Does this enlighten you, Sir, with respect to the intent of my question?

Mr. DAHLMANN: Yes, but I could not understand your question because at that time there was no persuasion whatsoever, because removal was, at that time, completely impossible because there was not a single house completed at that stage. You see, the disturbances took place on the night of 10-11 December and at that time not a single house had been completed in the new township of Katutura, and only a few weeks later, when the people from the old location—they were intimidated and they were afraid of future disturbances—urged the town council to complete the houses, and only then a small number of houses had been completed, and only then it was possible to allow the first number of non-Whites to go to the new township.

The PRESIDENT: By whom were they intimidated?

Mr. DAHLMANN: By the other non-Whites, by the so-called political leaders, and I think, too, a small number of huts had been set on fire.

Mr. GROSS: Sir, are you, or are you not, familiar with the methods, if any, of persuasion, which have been employed at any time in connection with the move of some 6,000 persons to Katutura from the old location? Are you familiar with any efforts made by anybody to persuade them to move?

Mr. DAHLMANN: Yes, of course, Mr. President, many employers have persuaded their employees to move to Katutura and the reasons are quite obvious. I think in the old location we had only nine latrines for, I think, 14,000 people. No, that is not true, 200 seats, 200 latrines and 9 water taps and no water toilets, and it is in the interests of the employer that his employees are living under normal living conditions—are living in better living conditions—in hygienic living conditions—and they urged them, of course, and they asked them, “why do you not go to Katutura” and the employers shared part of the rent for the houses and they are also paying bus fares. The second thing was that the town council evaluated the huts of the old location.

The PRESIDENT: The what?

Mr. DAHLMANN: The huts.

The PRESIDENT: Yes, but what did they do to the huts?

Mr. DAHLMANN: They evaluated them.

Mr. GROSS: Appraised them, I suppose, for purchase or condemnation.

Mr. DAHLMANN: The non-Whites who left the old location got a remarkable amount of money for the old slums.

Mr. GROSS: Now, Sir, in the context in which we are discussing the political aspects of the attempts at persuasion which would be necessary to accomplish the move, or a move, and I refer to the Katutura in this respect for your clarification, with respect to lessons which may be learned for an expert political analyst interested in the future of this territory, Sir, from the Katutura experience, I would like to ask you, Sir, for your evaluation, and I will be more specific in my question when I have read this paragraph 455 from page 119 of the Odendaal Commission report, in which the Commission recommends:

“That, in regard to the residential areas of non-Whites in Windhoek (excluding the Coloureds, Bastards and Nama), the authority concerned should do everything in its power to persuade the approximately 6,000 non-Whites still resident in the slum area to move, on the grounds of obvious health reasons and for their general benefit, to Katutura with its excellent amenities . . .”

Now, Sir, from the standpoint of your political analysis, why is it necessary at this stage for the Odendaal Commission to be recommending that the authority “should do everything in its power to persuade the approximately 6,000” to move, and so forth. What, Sir, on the basis of your experience accounts for their reluctance and failure to move so far?

Mr. DAHLMANN: Mr. President, it is very hard for me to understand, I cannot understand why a person who is in opposition to the Government cannot live in a decent house. Nobody has anything against the opposition to the Government, they are entitled to do that, they are entitled to have their parties and meetings, and so on, but why cannot they do it under normal living conditions, because I think the living conditions in the old location are terrible?

Mr. GROSS: Sir, they are concededly slum areas. Does this not make it all the more surprising that these 6,000 persons have not moved and that

the recommendation is now made in the sense and form in which it is?

Mr. DAHLMANN: Mr. President, that is one thing that one cannot understand—at least, I cannot understand it—and many visitors to the Territory cannot understand it either.

The PRESIDENT: Is there a political reason behind it?

Mr. DAHLMANN: There is tribal discipline and the objections of the Herero against Government policy.

Mr. GROSS: Are you familiar, Sir, with the reason which was assigned in the same debate in the House of Assembly by the Deputy Minister for South West Africa Affairs?

Mr. DAHLMANN: Which statement was it?

Mr. GROSS: The statement with respect to the difficulty and the reasons why the move had not been accomplished, despite the fact that it was from a slum area to an obviously more satisfactory area from a living point of view. Are you familiar with the reason assigned by the Deputy Minister in that debate?

Mr. DAHLMANN: No.

Mr. GROSS: You do not recall it, Sir?

Mr. DAHLMANN: No.

Mr. GROSS: At column 5516 of the *Hansard*, to which I have referred and cited, the Deputy Minister for South West Africa Affairs said:

“The Leader of the Opposition yesterday asked ‘what about Katutura, the people are still in the old location’. I shall tell him why they are there, they are still there because they have been incited by Whites not to move; they are being incited by the opposition not to move.”

Would you agree with the analysis of the Deputy Minister as to that being a reason for the failure to move?

Mr. DAHLMANN: Mr. President, I do not have all the information that the Deputy Minister has; I can say that a number of Whites were interested that the non-Whites should not move from the old location to Katutura; a few shop owners, to give you an example, where the shops were in the vicinity of the old location, but I cannot state from my own experience whether there were also some politicians who supported the attitude of the non-Whites in the old location.

Mr. GROSS: I shall cite to you, if I may, Mr. President, a reason assigned by the people themselves concerned before the Commission of Enquiry, which reason is set forth in the report of the Commission of Enquiry, to which you referred in your testimony on Friday. I refer to the report as it is printed in the United Nations document, *Report of the Committee on South West Africa*, Official Records of the 15th Session of the General Assembly, Supplement No. 12 (A/4464). At page 61 of this document, the following statements are made by the honourable Commissioner of the Enquiry.

I quote paragraph 20, and I shall be glad to go over it but I wish to be sure the honourable Court and you understand the context in full.

“On the part of certain of the occupants of the old location, chiefly the Hereros, there has existed for some considerable time dissatisfaction over the proposed removal; that this dissatisfaction developed into general opposition to the move only became evident in September 1959, when it first came to the knowledge of the municipal officials in charge of the location . . .”

I will pause there to ask you whether it is not correct that this September 1959 is some months prior to the occurrences which are the subject of the enquiry? That is correct, is it not, Sir? Can you answer yes or no?

Mr. DAHLMANN: Mr. President, that is correct. Before that time there was no opposition.

Mr. GROSS: I have not asked about prior to that time, Mr. President.

The PRESIDENT: Just answer the question, witness.

Mr. GROSS: Now, to go on from there.

"A meeting of the Advisory Board was then convened, and it was attended by some 200 Natives, and three grounds of objection to the removal to Katutura were advanced: (a) that it would be impossible for the inhabitants to pay the rent which would be charged for the houses there, and also for the increased bus fares to Windhoek; (b) that the proposed regulations were too strict; and (c) [and to this I invite your attention particularly, although you might comment of course on any other aspect of this] that the proposed removal was really a part of the general segregation policy (*apartheids beleid*) of the Union Government, which is totally unacceptable to all non-Europeans."

Now, Sir, with specific reference to this last reason brought forth in these hearings to which the Commissioner refers, what, if any, is your opinion or analysis, from a political point of view, concerning the role, if any, played by this factor of total unacceptability of *apartheids beleid* as a reason for deterring the move to these better quarters from the slum areas?

Mr. DAHLMANN: At that time, Mr. President, when the disturbances happened, the rent of the houses had not been fixed.

Mr. GROSS: Mr. President, I do not know whether I am obfuscating the issue; I am referring to statements made in September 1959, several months prior to the events in question, and I am anxious, if possible, for the witness to address himself to the context of time, unless he misunderstands my questions.

The PRESIDENT: Do you understand the questions put to you?

Mr. DAHLMANN: Yes, I understand.

The PRESIDENT: Well then, answer the questions, if you can. Please proceed.

Mr. DAHLMANN: This question that certain non-Whites are in opposition against the apartheid policy is admitted, and opposition still exists and that is why there is no other obvious reason why the minority is not prepared to go to Katutura, but in the meantime I think it is also clear that the majority of the inhabitants of the old location have moved to Katutura.

The PRESIDENT: Could I ask, Mr. Dahlmann, when you say that there was opposition to the apartheid policy, do I understand it to mean that the non-Whites were in opposition throughout the territory, or was it limited to the 6,000? You had better give the proper picture to the Court, whatever it is.

Mr. DAHLMANN: We are only talking about the Windhoek location, I think.

Mr. GROSS: It is difficult for me to interpret the full intention of the author of the report of the Commission of Enquiry, but according to the Summary it is stated that one of the reasons assigned by this group that

met in September 1959 in opposition to the move, on the part of a substantial number of the persons concerned, was that "the proposed removal was really a part of the general segregation policy of the Union Government which is totally unacceptable to all non-Europeans". This is not in terms limited to the 6,000 persons in the situation.

The PRESIDENT: No, but the comment as I understand you reading it, Mr. Gross, is that it is "one of the reasons given", he does not say, or does he, that as a fact it is wholly unacceptable to all non-Europeans?

Mr. GROSS: No, Mr. President, I appreciate very much the chance to clarify my question, because I thought I had asked, and intended to ask, for the witness's expert opinion concerning the validity or otherwise of that statement with respect to the unacceptability or total unacceptability to all non-Europeans, and I was anxious, Mr. President, with your indulgence to attain the witness's analysis of that as a conclusion.

[Public hearing of 12 October 1965]

Mr. GROSS: Mr. Dahlmann, yesterday at the conclusion of the proceedings we were discussing the possible reasons for the failure or refusal of a certain number of the Natives to move to the Katutura Township, and my questions concerning that were in respect of, generally, the analysis from a political point of view of the reasons for the refusal to move and of the methods of persuasion, as a possible indication of the shape of things to come in connection with what the Odendaal Commission report calls the great migration as contemplated in the implementation of the Odendaal plan. In that context I should like to draw your attention to the political analysis and the political factors entering into the political attitudes, anti-Government or otherwise, in respect of the Odendaal plan. With further reference to the matter of political attitudes and political actions, I should like to draw to your attention an article in the *Manchester Guardian* of 3 April 1965 by a political correspondent reflecting his observations on the basis of a visit to the Territory and interviews there. I read as follows:

"The political consciousness of the Africans may be partly measured by their boycott of the new African township of Katutura, near Windhoek. Built in 1959 to house about 10,000, Katutura is still not fully occupied in spite of official efforts. Many Africans [I will go over this if you wish, but to get it in full context], particularly the Herero (the most politically conscious tribe since they were decimated by the Germans at the turn of the century) insist on staying in their old and comparatively insanitary location. Whatever their reasons, the duration and effectiveness of the boycott are impressive."

Now, with respect to this political correspondent's report to which I have just referred, do you agree that the boycott of the move to Katutura, despite Government pressures or persuasion, is a fair symptom of their political consciousness, their consciousness of the necessity or purpose of political activity?

Mr. DAHLMANN: I think there are many questions involved. As far as the attitude of the non-Whites generally is concerned, I must briefly deal with the different population groups, with their political consciousness and with their attitude towards the Government.

I can be very brief with the northern part of the Territory . . .

Mr. GROSS: Mr. President, may I respectfully request that the answer be in terms of the Katutura context?

The PRESIDENT: Mr. Gross, you read a long statement from a correspondent, a great deal of which contains allegations of fact. I don't know to what extent you might later suggest that the witness did not answer the allegations of fact and therefore the facts might be taken to be correct. You asked him a very general question, and I think the witness is entitled to answer it in his own way.

Mr. GROSS: Thank you, Sir.

Mr. DAHLMANN: The northern territories, especially Ovamboland, the Okavango and the Caprivi Strip represent the majority of the non-White population of South West Africa, and these three territories are in favour of co-operation with the Government, and they are also in favour of the implementation of the political part of the Odendaal plan. I mentioned already the attitude of the chiefs and headmen who wrote to the Prime Minister, and I also mentioned the attitude of the 145 teachers, nurses and ministers who also wrote to the Prime Minister. In the Kaokoveld it is scarcely populated, but there you feel certain opposition towards the Government because there are a number of Hereros living there, and it is quite clear, and always admitted, that the Hereros are in opposition to the Government and also in opposition to the Odendaal plan. As far as the Damaras are concerned, the Damara tribal executive committee is against co-operation with the Government and also against the Odendaal plan. The paramount chief of the Damaras is in favour of the implementation of the Odendaal plan, and is also for co-operation with the Government, and I am very sure that the Damara tribal executive committee does not enjoy the support of the majority of the Damaras, because as the committee itself admits, the Damaras are not so group conscious as the other tribes of South West Africa.

Coming to the Bushmen, that is also a small group, and they are entirely dependent on Government protection.

The Rehoboth Basters, as I have explained already, have their own citizenship and are very proud of their own citizenship, although I must state that leaders of the Baster community expressed their opposition to the Government, and in the Rehoboth area you have this peculiar situation: on the one hand they are against the Government and also against the implementation of the Odendaal plan, but on the other hand they want to keep and to safeguard their identity as Baster burghers, Baster citizens, within their own area.

As far as the Namas are concerned, Chief Witbooi, it is quite clear, is against the Government, against the implementation of the Odendaal plan. Chief Witbooi is, as I also explained, the chief of 500 Namas altogether, that is, men, women and children. Other Nama chiefs and headmen are in favour of co-operation with the Government, and even Chief Dederic Isaak, who appeared for a short period on the list of the *Committee Members of Herero-dominated NUDO*, indicated just a few days before I left South West Africa that he had changed his mind and he is now prepared to co-operate with certain other chiefs and headmen who are in favour of co-operation with the Government.

The Coloureds—the vast majority, I think I can say—are definitely in favour of co-operation with the Government and also in favour of the Odendaal plan; they have expressed their views to that extent very often.

Coming back to the last population group, the Hereros: the Hereros, there is no doubt about it, are against co-operation with the Government, are against the Odendaal plan and are trying everything possible to make the situation for the Government difficult. The Hereros are dominating this NUDO party, and that is a nucleus of the opposition to the Government; and the Hereros are the driving force behind the boycott of the removal from the old location to the new township, Katutura. Those who refuse to go to the new township are in the majority Hereros, with a little bit of Damara and very limited Nama support within the location of Windhoek. And then one must ask, what are the plans of the Hereros and of NUDO, and they are not far away from the plans of the Government at all because, under African majority rule, NUDO favours regionalism—that means at the latest stage they are in favour of five different regions, one for each population group—the whole north for the Ovambos, Damara I think will be in the same region as the Odendaal Commission proposed, and the whole centre of the Territory they claimed for themselves, that should be Hereroland, and Namaland in the south, and the Rehoboth Basters should keep their present territory.

These are their own plans and they want to have a federation within this regionalism. They favour a federation in which each region should be represented equally; that means that the 245,000 Ovambos should have the same number of representatives within the federal Government as, for example, the Rehoboth Baster with, I think, 11,000 people. I explained already in my evidence that there is no region envisaged for the Whites.

Coming back to the last part of the question, the refusal to go to the new township from the old location does not reflect at all the attitude of all the non-Whites of the Territory and not even of the majority of non-Whites of the Territory. Even in Windhoek itself, it is clear that the majority has already gone to the new township Katutura, and only a minority, with the Hereros as the driving force behind it, refuses to go to the new township and is still in the old location.

The PRESIDENT: May I interpose just one question, Mr. Gross? What is the approximate population of people who are located in Katutura?

Mr. DAHLMANN: Mr. President, there are about 9,000 at present who are living in Katutura and about 6,000-7,000 in the old location.

Mr. GROSS: Now Mr. Dahlmann, you recall perhaps, Sir, that my question was whether you agreed or disagreed with the political observation that the refusal to move to Katutura indicated political consciousness. Would you agree, Sir, that it is a fair summary of the activities you just described in detail, and would you agree to the characterization of those many political activities you describe as amounting to a substantial degree of political consciousness among those concerned?

Mr. DAHLMANN: I explained, I think, in my evidence that there is a political consciousness amongst the leadership of the Hereros, there is no doubt about that. They are politically very conscious but that applies more or less to the leadership of the Hereros and is due to their tribal discipline—I think that is the most important factor. Within the Herero nation the politically conscious Herero leadership is definitely in a position to show strength.

Mr. GROSS: Now, Sir, again specifically—I am trying to confine my questions for the moment but you may roam where you will, Sir, if you could be responsive—but specifically with respect to Katutura and the

reasons underlying the failure to move, have you met in the course of your stay in South West Africa, Mr. J. D. Du P. Basson, who was a member of the House of Assembly?

Mr. DAHLMANN: No, I cannot remember.

Mr. GROSS: You have not encountered his name, Sir, in your political studies of the Territory?

Mr. DAHLMANN: I cannot recollect the name.

Mr. GROSS: Well, perhaps it might refresh your recollection to know that Mr. J. D. Du P. Basson is from Bezuidenhout.

Mr. DAHLMANN: Basson. Yes, I know him very well.

Mr. GROSS: Yes, it was my pronunciation that misled you. I apologize to the Court, Sir. You have met Mr. Basson, Sir?

Mr. DAHLMANN: Yes, I have.

Mr. GROSS: He was, was he not, a Member of Parliament of the South Africa Assembly in 1964 during the debate on the White Paper on the Odendaal Commission report?

Mr. DAHLMANN: Yes, I was also present there.

Mr. GROSS: You were present at those debates, Sir?

Mr. DAHLMANN: Yes.

Mr. GROSS: Mr. Basson was, was he not, a resident of South West Africa at one time?

Mr. DAHLMANN: Yes, that is correct. He was a resident of Windhoek.

Mr. GROSS: For approximately how long, do you happen to know?

Mr. DAHLMANN: For a number of years—I do not know where he was born but he was living in Windhoek for a number of years.

Mr. GROSS: Now, Sir, I refer to his statement in the House of Assembly debates in *Hansard*, the Third Session, Second Parliament, 4 May to 8 May 1964. This was during the course of the debate on the Government White Paper with respect to the Odendaal report. I should like to remind you of the following statement by Mr. Basson at column 5526:

“In respect of only these four states-to-be [and he mentions Damaraland, Hereroland, Tswanaland and Namaland] more than 97,000 people will have to be persuaded in terms of this Commission to settle in these artificially created homelands.”

Do you have any reason, Sir, to disagree with the figure of 97,000 approximately, to which he refers in that connection?

Mr. DAHLMANN: Mr. President, I cannot check this figure at the moment—it sounds rather high.

Mr. GROSS: Now, Sir, this will no doubt be clarified in the context of yesterday's session in which the precise breakdown was put into the record. Passing on from that, Mr. Basson goes on to say in column 5526:

“Let the Minister tell us how we are going to persuade them. They [that is presumably the authorities] failed with the removal scheme in Windhoek to Katutura and fared as badly with the removal Hoachanas to Utzawisis.”

Now, Sir, pausing there again, since this is the first mention of this latter, could you as briefly as possible, Sir, describe what you know about the removal of Namas from Hoachanas to Hżawisis to which Mr. Basson refers?

Mr. DAHLMANN: Mr. President, I can briefly say that I am very familiar with these things, I have been there at the end of 1958 and beginning of 1959, when the Namas, the Red Nation, in Hoachanas complained about



the idea of going to another Reserve in Hwawisis and I am very familiar with the background . . .

The PRESIDENT: Mr. Dahlmann, you were asked to give the picture in respect of it, I think. Is that so, Mr. Gross?

Mr. GROSS: I asked the witness to tell us as briefly as possible whether he could explain the circumstances accounting for the difficulties in connection with the removal?

Mr. DAHLMANN: Mr. President, there were some people in Hoachanas, the so-called Red Nation, who did not want to go to the new proposed reserve Hwawisis, and the Government tried to persuade them because at that time it was the impression that they would have better grazing grounds at Hwawisis and later on during the prolonged period of drought they did not have enough water there. But the Government was trying to persuade only a part of these members of the Red Nation to go to the new Reserve and especially the younger people, the older people had from the beginning, the right to stay there as long as they wished. There is, of course, always the factor of reluctance and suspicion against new schemes, that is the same thing all over the world, and some people have gone to the new Reserve and some others have not and they are free to stay there and that is a very limited number.

The PRESIDENT: How many went and how many stayed approximately?

Mr. DAHLMANN: Mr. President, I cannot give you the exact figure but I would say fifty-fifty.

Mr. GROSS: Now, Sir, Mr. Basson, after referring to the removal problem connected with the removal of the persons you have just described, goes on to say as follows and he is referring to the Minister, who has spoken:

"Now he blames 'agitators'. For years they have been struggling to move the people from the old location in Windhoek to the new one, and there are still 7,000 people in the old location. It is not a question of agitators but the problem is this and I was one of the few who, at the time, warned the Prime Minister and it is on record in this House, that when you do something in the name of apartheid, then whatever you do, whether it is good or bad, they resist it and it is turned down." (Columns 5526 and 5527.)

Sir, would you agree with Mr. Basson's analysis that a reason for the refusal to move is that it is, as he said, done in the name of apartheid?

Mr. DAHLMANN: Yes and no, Mr. President. As far as the Hereros are concerned, I am of the same opinion as Mr. Basson but as far as the other tribes are concerned, I am not in agreement with Mr. Basson and the Herero population consists of only 8 per cent. of the total population of South West Africa.

Mr. GROSS: Now, Sir, we will come back to your testimony with respect to the Hereros and their political activities. But first, we began with referring to the Katutura removal problem as possibly relevant to the greater migration as it is referred to in the Commission report. I refer to the reasons given by the persons concerned, or representatives of them, in opposition to the removal. I had referred yesterday, if I may refresh the witness's recollection, Mr. President, to the summary contained in a Commission of Enquiry report of a memorandum which had been submitted in September 1959 to the Advisory Committee concerning this problem. You recall that, Sir?

Mr. DAHLMANN: To the Advisory . . . ?

Mr. GROSS: Yes, Sir, I referred yesterday to the summary—Advisory Board it is called.

Mr. DAHLMANN: The Advisory Board of Katutura.

Mr. GROSS: Apparently so, Sir. The reference—and I wanted to get this clear in your recollection—is to paragraph 20 of the Commission of Enquiry report, to which I referred yesterday, and I believe you testified you were familiar with these proceedings?

Mr. DAHLMANN: Yes, I referred to paragraph 20.

Mr. GROSS: Now, paragraph 20 states as follows—this is the Commission of Enquiry report, that this dissatisfaction, and it relates to previous sentences: "On the part of certain of the occupants of the old location, chiefly the Hereros, there has existed for some considerable time dissatisfaction . . ."; then, if you notice, Sir, reference is made to the general opposition to the move, which are the words used by the Enquiry Commissioner:

"general opposition to the move only became evident in September 1959, when it first came to the knowledge of the municipal officials in charge of the location. A meeting of the Advisory Board was then convened, and it was attended by some 200 Natives, and three grounds of objection to the removal to Katutura were advanced."

I summarized them yesterday as reflected, here. Do you recall, Sir, the testimony, at this point?

Mr. DAHLMANN: Yes, I recall that.

Mr. GROSS: Now, this is to refresh your recollection, Sir. In the report of the Committee on South West Africa (this is the *General Assembly Official Record*, Fifteenth Session, Supplement No. 12 A/4464) there is a lengthier summary than the one given in the Commission of Enquiry report, which is headed "Reasons for the Opposition to the Removal", and that appears on pages 21 and following of the report of the South West Africa Committee.

Now, among the reasons for the opposition to the removal are the following:

"Chief Kutako, the OPO, [that is the Ovamboland People's Organization] and SWANU [all three, if you recall, had joined in this evidence] also contested the allegation that the old location was too small for expansion and expressed their opinion that the reason for the removal to Katutura was the fact that 'European' houses had been built right to the borders of the old location, which stood in the way of further European expansion in the area, and that the authorities regarded it as undesirable for Europeans and non-Europeans to live close to each other."

Do you have any reason to question the accuracy of the summary, which I have just read, that this was indeed one of the reasons assigned by the Natives for the refusal to move?

Mr. DAHLMANN: I do disagree with the contents of this statement.

Mr. GROSS: You disagree. Do you have any reasons, Sir, to disagree with the accuracy of this summary as to their reasons, quite apart from the merits or demerits of their reasons?

Mr. DAHLMANN: Yes, I do have.

Mr. GROSS: You disagree with this as an accurate summary?

Mr. DAHLMANN: I do.

Mr. GROSS: Now, Sir, have you yourself . . .

The PRESIDENT: What about your reasons? You were asked for your reasons.

Mr. DAHLMANN: Mr. President, there were negotiations between the town council and the Advisory Board for years and years and it was quite obvious, if you see the site of the old location in Windhoek and if you know the population figure, that something had to be done because the site was too small and there was no extension possible. There was a railway line, an industrial area and it was impossible to extend this old location, so some other plan had to be drawn up and all these things were in agreement with the Advisory Board and the Advisory Board had the opportunity to talk to the different people whom they represented. After long discussion, it was finally agreed to build this new township at the present site. The Advisory Board had the choice between three sites, as far as I remember correctly, and they decided that the new township, Katutura, should be built on the present site. You cannot build a township from today to tomorrow, or from September to December, so it was very well known to everybody in Windhoek that this township was under construction, and not only in September 1959. The township was supposed to be completed—the first part—in May 1960, and it was supposed to be fully completed somewhere in the middle of 1961. Only in September 1959, suddenly, there was a movement against the removal. At that stage, Mr. President, may huts had been evaluated already.

The PRESIDENT: Revaluated.

Mr. DAHLMANN: Valuated, yes; and the people living in these huts were satisfied with the valuation and only then started the agitation against the valuation, the removal and, finally, it culminated in the complete refusal to go to the new township and in the disturbances.

Mr. GROSS: Now, Sir. Were you finished?

Mr. DAHLMANN: I would like to mention one other thing, Mr. President. Mr. Gross quoted part of the report of the Commission of Enquiry, but it was of course only the allegation from the witnesses and not the findings. I do not know whether it is advisable to . . .

The PRESIDENT: What was the finding of the Commission?

Mr. DAHLMANN: If I continue to read paragraph 20, Mr. President: "According to the . . ."

Mr. GROSS: Mr. President, I would like to say that I am, Sir, with all respect, trying to keep, to the best of my competence and wit, my questions to a narrow compass. We are losing sight of the question. I have lost sight of the question in this discursive answer.

The PRESIDENT: I have not, Mr. Gross. Your suggestion was, to the witness, that the only reason, or a reason, for removing the people from the old site to the new site was to make way for White homes or White buildings and you asked him if he had any reason to disagree with that. He is now giving you his reasons and since you have, in the course of the last half hour, referred again to the report and the reason which was advanced at that particular time, and you seek to connect it up with Mr. Basson's statement, it seems to me that if the witness now concludes by saying what was the finding, then the Court knows precisely how the matter was viewed then by the Commissioners. I think the witness should reply to it. Then that concludes your statement on the matter, Mr. Dahlmann.

Mr. DAHLMANN: Mr. President: I continue to read paragraph 20:

"According to the evidence of the Presidents of the two Native political organizations, namely the Ovamboland Peoples Organization and the South West African Union (which will be referred to again as the 'OPO' and the 'SWANU') these are still the only factors upon which the present opposition is being based. There is, too, the position which Advocate Kotzé has urged the Commission to accept as correct."

And, again, Advocate Kotzé was a representative of the non-Whites.

The PRESIDENT: What is the conclusion?

Mr. DAHLMANN: The conclusion?

"The first of the grounds upon which the opposition to the removal was based by Advocate Kotzé, i.e., that an increase of rent to £2 a month was beyond the means of most of the Natives, is, in my opinion, not sound. Mr. de Wet, the location superintendent, stated that the house rent had not yet been fixed and that it had been decided that rents would be determined according to each family's earning capacity. He said, too, that the bus fares would not be increased to any appreciable extent. As to the second factor, i.e., that the proposed regulations are too strict, I am not in a position to judge. The regulations were not put before the Commission nor were any specific instances in which the regulations operated harshly referred to. Where, however, one and a quarter million pounds are being spent upon Native housing it can well be understood that provision must be made in the regulations for the maintenance of law and order in the location and some degree of strictness is inevitable.

I am of the opinion that the evidence which was adduced before the Commission has proved beyond any question that the riot in Windhoek Location on the night of the 10th to the 11th December must be regarded as part of the propaganda which those who claim to be the representatives of the Herero tribe have been making with the object of disparaging the Union of South Africa in the eyes of the United Nations. It is clear that the removal of the inhabitants of the old location to Katutura was to have started at the end of May 1960, and it would have been at least another year before the Hereros would have been required to move, and no other logical reason for opposing the removal at this point of time would appear to exist."

The PRESIDENT: How much more is there of it, Mr. Dahlmann?

Mr. DAHLMANN: Only a short paragraph; the last paragraph:

"The reasons for the opposition put forward by the self-appointed leaders of the Native population are not acceptable, for the letters sent from New York to those same leaders show clearly that the riot and the violence of which it formed part were exactly what the team which claimed to represent them at the United Nations was hoping for. They wanted it to happen and, when African blood was shed, they were, as Kerina so naively put it, prepared 'to make the most of it'."

Mr. GROSS: Mr. President, I should like to state for the record that it is not the purpose of these questions—this line of enquiry—to suggest in any way that this honourable Court should review or reconsider the findings of the Commission of Enquiry. My sole purpose, Sir, and my

questions have been intended to be directed solely to this end, was to establish in the record the reasons advanced by certain of the people and leaders concerned, the expression of their views and their reasons, Sir. When I asked the question of the witness, which I shall ask him again, with your permission, concerning another reason assigned by the persons themselves, my question, I believe the record will show, Sir, was whether the witness had any reason to question the accuracy of the fact that these reasons were assigned by these people. And, Sir, it is in that context and for that purpose that I read the following reason assigned by the OPO, the South West Africa National Union, and the Chief of the Hereros, as distinguished from their motives or incitation by others, to which you have testified repeatedly, and ask whether you have any reason to doubt that, in their testimony before the Advisory Board, they assigned the following as a reason for the opposition to the move.

Mr. DAHLMANN: May I interrupt before the . . .

The PRESIDENT: No, answer only questions put to you, Mr. Dahlmann.

Mr. GROSS: In fairness to the witness, whom I may have misled, I just want to make the purpose of my question clear, Mr. President, that anything relevant to the answer, in your judgment and discretion, of course you may refer to, but I want the question clearly understood, Sir. Is it correct to say that they advanced the following as a reason for the opposition to the move?

I will read now from page 65 of the report of the Committee on South West Africa, to which I have referred:

"It has been said that the old location site is too small for expansion; your petitioners contest this allegation. Any observer examining the area of the old location would not agree that there is no land for expansion; possibly some Europeans' land would have to be expropriated to facilitate such expansion, but surely this is preferable to moving a whole African community? In any event, if it is true that no further land is available, this does not necessarily imply that the present location should be removed; further land in other parts of Windhoek could be made available for the use of non-Whites, in addition to the old location."

Do you have any reason to believe, Sir, that that was not a reason assigned to the Advisory Board by these groups?

Mr. DAHLMANN: Mr. President, I do not doubt that these reasons have been forwarded to the Committee on South West Africa, but I cannot agree with these reasons because I know that they are not true—that is the only thing I can say.

Mr. GROSS: Now, Sir, I should like to put into evidence, with respect to my cross-examination and solely for purposes of the cross-examination, reference to Annex 6 of the report of the Committee on South West Africa.

The PRESIDENT: Is this in evidence already, Mr. Gross?

Mr. GROSS: It is in the documentation; yes, Sir.

The PRESIDENT: Then it is in evidence.

Mr. GROSS: That is correct, is it not? I wanted to confirm that, Mr. President.

The PRESIDENT: Yes, thank you.

Mr. GROSS: Annex 6 is entitled "Memorandum submitted to the Commission of Enquiry on behalf of Chief Hosea Kutako, the Ovamboland

Peoples Organization, and the South West Africa National Union", and what I have just read from page 65 of the report of the Committee on South West Africa is, in fact, from Annex 6, which is the memorandum itself.

Now, Sir, you have testified that you were present during the proceedings before the Commission of Enquiry—have you not testified to that effect, Sir?

Mr. DAHLMANN: That is correct, Mr. President.

Mr. GROSS: And that you are familiar with these proceedings?

Mr. DAHLMANN: Yes, Mr. President.

Mr. GROSS: And that you have stated, not merely by reference to the finding of the Commission of Enquiry, but on the basis of your own observation and analysis, you have given testimony with respect to so-called incitation of the Natives from certain persons in New York? Is that correct?

Mr. DAHLMANN: That is correct.

Mr. GROSS: When you responded to my question concerning whether or not these reasons were assigned to the Advisory Board and referred to in the Commission of Enquiry, would you now wish to amend your response to me that these reasons might have been advanced to the Committee on South West Africa but were not given to the Advisory Board or known to the Commission of Enquiry?

Mr. DAHLMANN: Mr. President, these reasons were known to the Commission of Enquiry, and the Commission of Enquiry referred also to a meeting with the Town Council, attended by the Mayor, the Town Councillors, the Chief of Police, the Native Commissioner, and approximately 200 non-Whites; there was freedom of speech and everybody could say what they liked, and these reasons were forwarded at that special meeting; I can remember it very well.

Mr. GROSS: And, Sir, was this not another reason assigned, and a rather important reason, for the refusal to move, and I quote again from the memorandum submitted to the Commission of Enquiry:

"(i) The proposed removal to Katutura is a further reason for the insecurity of the non-Whites. It is always the non-Whites who are moved to suit the convenience of the Whites. Your Petitioners fear that if Windhoek expands further the non-Whites will once more be moved. At one time the Hereros in Windhoek lived where the 'Native Hospital' is today. The Namias in Windhoek once lived where the Government buildings stand. They were all moved to the Old Location.

Similarly Hereros occupied Aupaikas and Furst Enwalte when the South African Government took control of South West Africa. They were forced to move to Orumbo in 1921, and to Aminuis Reserve in 1925.

Katutura means 'We have no permanent resident'. All these removals without their consent make the African people feel aliens in their own lands." (P. 65.)

This is the end of this reason, letter (i). Do you, Sir, now that I have read from the memorandum submitted to the Advisory Board, recall that this was, indeed, a reason assigned for the refusal to move?

Mr. DAHLMANN: Mr. President, I recollect these things very well; that was a reason given, and I also remember that all these reasons were dealt

with at this public meeting. I do not know whether I am allowed to explain these things further?

The PRESIDENT: No, apparently Mr. Gross only wants you to answer whether that was one of the reasons given, and that all appears in the evidence.

Mr. DAHLMANN: They were definitely reasons given.

Mr. GROSS: Now, Sir, are you aware of the reason given with respect to the opposition to the so-called policy to establish buffer zones between White and non-White areas? Does that phrase "buffer zones" in this context mean anything to you, Sir?

Mr. DAHLMANN: I have heard this phrase.

Mr. GROSS: Now, Sir, would it then be correct to describe the policy as it is described in the General Assembly resolution 1567 of the 15th Session, December 1960, in which the General Assembly resolution, dealing with the Windhoek problem, states as follows, in the preamble, among other things:

"Noting with regret that the construction of the new Location at Katutura is part of the plan laid down by the present Prime Minister in his former capacity as Minister of Native Affairs to the effect that Native Locations in urban areas, based on a policy of apartheid, must be situated in such a manner that a permanent 'buffer strip of at least 500 yards' on which 'no development at all is allowed' is maintained 'between the Native residential area and that of any other racial group'." (P. 32.)

The citation to this in the General Assembly resolutions of the 15th Session is to the Union of South Africa, Senate Debates, 1956, No. 15, Columns 3884 and 3885.

Now, with respect to this "buffer strip", which is a no-man's land, if one may call it that, the buffer strip of 500 yards—can you explain, or first of all may I ask, do you know of your own knowledge whether this policy of a buffer strip is objected to by non-Whites as a facet of apartheid?

Mr. DAHLMANN: Yes, Mr. President, I have heard that there is opposition against this so-called buffer zone, but I think that as far as Windhoek and Katutura are concerned it is rather immaterial because there are other buildings for other non-Native population groups which, to my mind, are closer than 500 yards away from the border of Katutura; there was also the allegation that Katutura has been fenced in, but this is also not true—there is no fence whatsoever.

Mr. GROSS: During your testimony, Sir, I was passed a message of a rather urgent nature and I am afraid I did not quite hear. Was it your testimony that the buffer zone does not exist in this situation?

Mr. DAHLMANN: I can think of buildings of other population groups which are closer.

Mr. GROSS: This would be an exception to the buffer zone policy, then?

Mr. DAHLMANN: I can only refer to Windhoek, Mr. President; I am not familiar with all the townships.

Mr. GROSS: Yes, Sir.

Mr. DAHLMANN: I know that there are other townships in South West Africa which are very closely situated to the townships of other population groups.

Mr. GROSS: Now, Sir, with respect to the buffer zone, or if I may call

it no-man's land policy, of 500 yards in which no development at all is allowed, have you, in your political observations and tours, ever come upon such buffer strips or buffer zones?

Mr. DAHLMANN: I have heard about it, Mr. President; I have also heard complaints about it; it has also been said that a buffer zone exists, or is supposed to exist, in Katutura; but, as I have said already, the buildings of other population groups are in very close vicinity of the site of Katutura.

Mr. GROSS: Finally, with respect to the general reasons assigned by these petitioners in the memorandum from which I am quoting, the major heading under paragraph 31 is "The proposed removal is primarily motivated by the apartheid policy which they bitterly oppose". Sir, perhaps you feel that you have answered this general question adequately, or to the best of your satisfaction, but would you agree or disagree that the persons and organizations here quoted and represented do bitterly oppose the apartheid policy?

Mr. DAHLMANN: I have already stated that these organizations are in opposition to the apartheid policy and all these political organizations, except the Herero dominated political organization, do not enjoy majority support.

Mr. GROSS: In your references to anti-Government activities, which is the general phrase you used a number of times in your testimony, did you mean by anti-Government activities or anti-Government position to include opposition, bitter or otherwise, to apartheid?

Mr. DAHLMANN: Yes. These organizations are opposed and I think the anti-Government activities, which I also mentioned, are very limited and actually the only thing I can think of is at present the refusal to go to Katutura by the Hereros and the unwillingness to co-operate with the Government on the part of the Hereros.

Mr. GROSS: Now, with respect to the Hereros, to whom you have referred, have you not, specifically, for example, in your testimony in the record at, page 471, *supra*, referred to the Chiefs Council as the "strongest non-White anti-Government group in South West Africa". Is that correct?

Mr. DAHLMANN: That is correct.

Mr. GROSS: And you referred to the discipline of the Hereros, did you not?

Mr. DAHLMANN: That is correct.

Mr. GROSS: And you referred to their political consciousness and political activity, did you not?

Mr. DAHLMANN: I do not think so. I have said that the leaders are politically very conscious and, due to the tribal discipline, they have of course the support of the majority of the Herero nation and I said that the reason for the support is, to my mind, that the political leadership and the tribal leadership are identical. This applies only to the Herero nation. In other political organizations there is no identity between tribal and political leadership.

Mr. GROSS: Now, with respect to the tribal or chieftain leadership and the discipline of their followers, would you say, looking at it broadly if you will, that the Government has encouraged political activities and fostered political advancement on the part of the Hereros, leaders and followers alike?

Mr. DAHLMANN: The Hereros are completely free to express their



opinion. They have their political party. Actually they had quite a number of political parties. They supported SWANU, SWAPO. Then they formed their first party—NACIP—then their second party, which was called UNIPP, and now another party which is called NUDO. So the political activities within the nation are unlimited or unrestricted.

Mr. GROSS: I think my question was, or was intended to be, would you say that the Government encourages and fosters political activity, or discourages it, or somewhere in between?

Mr. DAHLMANN: The Government encourages the political organization within the different groups to go ahead with the development of the nations and of the respective territories. But I think it is not the policy of any government to support or to encourage the formation of so many political parties. That is up to the people themselves to form parties; they can do this and they have done so.

Mr. GROSS: And would you say—apart from what we have already in the record with respect to the denial of permission to Chief Kutako and his advisers to proceed to other parts of Africa—that apart from that incident, the Government does foster and encourage political movement and political activity by facilitating the movement of political leaders throughout the Territory?

Mr. DAHLMANN: I can only state that many political meetings have taken place within the whole of South West Africa and the most violent accusations have been made in the speeches against the Government. To mention only one example: "Verwoerd and his criminal gang or band." I have said already that I do not want to refer to these emotional statements, but it is only to give you an idea that these political meetings are possible within the Territory and the leaders of the parties travel throughout the country very extensively. I cannot deny that sometimes permission has not been granted for them to go to certain places or to hold meetings at certain places. This is true. But, on the other hand, you find, for example, Mr. Kapuuo in Tses or in Krantzplatz or in Berseba. These are 350 miles away from Windhoek. He is free to go and he normally goes by car. There are certain restrictions sometimes, but on the other hand it is possible to hold these meetings and I have attended many meetings already.

Mr. GROSS: These places to which you have just referred are all so-called Reserves or home areas, are they?

Mr. DAHLMANN: Some of them are and some of them are not.

Mr. GROSS: Which of those you named are not?

Mr. DAHLMANN: Those I have named are home areas: Krantzplatz, Berseba, Tses. He is, of course, interested in meeting the leaders in the Reserves, but he also goes to Gibeon. Gibeon is not a Reserve.

Mr. GROSS: Does the same freedom of movement which you have described also relate to the urban areas such as Windhoek, where Natives work?

Mr. DAHLMANN: Many of these political meetings have taken place in Windhoek. I cannot think of any political meeting in Katutura but I can think of many political meetings in the old location.

Mr. GROSS: In respect of the areas outside the so-called dormitory towns or locations, are political activities of non-Whites permitted in the so-called White areas where non-Whites work?

Mr. DAHLMANN: I have never heard of such a meeting and never heard of any restriction; I have never heard that a political meeting was not

permitted. I think there was no limitation whatsoever. The normal place where they have these meetings is a Pepper tree, in the old location; and they normally take place on a Sunday afternoon where definitely all the White political meetings would not be permitted.

Mr. GROSS: This too refers to the location, I think you said, Sir.

Mr. DAHLMANN: To the location in Windhoek.

Mr. GROSS: Now, Sir, with respect to the White areas, as they are constantly referred to although the majority of the people who work there obviously are non-White, as the record shows, you testified, in yesterday's proceedings, at page 489, *supra*, in response to my question "whether you are familiar with the reasons given by Chief Kutako for refusal to participate in the consultations on the basis proposed":

"On the first occasion, that was in January 1964, Hosea Kutako said that he did not have time enough to discuss this matter with his headmen; and the second rejection of the invitation I cannot judge because there is no reaction whatsoever from the side of Hosea Kutako."

Now, Sir, may I ask, parenthetically, did you or did you not testify that the Chiefs Council has a policy of non-co-operation with the Whites? Is that a correct version of your testimony?

Mr. DAHLMANN: The Chiefs Council follows the policy of non-co-operation with the present Government.

Mr. GROSS: With the present Government, Sir?

Mr. DAHLMANN: Yes, Mr. President.

Mr. GROSS: Now, Sir, with respect to the present Government, as distinguished from non-co-operation with Whites generally, if that is the distinction you seek to draw, I should like to refer to A/AC.109/Pet. 213, a letter from Windhoek, 13 January 1964, from Mr. Kapuuo, the chief designate, for Hosea Kutako—it is signed "for Hosea Kutako"—and which relates to the problems in connection with the consultations which had been proposed. I should like to read the letter, since it is apparently the circumstance to which you referred in your testimony on a page cited, in which you said that Hosea Kutako said he did not have time enough to discuss this matter with his headmen. The letter is as follows—it is addressed to "His Honour the Administrator, Government Buildings, Windhoek"—

"Sir,

Your invitation to have talks with us on 30 January 1964 reached me while I was in the Aminuis Native Reserve. I invited some Headmen and prominent men from the Native Reserves with whom I was to have come to you. On our arrival in Windhoek we went to the Chief Native Commissioner at his invitation, who said that we should give him our grievances in writing so that he could send them to you before we come to you. At the same time, all the men from the Native Reserves with whom I was to come to you were given three days to stay in Windhoek.

In Windhoek I needed more time to discuss with the headmen and to write down the items which were to be brought to you.

My cook, driver and men from the Reserves were given up to 10 January 1964 to stay in Windhoek.

When we protested to the Chief Native Commissioner that three days were a very short period, our permits were extended to another

four days, ending on 10 January. The Chief Native Commissioner told us to go back to the Native Reserves and to return to Windhoek on 28 January 1964. We told him that we were not rich people and to go and come back on 28 January would entail much expenses. When we asked him why the Government did not want us to stay longer, he replied that the towns were European areas where the Africans could be allowed to stay temporarily, and he could therefore not allow us to stay as long as we pleased.

He suggested that we should rather discuss the items to be brought to the Administrator in one of the Native Reserves where, in his words, we could stay as long as we pleased.

We replied that Windhoek was in the centre of the territory and was also the seat of the Administrator.

We conclude from this impolite attitude of the Government that there was no real desire on your part to have talks with us. No self-respecting people treated in that way can be expected to accept an invitation, and we have therefore decided not to have talks with you on 30 January 1964."

Now, Sir, this letter—was this, so far as you understand, the situation that you were characterizing when you testified at page 489 that Kutako said that he did not have time enough to discuss this matter with his headmen? Or were you referring to another incident, or event, or communication?

Mr. DAHLMANN: No, Mr. President, I referred to that incident.

The PRESIDENT: Mr. Gross, you read a long letter. I do not know what it is suggested the function of the Court is in relation to the statements therein. Is the function of the Court to note that these statements were made, or is the Court to inquire into the truth of the allegations made in those statements?

Mr. GROSS: No, Sir. With all respect, I intend to connect up with my next questions now, Sir. This bears on the question of the witness's testimony with respect to the freedom of movement and restrictions imposed, to which he has again referred in his testimony just now in response to my question.

The PRESIDENT: I understand.

Mr. GROSS: And, Mr. President, if I may presume to elaborate one more sentence, the Court, in my own respectful submission, would indeed find it difficult to evaluate whether or not a particular letter or a statement in a particular letter is true or not true, to the extent that the authenticity of the letter itself is concerned as a statement by the individual and as to which there has been no impeachment. It would seem, Sir, then, that it would be of significance with respect to the political consciousness, the political attitudes, the state of mind as expressed by the individuals concerned and generally the reactions to such restrictions as may be imposed. And it is in that respect that I proceed now, with your permission, to my next question to the witness, which I believe may connect up with the matter of restrictions and limitations.

You testified, on page 489, *supra*, of the same verbatim record, and I am still referring to this specific instance, when I asked you—

"You are not aware of any imposition of restriction based upon the pass laws and the length of time for which he [that is Kutako] was offered opportunity to stay for consultations? Are you aware of that?"

And your response was:

“No. [I said ‘are you aware of that’ and you said ‘No’.] He is entitled to stay as long as he wishes in Windhoek as he is, as far as I know, exempted from the pass laws, and he is entitled to stay as long as he wishes in Windhoek, and the same applies to his driver and, I think, to his cook, and it might be to one or two of his servants, but I am not sure of that; but I am pretty sure that it applies to him personally, to his cook and to his driver.”

Now he being, as you have testified, Sir, the respected Chief of the Hereros and their political leader, would you now, in the light of this letter which I have read, indicate what basis, if any, you had for your testimony, which I have cited, on page 489?

Mr. DAHLMANN: Yes, Mr. President, I can produce another letter in which Hosea Kutako asks for permission to erect a new house for himself in Windhoek, in the Windhoek location; and, Mr. President, Chief Hosea Kutako, is, I think, living more in Windhoek than in Aminuis. As far as I know these statements, or alleged statements, by the municipal Native Commissioner have nothing to do with Hosea Kutako himself, because I think it is at least common knowledge in Windhoek that he spends most of his time in Windhoek. He is an old man, he needs medical treatment, so sometimes, of course, he is in Aminuis, but most of the time he is in Windhoek.

Mr. GROSS: By Windhoek you mean the Native location, Sir?

Mr. DAHLMANN: I mean the location, yes; and the town council has offered him a four-roomed house in Katutura.

Mr. GROSS: Now, Sir, do you have any reason to doubt the accuracy of the reference in this letter to the reply which he received when he asked “why the Government did not want us to stay longer, he replied that the towns were European areas where the Africans would be allowed to stay temporarily”, and so forth? Is this, from the point of view of your observation and knowledge, a fact, that Africans may not stay in European areas, except by permit and for a duration fixed by the authorities?

Mr. DAHLMANN: (1) Mr. President, non-Whites from the Reserves must have a permit if they want to stay in the urban area. I think the reasons are obvious. (2) I do not think that this statement alleged to the Native Commissioner does reflect actually the attitude of the Government. (3) The Administrator was and is highly interested to come together with Hosea Kutako and to have discussions. Actually, this first meeting was proposed only to meet each other, so that Hosea Kutako should know the Administrator, and it was a courtesy visit, nothing but that. And, Mr. President, the Administrator tried to create—I do not know whether he did but he tried to create—a very nice atmosphere for this first courtesy visit by paying a visit to the grave of the old Herero Chief, Samuel Maharero, in Okahandja. On his way back from Swakopmund to Windhoek he stopped at Okahandja and paid a visit to the grave of the former Herero leader. It was only a few weeks before this first meeting between the Administrator and Kutako was supposed to take place.

Mr. GROSS: Mr. Dahlmann, during the course of your testimony yesterday, you made one or two comments with respect to the agricultural potential of certain homelands. Knowing of course that you are not an agricultural expert, and not professing to be, nevertheless, in order to appraise the possible political attitudes and actions of the people who

would be involved in a move toward homelands, it may, Sir, be helpful to the honourable Court to have information concerning the actual situation in these proposed homelands from the standpoint of agriculture, let us say, since you have referred to that in your testimony. Sir, are you familiar, or have you heard of Professor Wellington, whose name is J. H. Wellington?

Mr. DAHLMANN: No, Mr. President, I have not heard of him.

Mr. GROSS: Professor Wellington was, as the record shows since he is cited in the pleadings, a Professor of Geography for many years at the University of Witwatersrand and he is, I think, also according to the publication to which I shall refer, Doctor of Science of Cambridge University. In an article on South West Africa Professor Wellington, in the publication *Optima* of March 1965, which is published in South Africa as a quarterly review "in the interests of mining, industrial, scientific and economic progress", described as follows on page 46 the proposed Hereroland:

"To the east of the hardveld the Herero homeland [it is referring here to the proposed Herero homeland] is also of immense size; its 5.9 million hectares includes the four home areas [which he proceeds to name] together with some additional government land and a small block of white farms around Rietfontein or Buitepos, near the Bechuanaland border. In the western part of the homeland, bore holes go down here and there into the sub-sand rock formations, and the *omurambas* [and then he names them] provide service water sporadically, but at least three-quarters of the area is waterless, except for pan water here and there for a few weeks after the rains. The Herero asked for some hardveld land in the Gobabis locality, but they were informed that such land was already occupied."

And then I call, particularly, Sir, your attention to the following statement by Professor Wellington, also at page 46:

"The Herero homeland is almost entirely on the sandveld they once scorned and dreaded. Aminuis, mostly hardveld, and the one reserve they really valued highly, will be taken over by the Government."

Now, Sir, on the basis of your knowledge and observation, if any, would you, Sir, express agreement or disagreement with Professor Wellington's analysis of the agricultural potential in these terms?

Mr. DAHLMANN: Mr. President, when I referred yesterday to the agricultural potential of future homelands, I only referred to Namaland and Damaraland. As far as the future Hereroland is concerned, I said already there are negotiations possible with the Government and, as far as the water position in the future Hereroland is concerned, I think the Odendaal plan makes it also clear that a pipeline is supposed to be built from Okavango, one of the six water carrying rivers in South West Africa, of which five are situated in non-White areas. From this Okavango the pipeline is supposed to be built to the future Hereroland, but I do not want to argue about the agricultural possibilities of the potential of Hereroland. I know the present Reserves in which the Hereros are living but I do not know very well the part which they are supposed to occupy, and I think that this matter is open for discussion between the Hereros and the authorities. That is all that I can say.

Mr. GROSS: Now, Sir, with reference to the proposed Damaraland to which you testified, Professor Wellington also has this to say at page 46 of the same article in *Optima*:

"The new Damaraland, which absorbs the present Okombahe and Otjohorong reserves involves an unprecedented development. Increased from the Okombahe area of 446,000 hectares to 4.8 million hectares, the new homeland [and I will call your attention to this next sentence, Sir] will include among other additions 1.9 million hectares of white farmland in the inner or transitional Namib zone, which, against expert advice, had formerly been sold to settlers by the administration and had subsequently been found unsuitable for white farming."

Now, Sir, with reference to your testimony yesterday at pages 510-511, *supra*, that Damaraland as well as Namaland, are, from the point of view of agriculture, extremely good areas, did you take into account, Sir, the fact, if it is a fact, that the 1.9 million hectares which would be part of the Damaraland, had formerly been sold to settlers by the Administration, and subsequently been found unsuitable for White farming?

Mr. DAHLMANN: That is not the fact, Mr. President. According to my knowledge, the large majority of this part has not been sold to any farmer. That applies especially to the Welwitschia area. The history of that part of the country is as follows. Some parts of South West Africa experience prolonged periods of drought. Farmers from these areas were allowed to go with their cattle or with their sheep to that completely undeveloped part of South West Africa. I think from now on it was round about 10 years ago, and these farmers found that this area is very suitable and they did not want to go back, and the Government was prepared to let them land, on the basis, if they wish, that they can after 10 years time, if they develop their farms properly (they had to start from the very beginning, there was nothing, there were not even roads at that time), be entitled, if they could prove that they had developed this country into a farming area, to buy this land from the Government.

The first farmers who came to this part of South West Africa have already bought their farms, but I must say that the major part of these farmers came only eight or nine years before the White Paper was issued (the White Paper on the Odendaal report) and so at that time they did not have their title for buying their farms. But I have been to that area and I cannot remember correctly, but it is a karakul sheep breeding area, and I think the annual turnover of these farms, only in the karakul sector, is over 2 million rand per year.

Mr. GROSS: Sir, after stating that 1.9 million hectares of White farmland have been sold to settlers against expert advice, and had subsequently been found unsuitable for White farming, Professor Wellington goes on to write as follows at the same page:

"The administration is now buying back these farms in the western parts of the districts of Outjo and Karibib, allowing generously for improvements and adding *verdrietgeld* (sorrow money) to soften the blow of having to relinquish the land. Of the R. 17 million [that is 8½ million pounds] earmarked by the Government for this repurchase of 158 farms, some R. 8 million has already been paid out and the farmers have been allowed to remain on their farms at a nominal

rental until the land is required by the Government for the possible implementation of the homelands scheme."

Do you have any reason to doubt the accuracy of Professor Wellington's statement that of the 17 million rand earmarked by the Government for the repurchase of these farms, some 8 million rand has already been paid out, including "sorrow money", as he describes it?

Mr. DAHLMANN: I am not familiar with these figures; they were published in an official statement of the Administrator a few weeks ago, but I am not familiar with whether these figures are correct. If Professor Wellington refers to the amount envisaged by the Odendaal plan for purchasing these farms, I can only state the actual price is much higher than the Odendaal Commission envisaged.

Mr. GROSS: Finally, with respect to Damaraland, as to which you testified yesterday on pages 510-511, *supra*, of the verbatim record, Professor Wellington, describing the topography of the proposed Damaraland, states as follows at page 46 of his article:

"Its sub-rectangular outline extends south-westwards to the border of the barren coastal Namib, where the annual rainfall is less than two inches. For the homeland as a whole, a mean rainfall of about six or seven inches would probably be a fair estimate."

Pausing there, do you have any reason to doubt the accuracy of Professor Wellington's statement in this respect?

The PRESIDENT: In what respect?

Mr. GROSS: That a mean rainfall of about six or seven inches would probably be a fair estimate for the homeland as a whole.

The PRESIDENT: Why is it necessary, Mr. Gross, in putting a question such as that, to quote at the great length you are from various sources? Is it, in the present context, to persuade the Court that what is said by Professor Wellington is correct, or is it for the purpose of merely getting the view of this witness?

Mr. GROSS: It is, Sir, for enabling the Court, in my submission, to evaluate testimony put forward as expert testimony by the Respondent, and in which the witness makes general characterizations or statements concerning matters of concern in this context to the political attitudes, political movements and the political aspirations of the individuals concerned. Professor Wellington has written in a sense which I am anxious to present to the Court, lengthy though it may be, for fear of otherwise doing disservice to the Court by quoting short sentences here and there out of context.

The PRESIDENT: Normally, Mr. Gross, in my view, if you are seeking to persuade the Court that the picture painted by Professor Wellington is the correct picture and that the witness has given testimony which is unreliable, then one deals specifically with each particular allegation which is made. If you are not, I do not understand why you are quoting at such great length for the purpose of asking questions which relate only to a very small portion of the statements you quote.

Mr. GROSS: I certainly will do my very best to observe the admonition, Sir. The statement which I had in mind, so that the record may be crystal-clear in terms of my intention, which is of course to observe the President's admonition, is that the witness had stated that Namaland and Damaraland are, from the point of view of agriculture, "extremely

good areas". This was an unsolicited testimony on his part, and my intention is to place into the record, for the witness's evaluation and agreement or disagreement, the analysis by a professor of geography of South Africa who writes on this subject.

The PRESIDENT: If you put to him the specific allegations made, Mr. Gross, there is no objection—I thought I had made my view on this clear.

Mr. GROSS: Now, just to complete the sentence, Professor Wellington at page 46 concludes the excerpt of which I have given only part and therefore wish to complete so that there will be no possibility of distortion out of context:

"Under such conditions the sub-desert grasses in years of good rain are very nutritious, but in the many droughty years the grazing over most of the area is excessively sparse."

Would you agree or disagree with this in terms of your testimony that Damaraland is, from the point of view of agriculture, an "extremely good area"?

Mr. DAHLMANN: I cannot say anything as far as the figures of Professor Wellington are concerned, I am unaware of that. It is a phenomenon of the karakul breeding areas that they have a low rainfall; therefore the farmers are breeding cattle in areas with higher rainfall, and karakul sheep in areas with lower rainfall. If you want to breed cattle there, Damaraland and also Namaland are not suitable, or less suitable, for that purpose, but I think the farmers in the Welwitschia bloc in the future Damaraland and the White farmers in the future Damaraland and in the future Namaland have proved already that they are very suitable places for karakul breeding, for nothing but that; and the topography, as far as that is concerned, of these karakul breeding areas, of course that is semi-desert or sometimes even desert.

Mr. GROSS: Do the Damaras breed karakul?

Mr. DAHLMANN: They normally breed small stock, but of course they should not remain at this stage of development, and they are also herdsmen on farms with karakul, and that also applies to the Namas. The Damaras living in the southern part, let us say south of Rehoboth, where the karakul breeding area begins, and also those who are living in the Welwitschia area and in the vicinity of Okombahe and so on, are of course familiar with karakul breeding because that is their daily job, to look after the karakuls in that area, although they are not the employers there.

Mr. GROSS: I would like to draw your attention to the Odendaal Commission report on page 31 under the heading of "The Damara", and with specific reference to paragraph 113:

"With the arrival of the Whites, resulting in increased personal safety and greater development, the Damara were able to evolve a totally new way of life. Large numbers were absorbed in the economy of the southern part of the country and displayed exceptional aptitude as employees."

I call your attention particularly to the following sentence, Mr. Dahlmann:

"In the home area of Okombahe the established community has concentrated mainly on animal husbandry, while in recent times



considerable numbers have found a good livelihood at the Uis mine situated in their own home area."

Pausing there, in your testimony with respect to the proposed homeland being an extremely good agricultural area in the light of the rainfall figures and so forth given by Professor Wellington, was your testimony directed at the prospect of Damaras continuing concentration on animal husbandry, or changing their form of agriculture?

Mr. DAHLMANN: I think in the light of the future development of the whole country they should change their attitude, and they should be more productive.

Mr. GROSS: In respect of your comment concerning the change of attitude which they should indulge in or aspire to, may I refer to table XIX on page 41 of the Odendaal Commission report and call to your attention the fact that, on the second line of the table, there are 18,499 Damaras in the urban areas of the southern sector. Do you find that?

Mr. DAHLMANN: Yes.

Mr. GROSS: With respect to those approximately 18,500 Damaras in the urban areas, is it part of the contemplated change of attitude on their part that they will go, or be persuaded to go, to the homelands to take up karakul breeding or other pastoral pursuits?

Mr. DAHLMANN: That is not necessary—there is a town in the future Damaraland, Welwitschia, and also the Uis tin mine, so that all of them have to become karakul farmers is not what I said, for they have other possibilities within their future Damaraland—they can be garage owners, there are shops—the facilities are already there.

Mr. GROSS: Yes. And it is contemplated from the standpoint of your political analysis, is it, that these 18,500 or a substantial portion of them will be approached and persuaded in due course to take up their residence in the proposed homeland? Is that, as you understand it, the political prospect?

Mr. DAHLMANN: As far as I see the future, I see it in a different light. I see it like this: in each community are progressive and aggressive elements who are interested in development, and I am sure that applies also to the Damara people, and I think a few of these progressive elements will go and will occupy these places, that means farms and the hotel, garages and so on, and they will run them; and the other, less progressive elements, some of them will work with them, with the family or other families known to them, and so in the long run I think quite a number of people will be attracted if the first newcomers to Damaraland are doing well. I think that is the procedure I can envisage.

Mr. GROSS: With respect to what a previous witness has referred to as a "vision", how would you characterize the end result envisaged in terms of what has been referred to as "political independence" when the vision is accomplished? What is the nature of the political independence which is envisaged for these homelands?

Mr. DAHLMANN: I am unable to say that—that is in the far future. There is already a sort of self-government, all these different tribes or nations have their own political systems, and it is envisaged that this system should follow more and more the pattern of democracy.

Mr. GROSS: Now, Sir, there has been testimony with respect to federation or commonwealth relationships which may be envisaged in the unspecified future time after these homelands have been established and requisite numbers have been persuaded to go there. Now, with respect

to the political analysis, both in terms of your understanding of the Odendaal Commission report and of your own expert observations and analysis, what would you envisage with respect to a federation or a commonwealth or some other relationship among these independent homelands in the words of the Odendaal Commission report at page 107?

Mr. DAHLMANN: Many solutions are possible and I would not say what the best one will be at a later stage in the future. That will depend on the people themselves. To my mind, nothing can prevent them from forming a commonwealth, federation or even one united South West Africa but at the present time, we are, I think, even far away from federation because, may I go back into history—four to five years ago, it was impossible to bring the eight Ovambo chiefs and headmen together. They were not prepared to cross the border of their respective tribes and they have been persuaded by the Government, mainly by the Chief Bantu Commissioner, to come together and to discuss and, if possible, to solve common problems. It is not possible at the moment to bring the Chiefs of Ovamboland together with the Chiefs of the neighbouring Okavango and the same applies to the Chiefs of the Kaokoveld. So I think it is envisaged that these parts, Ovamboland for example, also Okavango and Kaokoveld, being developed at a later stage and the people living in these parts are free to say: right, now we will have a federation or now we will have one unit.

Mr. GROSS: Sir, would you agree that the question of what they will be allowed or encouraged to do, whichever you prefer, is a factor in respect of their political aspirations, their political activities, their political attitudes. Do you agree, Sir, that this is an important factor in respect of their political attitudes and actions?

Mr. DAHLMANN: Not at the moment. Their political activity centres around their chiefs and headmen and around their own political tribal organization. I do not mean the political parties, I mean the group, the interest of the members of the different groups centred around their chiefs and headmen.

Mr. GROSS: When you say, Sir—"at the moment"—would you as a political analyst and expert project that moment in terms of predictable, foreseeable history? Is the change you envisage possible in one hundred years or lesser time from the point of view of your political analysis?

Mr. DAHLMANN: Mr. President, I think it is very difficult to give any figure here on how much time it will take to come to a federation or one unit but I would say the sooner the better. One cannot do it without developing these different communities and they really want to be developed on their traditional pattern and that also applies to the Hereros. They do not want to mix with the Ovambos and they are afraid to a certain extent of Ovambo domination and the Ovambos are also afraid of Herero domination because in the system which the Herero envisage, they themselves are living in the central part of the Territory which is highly developed and the other parts are much less developed. One example that I have mentioned already is that if Hosea Kutako sends a letter to Mr. Kama, then he signs "Leader of the Herero Nation". So they regard themselves as separate entities, as separate nations, with national loyalty and national pride.

Mr. GROSS: With respect to the question I asked in terms of the ultimate objective of federation, commonwealth or otherwise, are you

familiar, Sir, with the officially announced policy of the Mandatory with regard to the objective in question?

Mr. DAHLMANN: To which . . . ?

Mr. GROSS: Are you familiar with the announced policy of the Government of the Republic of South Africa with respect to the objective of a federation, commonwealth or otherwise, which is contemplated for the homelands?

Mr. DAHLMANN: Can you indicate where it is announced?

Mr. GROSS: Well, I take it that your answer is that you are not aware off-hand at least of any official pronouncements on the subject, Sir.

Mr. DAHLMANN: There are several pronouncements on this subject. One, for example, that these homelands are free to form a federation, and I think the Odendaal plan says that the Hereros might be willing to form a federation, if all the people agree, with the Hereros outside South West Africa in Bechuanaland. I think that is in the Odendaal report.

Mr. GROSS: You testified, did you not, Sir, that you had followed the proceedings in the House of Assembly with respect to the debate on the Odendaal plan White Paper?

Mr. DAHLMANN: That is correct.

Mr. GROSS: Are you aware of the statement by Prime Minister Verwoerd specifically on this matter of the objective in which, in the *Hansard* already cited at Columns 5460 and 5461, the Prime Minister, referring in the context to proposals made by the opposition leadership for federation as an objective, had this to say, Sir?

“And then the federation joke has to be carried further because that federation has to become part of another federation, that of the Republic of South Africa.”

And then he goes on to say, after characterizing the federation proposal as a “joke”:

“If there is anything which can be disastrous for South West Africa and for the prosperity of the Blacks as well as the Whites and for the possibility of developing the whole of South West Africa, as well as for White rule in its part of South West Africa, it is this little joke or experiment of the Leader of the Opposition which he wants to carry out as an alternative course for South West Africa.”

Were you present when this speech by the Prime Minister was made?

Mr. DAHLMANN: Yes, Mr. President. I can only say that it has nothing to do with the question that we are discussing at present. The Prime Minister referred to a completely different federation, he referred to the federation envisaged by the leader of the opposition based on the Basson plan. The Basson plan was completely different. You said in the question, the plan of the leader of the opposition, Sir de Villiers Graaff. This plan envisaged the division of South West Africa; the northern part should be given away and should become Ovamboland and the southern part should be one unit. I am not quite sure whether it was on a qualified franchise or one man, one vote. I think the Coloureds should be incorporated in the electorate and that was the way to have a combined White-Coloured majority within the southern sector of South West Africa. I think Mr. Basson mentioned a few figures and came to the conclusion that if the Whites, the Coloureds and the Basters came together, they can form the majority and they can out-rule African majority rule.

I am not quite familiar with this anymore as I did not think it would come up, but I know that this federation, which the opposition envisaged, was completely different from the federation idea I was referring to.

Mr. GROSS: Now, Sir, would it refresh your recollection as to the actual context of the Prime Minister's remarks to quote to you the following excerpt from his statement which is quoted in the Rejoinder as well, V, page 272:

"Further, we have adopted the standpoint that there must be economic co-operation, but in addition we make provision in our policy for the possibility of political co-operation. However, we do not seek this by means of a federation in which there will be a dominant group and in which a majority group will rule a minority group. Our principle is that in the highest body there should be a consultative body, that for political co-operation with one another there must be consultation in regard to common interests on an equal footing, as in a commonwealth."

Do you recall, Sir, this statement by the Prime Minister as to his definition of the future goal and objective of the homelands to be installed?

Mr. DAHLMANN: Yes.

Mr. GROSS: And does this have any relationship whatever with any specific type of plan of federation, or does it, as it appears from the words, refer to the course toward a consultative commonwealth-type relationship as distinguished from a federation-type?

Mr. DAHLMANN: I think I was actually asked how I myself envisaged the future of these territories or their co-operation, and I think I also mentioned that at the present time there is not much room for a federation, but at a later stage there might be. At present I think I agree with the statement of the Prime Minister that it is even difficult for the different groups to form a federation, so there is no reason to envisage this federation at present, but why should we not become one unit, if all these communities are prepared to do this and do not follow their present lines where they are suspicious of each other?

Mr. GROSS: Sir, for the record, I believe the record will show that my question was not a request for your view, which no doubt the Court is glad to have, but it was whether you are familiar with the Government policy on that subject.

Now, with respect to the political independence, which is the term used in the Odendaal Commission report, would you be prepared, for example, as a political analyst or expert, to venture an opinion or an estimate concerning an approximate time, let us say in a period of decades if you will, in which, let us say, the independent state of Tswanaland—population 2,632, none of whom now live in the proposed Tswanaland—enters the commonwealth alongside, let us say, Kaokoveld—proposed population, 9,000? As a political analyst, looking toward the accomplishment of the objective of the homeland proposal, do you envisage any period of time, decades or centuries or whatever you will, in which Tswanaland, as one of the proposed homelands, Kaokoveld as another, will be independent political members of a commonwealth of South West Africa? Do you envisage a time for the accomplishment of that vision?

Mr. DAHLMANN: In this question I cannot put the extremes together. Tswanaland and the Kaokoveld are far away. The Odendaal Commission actually planned that the different groups, or nations, should have

common borders, especially as far as Hereroland is concerned. Hereroland should have a common border with the Okavango and Damaraland will have a border with the Kaokoveld and it does not apply to Namaland nor to the Rehoboth Gebiet.

But let us give them the opportunity to come together. One should not think that it is a commonwealth like the British Commonwealth at present, that is not the question. The main thing is that one discusses common problems together and that was not possible a few years ago within the Ovambo nations, and it is not possible at present between the leaders of the Ovambos and the Kaokovelders and the Okavangos and the Caprivians. We have to follow this pattern to bring the leaders of the different groups together.

Mr. GROSS: Would you regard it as a matter or factor relevant to the political activities, attitudes, aspirations of the people concerned to evaluate whether the proposals with regard to the homelands, as stated by the Commission and confirmed in principle by the Government, are seriously intended or a hoax? Do you regard that as a relevant question for consideration by the persons in the Territory in connection with their political activities and attitudes?

Mr. DAHLMANN: Yes.

Mr. GROSS: The evaluation of the proposals, their seriousness—would that be correct? A factor in the analysis of their political attitudes?

Mr. DAHLMANN: Yes.

Mr. GROSS: Now, with respect then to the talk from official sources with regard to the objective of a commonwealth, an objective of political independence, let me, if I may, call your attention for example, as a matter of evaluating the attitudes of the political parties and personalities in South West Africa, to page 87 of the Odendaal Commission report, paragraph 329, with reference to the Kaokoveld, which is said to have a population of 9,234.

Now, paragraph 329 states the following goal and vision:

“That the Legislative Council [this is of Kaokoveld] gradually take over from the Department of Bantu Administration and Development the legislative authority and administrative functions which are to be entrusted to the said Department for the time being, as recommended in paragraph 222, that is eventually all functions, excluding Defence, Foreign Affairs, Internal Security and Border Control, Posts, Water Affairs and Power Generation, Transport (with reasonable protection of the development of local transport undertakings), and that all legislation be subject to the approval and signature of the State President of the Republic of South Africa.”

As a political analyst, would you say that this goal, this objective, this plan, as you call it—a political plan—is consistent with a concept, from a political analyst's point of view, of political independence?

Mr. DAHLMANN: First, I do not call the Odendaal plan a political plan.

Mr. GROSS: You said political plan, Sir, but the record will show that.

Mr. DAHLMANN: I regard the Odendaal plan as a development plan, but of course the political side is a part of it. As far as the Kaokoveld is concerned, I think that the present situation there is known and the proposals for the Kaokoveld, seen with our eyes, look very limited. In fact, they contain great possibilities for advancement and for develop-

ment and it would be good if the people themselves, living in the Kaokoveld, would take the chances and opportunities of developing their area because the Kaokoveld is rather undeveloped.

Mr. GROSS: Do you regard, from a political point of view, political independence, a phrase so often used in the Odendaal Commission report and in the Prime Minister's speeches to which reference has been made, in any real sense of the word as envisaging such matters as control over citizenship policy, for example, Sir?

Mr. DAHLMANN: If I go through all the restrictions, if I may so call them, I think the Kaokovelders are not prepared to defend themselves and . . .

Mr. GROSS: I am talking about citizenship policy. Do you regard the concept of political independence as envisaging or including control by a sovereign, politically independent, government of its immigration and citizenship policy?

Mr. DAHLMANN: The Odendaal plan is only the first step towards this development to self-government and maybe independence or maybe not; maybe at a later stage the different groups will not be interested any more in independence as they are now and they will be in favour of a greater unit, maybe the whole of South West Africa as one unit.

Mr. GROSS: As a political analyst, would you say that the objective which, if I may say, the founding fathers of the new system in South West Africa aspire to and which they plan, largely determines the form and structure of the system in its formation and evolution? Is that not, from a political point of view, a vitally important part of the present, rather than the remote undated future?

Mr. DAHLMANN: Undoubtedly. The first step is to establish a more democratic system than the one in existence and I think, as far as the Government is concerned, you can see the way very clearly. In the past you had these autocratic and despotic chiefs—some of them, not all of them—and now you are coming more and more to a rather democratic way of life. Now, the people already elect—rather, I would not say the people because the election system is quite difficult to explain—but the clans, or the heads of the families, elect the headmen and the councils of the headmen which are the local political authorities within these nations. The next step is to give more people the right to take part in these elections and to give them freely elected representatives within the leadership of the different tribes or nations. This is actually the pattern to which this development plan leads and if one follows this democratic pattern I think there are many possibilities in the future of their coming together within the framework of democracy. I must emphasize first that these different groups, or nations, are proud of their group identity so the first step is to create a democratic system within their groups and I think it should be easy to come to a common understanding between different democracies.

Mr. GROSS: I have listened carefully to your answer. I do not know whether you have referred at all to the question of White rule. If so, I will not pursue it. On the assumption that you referred only to democracy on one side of a colour or ethnic line, I should now like to invite your attention to the question I asked with respect to the importance of the objective in terms of the method and time of evolving a political system, that is, whether starting from Mr. Verwoerd's reference to White rule, whether it is or is not correct, according to your understanding, that the

system envisages and predetermines a division of the Territory between White and non-White in each of which areas, White and non-White respectively, democracy, as you call it, will be encouraged, but only with respect to those of the same colour and from the same area?

Do you understand my question, or would you like me to simplify and clarify it, which I will be glad to do?

Mr. DAHLMANN: No, Mr. President, I understand the question, but I cannot follow one phrase, and that is "not between Whites and non-Whites" this separation or whatever one wants to call it; there is a separation between the different existing nations within South West Africa—we are talking about South West Africa, I think?

Mr. GROSS: Yes, Sir.

Mr. DAHLMANN: That is not actually meant between the Whites on the one hand and the non-Whites on the other.

Mr. GROSS: When the Prime Minister, if you know, Sir, uses the expression in column 546r in these Assembly debates, and I quote: "White rule in its part of South West", what part of South West is "its part", if you know, Sir? What is meant by that expression?

Mr. DAHLMANN: I think it is the White part of South West Africa for which the Legislative Assembly has jurisdiction.

Mr. GROSS: Now, Sir, there is a White part of South West Africa over which the Legislative Assembly has jurisdiction. Is it your understanding that that White part of South West Africa includes the urban areas and the rural areas of the southern sector outside the Reserves?

Mr. DAHLMANN: Yes, Mr. President, that is correct.

Mr. GROSS: Now, Sir, in determining what shall be for the indefinite future the White part, as distinguished from the presumably non-White parts, would you say whether the decision with respect to that matter is made with any representation on the part of the non-Whites as a group or groups?

Mr. DAHLMANN: You mean within the . . .

Mr. GROSS: I mean for any purpose whatsoever, Sir, in setting up the system which you describe as a White part and various non-White parts. Is the determination with respect to the establishment of the system, and the allocation of the parts, made by a body in which the non-White group or groups have a voice or participation?

Mr. DAHLMANN: The Whites have the franchise that is envisaged . . .

Mr. GROSS: I am talking about the present time.

Mr. DAHLMANN: At the present time, only Whites are entitled to send representatives and to take part in the elections for the Legislative Assembly.

Mr. GROSS: So it would follow, would it not, Sir, that the determination of the distribution or the division of the Territory into these projected independent homelands, White and non-White respectively, would be made under the direction of and by control of an all-White legislature, which is not elected in whole or in part by non-White electors? Is that correct, Sir, or is that too complicated a thought to follow?

Mr. DAHLMANN: The thought is not complicated, but I think it does not reflect the right idea, because I do not know of any statement that the non-White homelands should be governed by the White Legislative Assembly in Windhoek.

Mr. GROSS: I had attempted to request whether you understood my question. Is the division of the Territory between White and non-White

determined by an all-White legislature, which is not elected in whole or in part by non-Whites? Can you answer that yes or no?

Mr. DAHLMANN: Mr. President, I am sorry but I did not understand the . . .

Mr. GROSS: That is a difficult question, is it, Sir? Do you understand the question or the answer? Is the division of the Territory between Whites and non-Whites determined and controlled by an all-White legislature, which is not elected in whole or in part by non-Whites? Is that true or false?

Mr. DAHLMANN: But there is no division.

Mr. GROSS: There is no division contemplated or in process or approved by the Government as a target?

Mr. DAHLMANN: Yes, Mr. President, a division is envisaged by the Parliament of the Republic.

Mr. GROSS: And is the Parliament of the Republic an all-White Parliament, Sir?

Mr. DAHLMANN: It is an all-White Parliament.

Mr. GROSS: And are any members elected by non-Whites, Sir?

Mr. DAHLMANN: No, Mr. President, they are not.

Mr. GROSS: Now, Sir with respect to the decisions made as to the homelands, the proposed homelands, I asked you before whether you, Sir, as a political expert and analyst, would venture an estimate in terms of years, decades, or centuries, whichever you prefer, as to the accomplishment of the political independence which is envisaged according to the Odendaal Commission report?

Mr. DAHLMANN: Mr. President, I am unable to give any figure.

Mr. GROSS: Now, Sir, you could not even estimate it within terms of centuries?

Mr. DAHLMANN: I hope as soon as possible.

Mr. GROSS: And that is . . .

Mr. DAHLMANN: I hope that the development of the whole country goes as fast as possible—that I can say; I can also state that a lot has been done and is being done to develop South West Africa as a whole. If one takes into consideration the vastness of the country and the small population—a little more than half a million people—then I would say that South West Africa is, at least economically, one of the highest developed countries in Africa or I could go even further.

Mr. GROSS: Sir, this may be a hypothetical question, but it is seriously intended: suppose—I ask you as a political analyst and as an expert for the Respondent on political activities, attitudes and developments in the Territory among the non-Whites—you were asked by a non-White, whom you were persuading, or the Government was seeking to persuade, to move to Hereroland or Damaraland, and if in part of the persuasion procedures back and forth that individual should ask you: "When can I expect that the homeland will be politically independent, and if I become a citizen of it, when can I exercise citizenship rights in any meaningful sense other than to become a foreigner in the White-ruled area?", would you think these questions pertinent to a consideration by an individual as to whether he should be persuaded to move to a proposed homeland?

Mr. DAHLMANN: Mr. President, that question is, of course, of importance, but the greater issue is to offer now opportunities for better living to the individual.



Mr. GROSS: I take it then, Sir, that you would not be prepared to answer in terms of time factors? I think you have already indicated that—is that not so, Sir?

Mr. DAHLMANN: I cannot do that, it depends on the people concerned.

Mr. GROSS: Now, Sir, with respect then to the improvement of economic opportunities, what would your answer be if the individual said: I have lived in the urban area, my father before me has lived here, and I would like to know what my future opportunities are here, where I reside and work, as distinguished from this prospect in the homelands to which you are persuading me to move. Would you, Sir, be in a position to express your view as to whether it is contemplated by the Government that his economic opportunities where he lives and works now, and may wish to stay, will be improved in the sense, let us say, of lifting or eliminating restrictions on promotion, or elimination of job restrictions or job reservations? Would you say that this enters into the possibilities as the Government foresees the plan?

Mr. DAHLMANN: Mr. President, I said yesterday that the question of job reservation is practically completely unimportant in South West Africa, and I think that nobody suffers under that law; on the contrary, I said yesterday that many jobs and opportunities are offered and we do not have the people qualifying for these jobs but I think that the inhabitants—the non-White inhabitants—of the White area have also good opportunities for the future—for example, they can acquire knowledge which they can use in their homeland or, if they prefer, they can use in the White area.

*[Public hearing of 13 October 1965]*

Mr. GROSS: Now, at the conclusion of the testimony yesterday, you responded to a question regarding improvement of economic opportunities and so forth and you said:

“I said yesterday that the question of job reservation is practically completely unimportant in South West Africa and I think that nobody suffers under that law; on the contrary, I said yesterday that many jobs and opportunities are offered and we do not have the people qualifying for these jobs, etc.”

Unless the honourable President wishes, I will not read the rest of the paragraph. I think that what I have quoted is in reasonable context.

Now, with regard to your testimony as to the “practically completely unimportant” aspect of job reservations, I wanted to ask you more specifically whether your judgment or testimony in this respect was intended to apply to restrictions, let us say, in the mining industry? Shall we pause there for your answer? Would you answer yes or no?

Mr. DAHLMANN: In my answer yesterday I gave a general survey. I did not refer to any specific industry or to any specific part of the economy. I have come to this conclusion because, firstly, many jobs have been . . .

The PRESIDENT: That is not the question, Mr. Dahlmann. The question is whether in the general answer which you gave to Mr. Gross's question yesterday you intended to include the reservation of jobs in the mining industry?

Mr. DAHLMANN: Generally speaking, yes, Mr. President.

Mr. GROSS: Did you also intend to include specifically the reservations in the railways and harbour administration with respect to firemen, etc.?

Mr. DAHLMANN: Yes, there are certain restrictions, that I must admit. On the other hand plenty of opportunities are offered.

Mr. GROSS: To these jobs? When you say "plenty of opportunities are offered" do you mean to these jobs?

Mr. DAHLMANN: Different opportunities offered.

Mr. GROSS: You mean to jobs of equivalent rank?

Mr. DAHLMANN: Higher rank.

Mr. GROSS: In these industries?

Mr. DAHLMANN: Not in these industries but in other fields of the economy.

Mr. GROSS: In the industrial field?

Mr. DAHLMANN: Yes, in the industrial field.

Mr. GROSS: Could you give the Court an illustration?

Mr. DAHLMANN: One example: in the fishing industry, in the road building industry. I must say that we do not have much industry in South West Africa except the mining and the fishing industry, but, as I already said yesterday, some non-Whites are boat owners, they own quite a number of boats. They are captains, or navigators of these boats and I think these are quite reasonable jobs, higher jobs.

Mr. GROSS: I take it that we can assume that there is no fishing industry in the urban or rural areas of the southern sector? I suppose that that is obviously so; that there are no large lakes, or are there?

Mr. DAHLMANN: No.

Mr. GROSS: Now, with respect to industries or occupations in the southern sector, just to clarify the question, are there any opportunities offered to Natives to serve in positions in which they exercise supervisory authority over Whites?

Mr. DAHLMANN: I cannot think of any at the moment, unless you say that a clerk who works in an office and has a book-keeper has certain supervisory functions, but otherwise no, I cannot think of any at the moment.

Mr. GROSS: Is that, so far as you are aware, Sir, a matter of Government policy?

Mr. DAHLMANN: I think that in the first instance there is the matter of qualification because . . .

Mr. GROSS: May I ask respectfully for a response to my question before the qualifications?

The PRESIDENT: Sometimes though it is not your fault, Mr. Gross—I have noticed on more than one occasion—the witness, who is not speaking his mother tongue, misunderstands the point of the question.

Mr. GROSS: I am sorry.

The PRESIDENT: Mr. Gross will put the question to you again, Mr. Dahlmann, listen to the question, and if you can, give a direct answer to it. If you have to qualify it, then you must qualify it, but if you are capable of giving a direct answer, particularly whether a certain position is correct or not, then please answer briefly in accordance with the question and be responsive to the question. Do you follow what I mean?

Mr. DAHLMANN: Yes, Mr. President.

Mr. GROSS: Sir, would it help if I rephrased the question?

The PRESIDENT: Would you mind? Yes.

Mr. GROSS: Is it, if you are aware, a matter of Government policy that no non-White may occupy a position in which he has supervisory authority over Whites?

Mr. DAHLMANN: Yes. I think one can say that it is more or less Government policy.

Mr. GROSS: Is your qualification now relevant, because I did not want to cut you off from qualifying your answer if you wish to?

Mr. DAHLMANN: Not in this particular field.

Mr. GROSS: When you testified in the verbatim record at page 458, *supra*, you testified that among the basic facts and forces relevant to (I am paraphrasing) political attitudes, activities and antagonisms—those were the words you used—and then on page 459, you said that one of these factors, as I understood you, is economic well-being or economic stress. You went on to say, on page 459, that the latter, economic stress, leads to political dissatisfaction with the Government in power and economic well-being leads to happiness or satisfaction and so forth. That is a correct summary of your testimony, is it not?

Mr. DAHLMANN: That is correct, yes.

Mr. GROSS: I should like to ask you, in connection with economic stress and economic well-being or otherwise, is it, so far as you are aware, a fact that for many years the leaders and organizations in South West Africa have voiced strongly expressed grievances concerning the adverse effects of restrictions in the economic field arising from the apartheid policy? Is that a statement of fact, irrespective of the merits or demerits of their position?

Mr. DAHLMANN: I must say I cannot think of any specific complaint or statement to that effect.

Mr. GROSS: You have, in your political studies and analysis, never encountered any expressions, strongly voiced or otherwise, of dissatisfaction or grievance with the economic consequences of apartheid?

Mr. DAHLMANN: When I referred to the economic well-being as an important factor I did not think of this question. I mainly thought, as I mentioned, that during prolonged periods of drought the whole country experiences bad times and this is the dissatisfaction I meant in my evidence.

The PRESIDENT: I think the Court understands that, Mr. Dahlmann, but the question which was put to you is quite a different one. It does not bear upon specifically the truth or otherwise of that statement. Mr. Gross's question is whether you can recollect whether any political leader, at any particular time, has expressed, either in strong language or otherwise, criticism or objection to the economic conditions in the Territory resulting from a policy pursued by the Government of the Republic of South Africa?

Mr. DAHLMANN: Mr. President, I can think of complaints about low wages, yes. There are a few complaints and of course wages have increased . . .

The PRESIDENT: And that is your answer to Mr. Gross?

Mr. DAHLMANN: Yes.

Mr. GROSS: I take it then that you cannot recollect any statements of grievance or objection to job restrictions or reservations?

Mr. DAHLMANN: No, only about the low wages.

Mr. GROSS: Only the low wages?

Mr. DAHLMANN: Only the low wages, that I can remember.

Mr. GROSS: I see, Sir. You have not encountered any statements by leaders of SWAPO or SWANU, for example, in respect of the economic apartheid policy?

Mr. DAHLMANN: They might have said something during their meetings, I would not deny that. But I cannot think of any specific statement at present.

Mr. GROSS: I do not want to tax your recollection, Sir. I think that you are familiar with petitions, I believe you testified, Sir?

Mr. DAHLMANN: Yes.

Mr. GROSS: And in petitions that you have studied have you seen references to economic apartheid and objections voiced thereto?

Mr. DAHLMANN: Against the Odendaal plan in general but not actually against job reservation, or something like that.

Mr. GROSS: I said, Sir, the consequences of economic apartheid, of the different treatment meted out to non-Whites as distinguished from Whites.

Mr. DAHLMANN: No, Mr. President.

Mr. GROSS: You do not recall any such statement, Sir?

Mr. DAHLMANN: No.

Mr. GROSS: Now, in your interviews with political leaders, that you have referred to in your testimony, have you derived the impression that they are satisfied with, they are content with, the discriminations in the field of job employment?

The PRESIDENT: Does this refer to political leaders or non-Whites generally?

Mr. GROSS: I am referring to the political leaders, with whom I believe the witness testified he had consultations.

The PRESIDENT: Yes.

Mr. DAHLMANN: The leaders of the political parties reject the Government policy as a whole.

Mr. GROSS: Including economic apartheid?

Mr. DAHLMANN: Including everything, even including, as I have stated already, economic development plans.

Mr. GROSS: Including economic apartheid, Sir?

Mr. DAHLMANN: I said including economic development plans.

Mr. GROSS: I know you did, Sir, but I say, do these comments include economic apartheid as well as economic development, to which you refer?

Mr. DAHLMANN: Yes, Mr. President; everything.

Mr. GROSS: Now, Sir, with regard to the appraisal of the economic stress or economic well-being in respect of the Natives in the economic field, are you familiar with any reports or conclusions of United Nations Agencies or bodies with respect to that matter?

Mr. DAHLMANN: Not at the moment.

Mr. GROSS: Have you engaged in any study or analysis of United Nations resolutions or reports of committees concerned with South West Africa?

Mr. DAHLMANN: Yes, Mr. President.

Mr. GROSS: And in any of those reports or conclusions you say that you do not recall having encountered any analysis, or findings, or conclusions with respect to the economic apartheid consequences?

Mr. DAHLMANN: Well, there are definitely conclusions.

Mr. GROSS: And are they favourable or unfavourable, Sir?

Mr. DAHLMANN: Unfavourable.

Mr. GROSS: And, Sir, for example, would the following be what you would regard from your study as a, shall we say, typical example, this document being in the record: *General Assembly Official Records*, Sixteenth Session, Supplement 12A, document A/4926, which is the *Report of the Committee on South West Africa Concerning the Implementation of General Assembly Resolutions 1568 (XV) and 1596 (XV)*, and I refer to two relatively brief paragraphs from pages 20 and 21 of the report.

Paragraph 154 states:

"South Africa is the only State in the world today to practise racialism as an official policy, not only within its boundaries but throughout the Mandated Territory of South West Africa. This form of racial segregation and discrimination known as *apartheid* has been repeatedly condemned by the United Nations, by world public opinion and by all those who appeared before the Committee during its visit to Africa."

And then specifically, in this context, and I have read this to give the context, paragraph 155 (b):

"In the economic life of the country, the Native peoples have no share in the profits of trade, commerce and industry, or in the utilization or exploitation of their agricultural, fishing or rich mineral resources, their only role being as a cheap source of labour for the benefit of the Whites, with no right to own land, which has been alienated to the extent that only 26 per cent. of the total land area of the Territory has been reserved for the Non-European majority. Neither have the Natives the right to practise the professions or to engage in general trade, commerce and industry, nor even the right to organize themselves into trade unions to protect the legitimate rights of labour."

Now, Sir, if I may, with the President's permission, call to your attention, in that paragraph I have just read, certain specific statements under the heading "Conclusions of the Committee", and ask, Sir, whether it is correct, on the basis of your knowledge and information, that the Natives, the non-Whites are denied—I will refer to the language here—"the right to organize themselves into trade unions to protect the legitimate rights of labour". Now, Sir, specifically with respect to that, are you familiar with the registration limitations with regard to non-White unions?

Mr. DAHLMANN: Mr. President, I am not an expert in this field. As far as I know they are allowed to form trade unions. No provision has been made for the registration of these trade unions.

Mr. GROSS: Now, Sir, when you say that no provision has been made for registration, I take it that you mean, do you not, that non-White trade unions, if formed, may not be registered under the prevailing laws? Is that correct, Sir, so far as you know?

Mr. DAHLMANN: That might be correct, Mr. President; I am not completely familiar with this field.

Mr. GROSS: Now, Sir, with respect to the reference to the right of Natives to practise the professions, it has been testimony that there are indeed persons engaged in professions in the Native Reserves or in Native townships: is that correct?

Mr. DAHLMANN: Yes.

Mr. GROSS: Now, Sir, are there any non-Whites engaged in professions

in the so-called White areas outside the Native Reserves, or outside the Native townships or locations?

Mr. DAHLMANN: Yes, Mr. President.

Mr. GROSS: Could you give an illustration, Sir?

Mr. DAHLMANN: I did not quite follow the question. Which kind of jobs?

Mr. GROSS: I said professions, Sir.

Mr. DAHLMANN: Professions?

Mr. GROSS: Yes, Sir. Do you have a doubt as to the meaning in English of the word "profession", because I would be glad to clarify that.

Mr. DAHLMANN: They are working, as I said already, as clerks, as operators of machinery, as captains, as boat owners, as navigators.

The PRESIDENT: Do you call those professions?

Mr. GROSS: Shall I be more specific, Mr. President, to aid the witness and to save the Court's time?

The PRESIDENT: I think you had better, yes.

Mr. GROSS: Let us take, for example, without meaning to be exclusive, lawyers, doctors, teachers, doctors of divinity, or ministers of the Gospel—let us stop there. Are there any non-White persons, within those categories of professions, who practise their profession or calling in any but the Native locations, or the Native Reserves or home areas?

Mr. DAHLMANN: No.

Mr. GROSS: Now, Sir, I believe that the testimony which you gave in the verbatim record at page 473, *supra*, in which you referred to "vigorous attempts have been made to create unity between the different anti-government organizations": and on page 458, if I may—I am anxious to get the context here—that:

"... without keeping in mind certain basic facts and forces it is practically impossible to understand the attitude, activities and antagonism which manifest themselves in the political sphere in South West Africa".

I pause there; that is on page 458, do you find that, Sir?

Now, with respect to the attempts to create unity between the different, what you describe as "anti-government organizations", and the basic facts and forces which are necessary to understand the attitudes, activities and so forth which manifest themselves in the political sphere, would you say, Sir, that the Odendaal plan recommendations, with respect to the political structure of the projected homelands, would be a fact relevant to an understanding of the attitude, activities, antagonism. I refer to the political aspects of the plan, particularly the organization contemplated for the new homelands? Would you accept that as a major fact in connection with the political activities and attitudes of the people in South West Africa?

Mr. DAHLMANN: Mr. President, the proposals of the Odendaal plan are based on the fact of this disunity, this antagonism and this suspicion, and therefore the Odendaal Commission came to the conclusion that at the present stage it might be better to develop the different nations, or communities, or groups, within their own field—it is supposed to be a group or a nation development. And that might lead, at a later stage, to better understanding between the political units, and also between the different political organizations.

Mr. GROSS: And, Sir, this project, I believe you have testified, is

determined by the Government in which the non-Whites themselves are not represented? I believe you have testified to that; that is undisputed in the record, is it not, Sir?

Mr. DAHLMANN: Mr. President, I have testified that the non-Whites are not represented in the Parliament of the Republic, but that does not mean that they have not been consulted. The procedure was as follows. The Government appointed this Commission of Inquiry; it was the duty of the Commission of Inquiry to approach all the different groups and all people who wanted to give evidence before the Commission were invited, so that applied to the different political organizations and also to the political leaders. Then the Commission produced a report, and this report went, of course, to the Government, and that was the basis for the Government decision and was tabled in Parliament.

Mr. GROSS: As a political analyst and observer, Sir, do you consider that consultation is equivalent to participation in the decision-making process, direct participation?

Mr. DAHLMANN: Under the present circumstances I think there is not much other choice.

Mr. GROSS: The present circumstances being what—would you clarify that, if you don't mind?

Mr. DAHLMANN: The present circumstances are as I explained. The individual is not much interested in politics at all, and the groups centre round their headmen and chiefs; that is the main thing to my mind, that the national authorities are consulted, because they are the representatives of their respective people. Of course they consult their own people; they have their meetings, and they discuss certain things with the heads of the families and with the Advisory Board members, and so on; but I think under the present conditions it is the proper way, at least first, to consult the local political authorities.

Mr. GROSS: Would you say that the local political authorities, for example, are sufficiently interested or mature enough to be consulted but not quite enough to be allowed to participate in the decision-making?

Mr. DAHLMANN: I am definitely of the opinion that they are mature enough to be consulted, and I have said already that they might also be mature enough to take a decision; actually, they have taken decisions, especially as far as the Odendaal plan is concerned—many of them have taken decisions. The other question is, I presume, a question of a qualified franchise, and I think I have explained . . .

Mr. GROSS: I did not ask about a qualified franchise—if you wish to speak about a qualified franchise . . .

Mr. DAHLMANN: No.

Mr. GROSS: I have not asked about a qualified franchise. May I continue, Mr. President? I don't want to cut the witness off. The question which I should like to ask you, however, is whether the reasons which you assign for not permitting (if this is a correct paraphrase of your testimony) non-Whites to participate in the decision-making process as distinguished from the consultation process pertain to all non-Whites in the Territory; whether the reason which you assign for distinguishing between limitation to consultation as distinguished from participation in the decision-making process applies to all non-Whites in the Territory, every individual non-White in the Territory?

The PRESIDENT: Do you understand the question, Mr. Dahlmann?

Mr. DAHLMANN: No, I am sorry.

Mr. GROSS: I don't want to take too much of the Court's time with this—let me, if I may, rephrase it in a different way. My point is simply this: you do not deny, do you, that there are non-Whites in the Territory who would be capable and qualified to serve in governmental bodies and participating in governmental decisions—there are such persons, are there not?

Mr. DAHLMANN: Yes.

Mr. GROSS: And the law and structure of the Government is such that those persons, irrespective of individual qualifications, are not entitled to participate—is that correct?

Mr. DAHLMANN: That applies to the central Government and to the Legislative Assembly, to the Administration, in Windhoek, although there are also non-White officials within the Administration, but it does not apply to any body within the framework of the different nations.

Mr. GROSS: It applies then, does it not, to the legislative bodies which make the decision, for example, with respect to the implementation or otherwise of the Odendaal plan, is that not correct—that is either yes or no, I am either right or wrong?

Mr. DAHLMANN: That is correct.

Mr. GROSS: With regard to the political recommendations in the Odendaal plan itself, there has been testimony concerning both the objective of political independence as stated by the Commission and by the Prime Minister and others as well as reference to the nature of the legislative organs, or government organs, which are contemplated for the homelands. This, you would concede, would you not, is a factor relevant to political attitudes and actions with regard to opposition or support for the Odendaal plan—you would regard this as a relevant factor, would you not?

Mr. DAHLMANN: Yes.

Mr. GROSS: Now, with respect to the proposals in the Odendaal plan, which I think you have characterized as the political part of the plan, we have in the Odendaal plan, do we not, three interrelated factors: one relates to the legislatures, or organs of government proposed; the second relates to citizenship policy; and the third relates to franchise—would you agree that that is a fair statement of the major elements of the governmental structures proposed?

Mr. DAHLMANN: Yes.

Mr. GROSS: I will attempt very briefly to get your expert opinion whether or not this is to be interpreted as the words seem to indicate, let us take proposed Hereroland, for example, and you will I think agree, would you not, that the structure proposed is fundamentally the same for all of the proposed homelands?

Mr. DAHLMANN: More or less the same.

Mr. GROSS: More or less the same. So if we take Hereroland, just as an example: page 97 of the Odendaal Commission report, let us turn to paragraph 357, and I think you will find that the contemplation is that all legislation should be subject to the approval and signature of the State President of the Republic of South Africa—that is correct, is it not?

Mr. DAHLMANN: That is correct.

Mr. GROSS: That pertains to legislation—this is of course in the future when at some unspecified time these homelands come into being with these legislatures, but dealing with them now not as facts but as prospects



for political consideration by political leaders and others; with respect to the legislatures proposed, is it not correct that in paragraph 356 on page 97—it is the provision with regard to the structure or composition of these organs—is, among other things, that “elected members shall not constitute more than 40 per cent. of the Legislative Council”—is that a correct reading of that section?

Mr. DAHLMANN: That is correct.

Mr. GROSS: And is it further provided in paragraph 358 on page 97:

“That the executive powers of the Legislative Council be vested in an Executive Committee consisting of the senior headman or his authorized deputy and four members to be elected by the Legislative Council . . .”—

is that a correct reading?

Mr. DAHLMANN: That is correct.

Mr. GROSS: And that would mean, would it not, that the Executive Committee in which the executive powers would be vested would be elected by a Legislative Council 60 per cent. of whom are composed of non-elected members—is that correct?

Mr. DAHLMANN: That is perfectly correct.

Mr. GROSS: Further, with reference to the powers projected for the Legislative Council and the Executive Committee as its delegated arm, is it not correct that paragraph 364 provides that the Executive Committee . . . paragraph 364, do you have that? I don't want to go too quickly—do you have it before you?

Mr. DAHLMANN: Yes.

Mr. GROSS: I read the last clause:

“. . . that the Executive Committee or a citizen shall not have the right to alienate any land to a non-citizen except with the approval of both the Legislative Council and the State President of the Republic of South Africa”.

That is a correct reading of it, is it not?

Mr. DAHLMANN: That is correct.

Mr. GROSS: Would you, as a political analyst and observer, and an expert proffered here in the political field, express an opinion whether these—I refer now to the limitations upon the power contemplated for the legislative organs of government—would be consistent with political independence in the normal political usage of the phrase?

The PRESIDENT: The witness hardly needs to be asked that question, does he, Mr. Gross? The Court itself can make determinations by reading the paragraphs themselves, without any assistance from any witness.

Mr. GROSS: I was anxious lest the record indicates that the witness might have implied or testified that this would be consistent with political independence as the phrase is used frequently by the Prime Minister and the Odendaal Commission report; I will be glad to withdraw the question, Sir.

The PRESIDENT: No, Mr. Gross, if you think it is going to be of assistance to the Court.

Mr. GROSS: I would not press the point, Sir—I will withdraw the question. With regard to citizenship, so that we can hurry this along, I refer to paragraph 362 on the same page, 97, and call to your attention the paragraph reference to the following language specifically:

"That, as soon as is practicable, the Legislative Council by legislation institute for the homeland a citizenship of its own and that every Herero born in or outside Hereroland but within South West Africa . . . [etc., forgetting the other clause] but now permanently resident in Hereroland and not declared a prohibited immigrant . . . [I now stress these words] shall be entitled to such citizenship . . ."

Is it your understanding of this recommendation that the exercise or not of this entitlement to citizenship is an option given to the Herero in this case? Is it an option which he can exercise or is it intended, so far as you are aware, to confer citizenship by operation of law through the Legislative Council or otherwise?

Mr. DAHLMANN: I think that is only a confirmation.

Mr. GROSS: It is a confirmation? This language "shall be entitled to such citizenship" sounds, does it not, as if it were to be an option, an election, on the part of the Herero who, let us say, is living or was born in the southern sector, in any area you wish outside the proposed Hereroland; is he, or is he not, if you know, under this proposal to be entitled to refuse citizenship, is this an option or an election or is it, or do you consider that you do not know the proposal?

Mr. DAHLMANN: Mr. President, I think the difficulty is established—that is not a law here, that is a proposal . . .

Mr. GROSS: This is a recommendation.

Mr. DAHLMANN: A recommendation and I do not know what the future law in this regard might be. As far as I see it for all practical purposes, the Hereros living in South West Africa will have the opportunity to say "yes" or "no" to the question whether they want to participate—that is the practical point—on the elections for this legislative body.

Mr. GROSS: Sir, if you do not know, I am sure the Court would wish you to say so and I will not press you further. Do you know whether it is or it is not the intent of the recommendation, in your understanding, that the Herero, let us say born in Katutura township, to take a place arbitrarily, would have the option to say: I do not elect to become a citizen of Herero land when it is formed finally?

Mr. DAHLMANN: That might be possible.

Mr. GROSS: Now if it is possible for him to reject the option, if that is the sense of your testimony that it is an option, what would his citizenship status then be, if you know?

Mr. DAHLMANN: Mr. President, I cannot judge on these points. They are far in the future and are recommendations and one cannot say what the final result of these recommendations will be.

Mr. GROSS: So that, Sir, if a person should come to you, or having heard that you have testified here as an expert on this subject on the political problems or otherwise, and ask you whether or not he should allow himself to be persuaded to go, you would not feel in a position to advise him whether or not he would be a citizen in the, let us say, southern sector, if he refused citizenship in the other territory?

Mr. DAHLMANN: Mr. President, the recommendations of the Odendaal plan are, of course, to encourage the non-Whites living in the southern sector within the White sector to develop their homelands and to take their citizenship of their respective homeland in order to be able to elect their democratic organizations.

Mr. GROSS: Would it be fair to say, Sir, that in order to encourage him

to do so, he is kept in the dark concerning his citizenship status if he does not elect to take up citizenship in Hereroland?

Mr. DAHLMANN: Mr. President, I think that is a more legal than political aspect, although they are sometimes very close together, but it is very difficult to judge at the present time from the recommendations what the future possibilities and solutions might be.

Mr. GROSS: Sir, again as perhaps this might also be regarded by you as a legal rather than a political question—that is the question of the civic status of the individual—but I refer to page 107, paragraph 413, just to test this point out in the case of the young Herero who was sought to be persuaded to move to Hereroland, in a hypothetical case. In paragraph 413, you will note, Sir, the reference to:

“That all citizens of the homelands, with the exception of those who have been declared prohibited immigrants.” (Odendaal Commission report, p. 107.)

Now Sir, as a political analyst and observer, are you able to clarify the apparent contradiction between referring to a person as a *citizen* and the same time as a prohibited *immigrant*?

The PRESIDENT: Mr. Gross, I wonder whether this carries the matter any further so far as the Court is concerned? If the suggestion is, and it is a matter for you to comment in respect of it, that having regard to 362 and 413 there is contemplated some pressure upon those who are outside the homeland to go to the homeland, and if they do not, it will be at the expense of being without citizenship. Well, that is a matter surely which can be spelt out of the report itself without asking the witness for his view or his interpretation of it. On the question of citizenship, I should have thought that the Court is in an even better position than any witness that might be called to determine what is the meaning of the Odendaal report.

Mr. GROSS: Well, Sir, I certainly with respect fully agree. I am concerned, if the Court pleases, with another aspect of the question and I shall not pursue the point, but, if I may, Sir, explain, without anticipating comment unduly, that the confusion engendered with respect to the civic status of an individual would be, in fact, relevant to the character of the plan itself, which is here under examination, through this witness as a political analyst. It would seem to us, respectfully, to bear upon the attitude, confusion or uncertainty of an individual regarding just what is contemplated, in determining whether this plan is or is not a hoax or a serious proposal. This is a subject for comment, of course subsequently, Sir, but this is the aspect which I had intended to press. I will only now, Sir, refer to one more aspect of this proposal which is on page 97, paragraph 363. I will attempt very briefly to bring out the point: do you know, Sir, and if you do not that is the end of the question, whether the intention of the proposal in paragraph 363 is that to exercise the franchise, either by way of registering or casting the ballot, the individual concerned, in this case the Herero, would have to be physically present in Hereroland either to register or vote or both? Do you know one way or the other about that, Sir?

Mr. DAHLMANN: Mr. President, paragraph 363 says—“provided that they are resident in South West Africa and registered as voters in Hereroland”.

Mr. GROSS: Yes, Sir. Now the phrase “may be” and I will not press

you on this if you do not know, and the phrase "voters in Hereroland" if you understand, Sir, does this refer to register in Hereroland as voters or register as voters in Hereroland? Do you happen to know, Sir? The phrase is ambiguous and I wondered whether you happened to know?

Mr. MULLER: I must object to asking the witness questions concerning a legal interpretation of paragraph 363.

Mr. GROSS: I asked whether he knew, Sir, I did not ask him for an interpretation.

The PRESIDENT: How can he know except by interpreting unless the members of the Commission told him something which throws some light upon the words they used. Why then don't you ask him—if he knows from the Commission what was intended by the particular clause, and if he does not that concludes the matter. He cannot be asked to interpret . . .

Mr. GROSS: I have not asked him to interpret, Sir.

The PRESIDENT: Well, you came very close to it, Mr. Gross.

Mr. GROSS: Do you know, on the basis of any information you have from consultations with members of the Commission, newspaper releases, statements by the Prime Minister or any other source, Sir, what the intended policy is here, Sir?

Mr. DAHLMANN: No, Mr. President.

Mr. GROSS: With respect to another major aspect of the Odendaal Commission plan, I am not asking you now, Sir, for interpretation of the plan, and if you do not have knowledge from which to form an answer, we will dispose of the matter, but in connection with the non-Whites in the White urban areas, this relates, does it not, so far as you know, to the status of the non-Whites who elect not to go to the homelands when, and if, they are established? This would be correct, would it not, Sir? This would relate to those non-Whites who may elect not to go to the homelands if and when the latter are established—is that not correct?

Mr. DAHLMANN: Yes.

Mr. GROSS: Now Sir, with respect to the paragraph 44I, page 117, reference is made there and I will read the context, if I may:

"The Commission is of the opinion that the considerable expansion of educational and health services and the accelerated rate of development in the homelands, as recommended elsewhere in this Report, will create greater opportunities for employment in the homelands in the Southern Sector and result in a great migration to those areas."

Now, Sir, if you feel it is within the realm of your expertise or competence, would you state whether in the event of such a "great migration" to the proposed homelands if, and when, they are built, there would be a requirement for substantial numbers of those persons for labour in the so-called White area or White economy—have you a basis for answering that question or giving an opinion with respect to it?

Mr. DAHLMANN: Mr. President, qualified people will be needed in the homelands and I think also within the White area.

Mr. GROSS: And Sir, are you familiar, I am not asking for an interpretation, I am asking you whether you are familiar with what, if anything, in the Odendaal Commission report, pertains to recommendations in the field of labour? Are you familiar with anything in the Odendaal Commission report on the question of the problem of labour in the Territory?

Mr. DAHLMANN: No, not at the moment.

Mr. GROSS: Sir, I call to your attention, paragraph 1518, page 487. Now, Sir, according to a study to which reference has been made and which has been cited previously, the study by Mr. Gordon Lawrie, the Director of the South African Institute of International Affairs, the article to which I have previously referred, Mr. Lawrie comments under the heading of "Labour" in his analysis of the Odendaal Commission report referring to this paragraph: "This appears to apply to industrial workers only—what the position of farm labourers is to be or where labour for farms is to come from is nowhere mentioned in this report." On the basis of your study of the report, can you state, Sir, whether that is a correct statement or do you not know, Sir, this being a lengthy report? Do you know, Sir, whether this is a correct statement?

Mr. DAHLMANN: The report is very lengthy, as you said, and the question of labour is mentioned.

Mr. GROSS: Of farm labour? Yes, Sir, well, the answer to my question is that you do not have a basis of knowledge whether this is or is not a correct statement.

Mr. DAHLMANN: No, I am not familiar with all the details.

Mr. GROSS: Now, Mr. Lawrie also says, on page 115 of the same work . . .

Mr. MULLER: I object, here, to questions of this nature. Other people have been called to testify as experts on matters of economics in South West Africa. Now, a witness, who has been called in as an expert in an entirely different field, is being asked a question in regard to labour. Passages are read from documents criticizing the report which have not been put to the witness before to study at all.

The PRESIDENT: I appreciate that, Mr. Muller, but the Court is not desirous of putting limitation upon cross-examination. The witness is an expert in political matters. He has his attention drawn to Article 1518 of the report; he has not time to read it; somebody else has a view that it seems to result in a certain thing; I do not know how the witness can give evidence which is of any great assistance to the Court, but I do not think the Court will interfere with the cross-examination that Mr. Gross is directing.

Mr. GROSS: Thank you, Sir. If I may, Mr. President, with respect, point out that in the Applicants' respectful submission, there is no possible line which can be drawn, from a realistic point of view, between political activities, political organization, political attitudes, as to which this witness has testified on direct, and expressed opinions, within the economic field. The proposed policies, or lack thereof, with respect to labour, with which these individuals will be . . .

The PRESIDENT: Nobody has suggested that, Mr. Gross, one must consider the objection in relation to the questions you are putting. It is a different matter altogether.

Mr. GROSS: I misunderstood Mr. Muller and I apologize if I did, Sir, I thought he sought to draw a distinction between politics and the labour of the people.

The PRESIDENT: Not at all, politics cover all fields of activity of a State.

Mr. GROSS: Now, Sir, I would like to conclude with the one further reference, which I was on the point of making, to ask you, on the basis of the study you have made of the Odendaal Commission report, which

you have testified you have studied, whether you know, Sir, whether it is correct or not, as Mr. Lawrie says:

"It is strange that labour questions are dealt with in a single paragraph (1518), near the end of the Report, which reads as follows:"

I simply am asking you, Sir, whether, on the basis of your study of the Odendaal Commission report, you know, or do not know, whether labour questions are dealt with in any other paragraph of the report. Do you know, Sir, or do you not, offhand?

Mr. DAHLMANN: I cannot give you any specific paragraph, but if one thinks of all these developments, projects, within the territory, within the non-White territory as well as in the White part, then the question of labour is included.

Mr. GROSS: Sir, I would now like to refer, once more, to the recommendations—the proposed plan—with regard to the non-White in the White urban areas, which is the heading of the plan of this section, on page 115. At page 63, in paragraph 231, reference is made, if you will turn to that page, Sir, to the following:

"That the control and administration of the White population and their area, as well as the non-White groups in the area concerned, be entrusted in respect of all the remaining functions to an Administrator, to be appointed by the State President . . . and an executive committee of four members to be elected by the Legislative Assembly."

On the basis of your study of the plan, on the basis of any sources which may be available to you, Sir, do you understand this provision to mean that in the urban areas, such non-White groups or individuals as elect not to go to a homeland, if and when created, will be under the control and administration of a body appointed by the State President? Do you understand that to be the intention?

Mr. DAHLMANN: Only the Administrator is appointed, as far as I see it, by the State President and, as far as I understand it correctly, the four members to be elected by the Legislative Assembly.

Mr. GROSS: Yes, Sir. Now, the next paragraph, paragraph 232, immediately following, recommends:

"That the Legislative Assembly of eighteen members elected by the registered White voters be retained and exercise legislative powers . . ."

Now, Sir, is it your understanding, on the basis of any information available to you, that the recommendation then comes down to this: that with respect to the non-Whites in the urban areas who elect not to go to a homeland, if and when established, but to remain where they live and work . . .

The PRESIDENT: Witness, have you any information, other than the text of these two paragraphs, to form any judgment upon?

Mr. DAHLMANN: Nothing but the text of these paragraphs.

The PRESIDENT: It surely must be a matter for the Court, Mr. Gross, as to what the paragraphs mean?

Mr. GROSS: Yes, Sir. I would like to ask you, Sir, as an expert, whether you do, or do not, regard this entire plan as a plan to partition or divide

the Territory on the basis of an ethnic or colour line? Would you have an opinion with respect to that, Sir, as a political expert?

Mr. DAHLMANN: Mr. President, it is difficult to say what the future brings. At present, this plan is designed to develop underdeveloped, or even undeveloped, areas of South West Africa and to develop the different communities. That can lead, as I explained yesterday, to a commonwealth, or to a federation, or to a unit, or even to integration. What the future might be, nobody can say at the moment.

Mr. GROSS: You are aware, are you not, Sir, that there are, according to the Odendaal Commission report and undisputed fact I believe, some 12,700 persons classified as "Coloureds" in the Territory?

Mr. DAHLMANN: Yes.

Mr. GROSS: Is it proposed, Sir, or recommended, by the Odendaal Commission or anyone else, if you know, that there will be a homeland, so-called, for the Coloureds?

Mr. DAHLMANN: Not actually a homeland, a settlement.

Mr. GROSS: Is it proposed, Sir, that the Coloureds shall be persuaded to move to three locations, or townships, which will be established in accordance with the Odendaal plan? Do you know whether that is correct, Sir, and I refer, so that your recollection will be refreshed, to paragraph 420, at page 109.

Mr. DAHLMANN: Yes, I mentioned this settlement.

Mr. GROSS: Now, Sir, in paragraph 420:

"That in due course the Coloureds be settled in the three above-mentioned towns in properly planned and proclaimed Coloured Townships where they shall enjoy the right to own property."

Do you know, Sir, whether or not the Coloureds, as they are classified, enjoy the right to own property where they reside now?

Mr. DAHLMANN: Yes, they are entitled to own property.

Mr. GROSS: Then, of course, I take it you have no basis for an opinion or otherwise as to the reason for this reference to "where they shall enjoy the right to own property"; I take it that you do not have any basis for an appreciation of the significance of that sentence.

Mr. DAHLMANN: May I add, just for clarification, that they are entitled to own property already, and not only in that proclaimed area.

Mr. GROSS: With respect to the Coloureds, would you say, Sir, as a political expert and analyst, that they do indeed represent a very special case, a very special type of problem, in the Territory because of the fact that they do not fit into the so-called homelands plan—is that a correct appreciation from the point of view of political analysis?

Mr. DAHLMANN: They do not fit in, that is perfectly correct, and I can only say that the Coloureds or the majority of the Coloureds are supporting this plan and the Government policy.

Mr. GROSS: Do they have a vote, Sir, in the State Legislature or in any organ of Government to express their preferences?

Mr. DAHLMANN: No, Mr. President, at present they have the Coloured Council which is supposed to become an elected Council, and that is their representation.

Mr. GROSS: Now, Sir, is it not correct to say that the proposal is . . . I understand, Sir, by the way, that your answer to my question was that the Coloureds do not have the franchise in the central organs of Government, including the Legislative Assembly. That was the answer to my question?

Mr. DAHLMANN: That is correct.

Mr. GROSS: Now, Sir, with respect to the Coloureds as, shall we call them, a "special problem", it is stated in paragraph 452, at page 119:

"That, where Coloureds, Basters and Nama who are the responsibility of the Department of Coloured Affairs are resident in urban areas, the said Department should persuade them in their own interests, and to enable them to have a say in their own affairs, to move to their respective urban residential areas . . ."

Would you have any basis on anything which is known to you, or which is reflected in your studies or consultations or otherwise on the subject, as to whether the expression "persuade them" and "to enable them to have a say in their own affairs . . ."

The PRESIDENT: You are asking the same type of question again, Mr. Gross. Has the witness any knowledge outside the text of the document in front of him?

Mr. GROSS: Do you have any knowledge of anything in the Odendaal Commission report on the basis of anything outside the text of the document, Mr. Dahlmann?

Mr. DAHLMANN: I can only say that the attitude in the past was that the Coloureds, regardless of where they were living, should have a say or be entitled to elect the Coloured Council; that is all I can say.

Mr. GROSS: So you do not know, Sir, whether, in any sense of the word, the Coloureds have a say in their own affairs when they live in the urban areas outside of townships; you do not know, Sir?

Mr. DAHLMANN: No.

Mr. GROSS: Is there any basis, other than race or colour, for the planned segregation into townships to be proclaimed?

Mr. DAHLMANN: Mr. President, in the past this problem never arose because the Coloureds are living all over the country and, as I understood the policy, they were supposed to elect their council wherever they live.

Mr. GROSS: That is the answer to my question, Sir?

Is there any basis other than race or colour which, so far as you are aware as a political analyst, accounts for the plan to segregate the Coloureds into the townships to be proclaimed?

Mr. DAHLMANN: Mr. President, there are, of course, always these problems on this question of community development, and the Coloureds and the Basters are actually, and especially the Basters, proud of their own identity and regard themselves as a group, and want to develop their group to promote their well-being within their group, education, and qualification, and so on.

Mr. GROSS: I will not press the same question again, perhaps you have answered it in the best way you know how; but, with respect to the Coloureds, is it true, Sir, that the Coloureds, as the Odendaal Commission report states, in paragraph 121, page 33:

" . . . have a strong Caucasian strain and for the most part maintain a Western culture and way of life. Their language is chiefly Afrikaans."

From your own knowledge of the Territory, is that a correct description?

Mr. DAHLMANN: That is correct.

Mr. GROSS: Do they work in urban areas outside of townships reserved for them alone?



Mr. DAHLMANN: They do.

Mr. GROSS: And is it projected that they will continue to do so, if and when they are persuaded to move to segregated townships?

Mr. DAHLMANN: It will be possible that they remain in the areas where they live.

Mr. GROSS: And, Sir, if they remain in the areas where they live—I am not certain that we understand each other at all—my question was: is it contemplated, if you know, that Coloureds, so-called, who may live in townships to be reserved or proclaimed for them, will, as heretofore, be working in the urban areas outside of their proclaimed township?

Is that contemplated, so far as you are aware, Sir? Would you contemplate that, as a political analyst?

Mr. DAHLMANN: I am not aware of that.

Mr. GROSS: You are not aware that they would work outside of the town?

Mr. DAHLMANN: Oh yes, that is possible.

Mr. GROSS: That is possible?

Mr. DAHLMANN: That is possible.

Mr. GROSS: Now, with respect to that portion of their lives which is spent in and at work for the so-called White economy, are they to be given, in the words of the report, "a say" in those affairs of their lives, so to speak?

Mr. DAHLMANN: No, the Coloured Council—that is the proposal of the Odendaal plan.

Mr. GROSS: The Coloured Council, if I am not mistaken, Sir, and correct me if I am wrong, relates to affairs pertaining to the township itself—is that not correct, Sir?

Mr. DAHLMANN: I think that is not correct.

Mr. GROSS: What is the jurisdiction of the Coloured Council, if you know, Sir?

Mr. DAHLMANN: All Coloured affairs.

Mr. GROSS: All Coloured affairs?

Mr. DAHLMANN: Yes, I cannot give you the exact limitation, but it goes far beyond the border of administration of different townships.

Mr. GROSS: I will not press you because this would entrench on legal questions, and that is of interpretation; I would merely refer to what I had previously referred to concerning the non-Whites in urban areas, with reference to the control and administration over non-Whites who are in those areas, and I will not press you further on that as it is a legal interpretation point.

I would like, Sir, to turn to the question of petitions and petitioners.

The PRESIDENT: I think at this stage, Mr. Gross, the Court will recess, but before I do so, could I ask you a question for clarification?

You directed a number of questions to the witness in relation to paragraphs 356 and 357 of the Odendaal report, that is the establishment of a legislative council and an executive council. As I understood it, and would you check with my understanding, they were directed to the witness on the basis that this suggested legislative council and executive council were transitional stages and not ultimate stages in the programme of the Republic of South Africa.

Mr. GROSS: Mr. President, with respect, that was not my intention or understanding; there is, of course, if I may say so, something of an ambiguity, according to my understanding, of just what is transitional

and what is ultimate in this whole affair. When questions are asked, it frequently becomes transitional, and there are also at other times reference to ultimate objectives; so far as these sections are concerned, Sir, according to my understanding and analysis, they stand as ultimates in the sense that there is nothing proposed or recommended to succeed them.

The PRESIDENT: It is because I wanted to be sure of that, Mr. Gross, I sought clarification. I draw attention to paragraph 357, which has a reference to paragraph 222—perhaps you might give paragraph 222, at some time, your consideration.

Mr. GROSS: Yes, Sir, I have indeed, Sir. Thank you very much.

Mr. MULLER: Mr. President, can I ask my learned friend whether he can give any indication as to whether he will complete his cross-examination of the witness today, because I have to make arrangements with regard to another witness who has been waiting for two days now, and I have indicated that he need not come until I let him know, and I can then, if I can have some indication, advise him to come or not.

The PRESIDENT: Mr. Gross, are you able to give any indication to the Court when you expect to finish your cross-examination?

Mr. GROSS: Sir, that would require consultation with the witness, in all seriousness.

The PRESIDENT: Consultation with the witness?

Mr. GROSS: It would indeed, Sir, because I think that the answer, with all respect, depends very largely on the nature of the witness's answers.

The PRESIDENT: If you cannot give the answer, Mr. Gross, that is all there is to it.

Mr. GROSS: Well, Sir, I thought I owed an explanation of why I could not; it had been my intention, and is, to finish today, Sir, and I will do my very best, Mr. President.

The PRESIDENT: The Court is entirely in your hands in that respect, Mr. Gross.

Mr. GROSS: I just regret that I cannot answer Mr. Muller's question because it is a two-sided equation, Sir, as I think counsel will realise.

Mr. President, with respect to the comment made by the honourable President regarding paragraph 222, would it be the pleasure of the Court, Sir, that the Applicants reserve comments until another occasion, or would the President wish to have their comment at this stage?

The PRESIDENT: Since there are portions of the evidence of the witness, Mr. Gross, which have been directed to specific particulars in the Odenaal report, that, I think, would fall within the provision which has been made that when the oral evidence has been concluded, and the Respondent has finished its address, it will be open to you to comment on the evidence, and it would be permissible to make reference to this particular matter on that occasion.

Mr. GROSS: Thank you, Mr. President. Would it be out of order, in the light of what the President has just said, to briefly state, Sir, that the problem presented to the Applicants, Sir, arises out of what, with respect, we find ambiguous in the report? The lines of enquiry which the Applicants have been addressing to this witness, put forward as an expert in the political field, are designed, among other things, Sir, to show that the very ambiguities and difficulties of understanding and interpretation of this report are matters of political consequence in the

Territory. That, Sir, I felt duty-bound to explain that I was not asking this witness for legal opinions or for anything outside his knowledge, except as a political expert dealing with a report which he has testified that he has studied.

The PRESIDENT: I appreciate that, Mr. Gross, and there is no criticism of the way in which you have cross-examined. My only observation is that when the Court has a written document in front of it, it is of no assistance to ask a witness what his view is on what it means. That is almost elementary. It is for the Court to determine what is the meaning of the document.

Mr. GROSS: Sir, without meaning to carry the colloquy on, if the witness does testify as an expert, but it is not within the range of his professed or proffered expertise to deal with this document or the political implications thereof, I would, of course, have an entirely different view with respect to my method of cross-examination in regard to these concededly difficult, somewhat abstruse and interrelated provisions in this lengthy report.

The PRESIDENT: They may be so and they may not be. That is a question of interpretation.

Mr. GROSS: That is my contention, Sir, of course. May I continue, Sir?

The PRESIDENT: Please do.

Mr. GROSS: With respect to the petitioners, I should like, with the Court's permission to refer to a statement made by learned counsel, Mr. Muller, in introducing this witness and proffering his testimony, and I refer, Sir, to the verbatim record of 7 October, at page 456, *supra*. I am referring to Mr. Muller's statement of a sentence which I will read, I believe, in context, in which Mr. Muller explained the purpose of proffering this witness, among other things.

"We will then submit and argue that to a very great extent the resolutions as well as the reports [that is of the United Nations bodies] are based upon or largely influenced by statements made by this body of political petitioners."

This was asserted by Mr. Muller by his statement to the Court, Mr. President, and by way of explanation of the particular respects in which the witness's testimony is regarded to be relevant by the Respondent, basically on two main aspects and then Mr. Muller went on from there. Now, Sir, I call this to your attention, Mr. Dahlmann, and I would like to ask you whether in respect of any of your testimony to the Court you have, or seek to, or sought to have the Court infer on the basis of any of your testimony, that United Nations resolutions or reports are based upon, or largely influenced by, statements made by this so-called body of political witnesses?

Mr. MULLER: Mr. President, with respect, I indicated that that would be our argument. I did not say that we would envisage any evidence on that aspect from the witness.

The PRESIDENT: But you did lead certain evidence on specific matters.

Mr. MULLER: As to whether the contents of the petitions were true or not, Mr. President.

The PRESIDENT: As to whether they were true or not?

Mr. MULLER: Yes, Mr. President, not farther, as to whether the resolutions my learned friend says were based or not based on them. That I did not elicit from the witness.

Mr. GROSS: Sir, obviously Mr. President does not wish me to engage in a colloquy with the counsel on this point. I would simply call the Court's attention, if I may, to the statement, which is relevant referring to testimony to be proffered, "when we come to deal later on in argument with the so-called law-creating processes or norm-creating processes referred to by the Applicants, that is, resolutions and reports of organs and agents in the United Nations".

Now, Sir, I am asking the question of the witness, with the Court's permission, whether any testimony he gave he considers relevant, and wishes the Court to infer from any of this testimony, in any respect that is germane to the question, whether or not resolutions and reports of organs and agencies of the United Nations are based upon, or largely influenced by, statements made by this body of political petitioners. It is a question addressed to the witness, with the Court's permission, so as to examine the purport and intent of his testimony in this regard.

The PRESIDENT: Mr. Gross, I think that is perfectly permissible. When a witness is called to testify on questions of fact, or as an expert, the range of cross-examination is not limited by the facts to which he deposes or the expert evidence he gives in chief. So it would be perfectly open to you to ask that question.

Mr. GROSS: Sir, may I then ask the question if the witness understands it. Would you like it repeated or do you understand it?

Mr. DAHLMANN: Mr. President, many petitions have been sent to the United Nations from South West Africa and from political leaders outside of South West Africa, and one finds that some resolutions have more or less the same wording as the petitions or refer to the petitions.

Mr. GROSS: Now, Sir, were you in your studies of the United Nations resolutions and reports of agencies, aware, or came across, Sir, the proceedings of the Trusteeship Council in the 1947-1949 period with respect to South West Africa. Are you familiar with those, Sir?

Mr. DAHLMANN: I am not familiar with all the particulars, but I am more or less generally aware of what was going on, speaking in general terms.

Mr. GROSS: Do you know, Sir, of your own knowledge, whether or not these petitioners, the ones you have cited and liberally quoted from documents already in the record, were before the Trusteeship Council in that period?

Mr. DAHLMANN: No, Mr. President, definitely not Kerina, definitely not Kozonguizi, also not Kuhangua, Nujoma and so on, nor Michael Scott at that time. No.

Mr. GROSS: None. The answer is no, Sir. I think that will be brought out by the record, Sir. Now with respect to the proceedings at that time, are you aware of, or familiar with, the resolutions adopted and the recommendations made by the Trusteeship Council with respect to South West Africa policies, including racial policies?

Mr. DAHLMANN: Mr. President, I have read quite a lot about the proceedings and also about certain resolutions, some adopted by small majorities, some adopted by greater majorities, that is true, but I cannot give any details about the resolutions.

Mr. GROSS: But you can say, Sir, can you, without qualification, that those resolutions and reports could not have been influenced by anything these petitioners, who are called professional petitioners by the Respondent, had to say at that time?

Mr. DAHLMANN: Those petitioners I have quoted had nothing to do with, or, I would say, at that time they did not appear as petitioners.

Mr. GROSS: And, Sir, do you know, for example, when any of the gentlemen that you mentioned first appeared as petitioners before the United Nations or any of its organs?

Mr. DAHLMANN: I said in my evidence that Kerina appeared as a petitioner since 1956. He left the country in 1953. Michael Scott appeared before that time as a petitioner. I am not quite sure since when, but he was in the Territory I think in the late 1940s—1947 or so—which was his last visit to the Territory.

Mr. GROSS: In your testimony, Mr. Dahlmann, did you read into the record any correspondence from Mr. Michael Scott to the United Nations?

Mr. DAHLMANN: No I did not.

Mr. GROSS: Now, with respect to the petitioners whose correspondence you did read into the record in detail, do you know them personally, some of them? I believe you have testified.

Mr. DAHLMANN: Some of them, yes.

Mr. GROSS: Could you state, just generally, for example, one or two, let us say Kozonguizi or Kerina, what their age was approximately at the time of say 1956?

Mr. DAHLMANN: They were in their twenties. I think Kozonguizi was born in 1922, and Kerina a little bit later, but more or less around that time.

Mr. GROSS: And they were students, were they, Sir? Was Kerina studying at Lincoln University in the United States?

Mr. DAHLMANN: That is correct, Mr. President. And Kozonguizi was studying before that time in the Fort Hare University.

Mr. GROSS: And he is now studying in London, is he not, Sir, do you know?

Mr. DAHLMANN: I do not think that he is studying any more, but he is living in London.

Mr. GROSS: Incidentally, Sir, do you know of any other petitioners from South West Africa who are studying in the United States and filing petitions at the same time?

Mr. DAHLMANN: Mr. President, quite a number of petitioners from South West Africa appear before certain United Nations bodies. For example, Mr. Ngaviruc, Mr. Kuhangua, Mr. Nujoma . . .

Mr. GROSS: Sir, may I clarify my question. I asked, Sir, whether you know whether any other petitioners are studying or have studied in the United States?

Mr. DAHLMANN: Yes, I think that Bassingthwaite . . .

Mr. GROSS: And how about Mr. Nathaniel, Sir? I. G. Nathaniel.

Mr. DAHLMANN: No, definitely not, I. G. Nathaniel is, to my mind, the Acting President of SWAPO in South West Africa. He is living at Walvis Bay. He never went to the United States.

Mr. GROSS: Sir, I will not pursue this point other than to refer to document A/AC109/Petitioners 219, 13 April 1964, which is signed by Mr. I. G. Nathaniel, as Acting President of SWAPO and is dated Brooklyn, New York, 16 March 1964. As a matter of information, since the question had come up with an earlier witness, just for the clarification of the matter and for the assistance of the Court, can you state that this indeed is an error and I am misinterpreting this petition? So far as you know, he was not in New York when he wrote this letter?

Mr. DAHLMANN: I cannot prove that, of course, but I have here in my file a letter from I. G. Nathaniel Maxuirili and he is the acting SWAPO President. That is perfectly correct and, to my knowledge, he was never in the United States. Actually he is living in Walvis Bay now, that is a fact.

Mr. GROSS: That is all I want to know. I have no personal knowledge of this matter and make no representations, nor am I testifying with respect to it, Mr. Dahlmann, but I wanted to know whether you know of any other South West Africans, non-Whites, who are studying in the United States, or who have studied there, other than Mr. Kerina. You mentioned one other person I believe?

Mr. DAHLMANN: There are a few of them.

Mr. GROSS: They are non-Whites?

Mr. DAHLMANN: Non-Whites, that is correct.

Mr. GROSS: From South West Africa?

Mr. DAHLMANN: From South West Africa.

Mr. GROSS: With respect to the Trusteeship Council recommendations, is it your recollection that those Trusteeship Council recommendations were accepted or referred to or adopted in General Assembly resolutions, do you know?

Mr. DAHLMANN: Yes.

Mr. GROSS: With respect to the sources of information, if you know from your studies, available to the United Nations bodies and agencies and used by them, are you familiar with reports of the South West Africa Committee, generally speaking?

The PRESIDENT: *I did not follow that question, Mr. Gross.*

Mr. GROSS: Mr. President, I asked the witness whether he was generally familiar with the reports of the South West Africa Committee.

The PRESIDENT: I thought you referred also to the sources of information.

Mr. GROSS: I am leading up to that, Sir. I am connecting up, Sir, to that, but I have to lay this foundation first, Mr. President, in fairness to the witness.

Mr. DAHLMANN: There were, I think, at least two committees.

Mr. GROSS: Well, I would refer specifically, for example, to the report of the Committee on South West Africa to the General Assembly, the 10th Session, Supplement No. 12, A/2913, 1955. Are you familiar with that report, Sir, have you read it recently or at all?

Mr. DAHLMANN: Definitely not recently.

Mr. GROSS: You do not, then, know from your own study or knowledge whether this would or would not be a typical or illustrative report in respect of the statements of the Committee concerning the sources of its information? Perhaps I may simplify it, Mr. President, if I should indicate what the statements were?

The PRESIDENT: I think the first thing is, before he can give any evidence of value, Mr. Gross, that he should be acquainted with that particular document which you say is illustrative of a particular subject-matter.

Mr. GROSS: Yes, Sir. Essentially, the paragraph to which I refer is paragraph No. 2 on page 8 . . .

The PRESIDENT: Have you got that before you, Mr. Dahlmann?

Mr. DAHLMANN: No, I have not.

Mr. GROSS: It is a very brief statement, Mr. President.

The PRESIDENT: Let the witness be given a copy so that he can see it. He may identify it and say he is aware of it and knows of it.

Mr. GROSS: Very good, Sir. The paragraph I have in mind is at page 8, paragraph 2. Do you see it, Sir?

"On the basis of this information [which refers to information generally referred to in the preceding paragraph] taken from the official documentation issued by the Government of the Union of South Africa and, under its authority, by the Territory of South West Africa, and on the basis of some other relevant information, such as Press reports, the Committee has drawn up the present report concerning conditions in the Territory of South West Africa."

I refer specifically to the statement by the Committee that it has drawn up the present report, among other things, on the basis of information taken from the official documentation issued by the Government of the Union. Have you, in studying this report, made any conclusions with respect to the extent to which its findings and conclusions reflect the official documentation of the Government?

Mr. DAHLMANN: Yes. At that time no petitioners were admitted to the United Nations and the Trusteeship Council or the Committee on South West Africa had, of course, to use other sources. I am not quite sure, but I think only after 1954 or 1955 were petitioners allowed to appear before the United Nations.

Mr. GROSS: With respect to the period prior to the dates you have just mentioned, are you familiar, on the basis of your own study, with General Assembly resolutions dealing with South West Africa?

Mr. DAHLMANN: Yes.

Mr. GROSS: And would those resolutions reflect statements made by petitioners which, as you say, had not then yet appeared? That would be self-evident, would it not, that those resolutions could not have been affected by their statements?

Mr. DAHLMANN: No, they could not.

Mr. GROSS: Also with respect to sources used by the Committee, there is, in the documentation, United Nations document A/5212, and I refer specifically to Addendum 1, 20 September 1962, which is Annex XI—report of the Special Committee for South West Africa—which is a record of the hearings held by the Chairman and Vice-Chairman of the Committee in South West Africa. Now, I do not propose to burden you or the Court with an examination of the contents of this, but are you aware, do you know about this, are you familiar with the document? Are you familiar with the fact that such a report is in existence?

Mr. DAHLMANN: Yes, I am familiar with that.

Mr. GROSS: And would it be a fair characterization of this report that, again without referring to its merits or demerits, it sets forth in summary form the records of interviews held in South West Africa by these gentlemen with various groups, individuals and organizations?

Mr. DAHLMANN: I remember the visit of the Chairman and the Vice-Chairman of this Committee very well and they held discussions. But before I answer all the questions involved I must study the report and I must say that this does not reflect the true situation or it does well reflect the situation.

Mr. GROSS: My question does not go into that matter at all. The question is whether it is a fair summary of the contents of this report, in

order to save the Court's time, which I am trying to do, that it reflects the record in summary form of meetings held by these two gentlemen in South West Africa with individuals, organizations and other persons? Is that a correct summary of what this report contains?

The PRESIDENT: Do you understand the question?

Mr. DAHLMANN: It is rather difficult to say whether that reflects the situation . . .

The PRESIDENT: No. The question is: does the summary indicate that it is based upon information gleaned by the Committee from various interviews with various people in the Territory?

Mr. DAHLMANN: Yes, I think so.

The PRESIDENT: Whether the summary be right or wrong, that is what it does?

Mr. DAHLMANN: Yes.

Mr. GROSS: In order to clarify, this, does it, for example, include a summary of a meeting with Chief Kutako, with deputations from the Waterberg East Native Reserve, with a deputation from SWANIO, with a deputation of Hereros and Damara, with three German residents at Tsumeb, etc.? Is this a fair reflection?

Mr. DAHLMANN: That is correct.

Mr. GROSS: This, then, is a summary of hearings, or meetings, held in the Territory which was put out as a report of the Special Committee for South West Africa. That is correct, is it not?

Mr. DAHLMANN: That is correct.

Mr. GROSS: And are you familiar with the report of the Committee itself, to which this is an annex, in which reference is made to this annex?

Mr. DAHLMANN: I am familiar with both of these.

Mr. GROSS: Mr. President, the report will, of course, speak for itself, but I just wanted to know whether the witness was familiar with it. The report is document A/5212.

I wanted to ask you whether you regard, as a political analyst and expert, the right of petition as a fundamental or important right with respect to the mandates system?

The PRESIDENT: Mr. GROSS, I do not think that however you stretch the expertise of this witness that he could be asked that question.

Mr. GROSS: May I then ask a question, Sir, whether, in your expert testimony, with respect to what Respondent calls professional petitioners, in referring to statements or petitions submitted by these petitioners or others, you are seeking to have the Court infer anything in any way derogatory to these individuals as petitioners in exercising their right of petition?

Mr. DAHLMANN: No.

Mr. GROSS: Now, you recognize, as a political analyst who has been testifying with respect to the existence of these petitioners, that you have characterized, in response to leading questions by counsel, that their petitions are erroneous and, perhaps, I think you used the phrase "misleading"?

Mr. DAHLMANN: Yes.

Mr. GROSS: You do not mean by that testimony, or do you, to seek to have the Court infer that these petitioners are deliberately telling untruths, do you?

Mr. DAHLMANN: Mr. President, it is difficult to say which motive is behind this. I can only compare the petition and the true facts. That is



the only thing I can say. What their motives are and whether they do this deliberately, or as professionals, I think this is too personal a view.

Mr. GROSS: But you have no knowledge, Sir?

The PRESIDENT: He says it is too personal a view.

Mr. GROSS: You have no knowledge with respect to their motives, that is what I understood you to say?

Mr. DAHLMANN: No, I would not judge on that. I only see what they write and on the other hand I see the facts.

Mr. GROSS: Now, would you also see, or perceive, difficulties in the way of communication between them and persons in South West Africa?

Mr. DAHLMANN: I cannot see any difficulty because it is a fact that all the petitions sent from South West Africa reach the United Nations. For example all the petitions sent by Hosea Kutako or Kapuuo or other personalities within the Territory arrive at New York and I think they also arrive in other parts of the country. Mr. Kapuuo told me, just a few days before I left, that he is in contact with Mr. Kerina, for example, so there is a possibility of communication, I think one could say regardless of the contents of certain telegrams. The Post Office official reads what the sender says and I am not quite sure whether those telegrams would be accepted in other countries, but here in South West Africa they are accepted by the Post Office and the contents are not altered or changed and they are sent to New York or any other place.

There might be one difficulty at present, as far as communication between South West Africa and certain other African countries are concerned, because of the boycott. I think it is at present impossible to send a letter from South West Africa to Dar-es-Salaam, but that, is of course, because of the boycott of the African States and South West Africa.

Mr. GROSS: Sir, does the Government of South Africa transmit petitions to the United Nations?

Mr. DAHLMANN: No, Mr. President, not the Government. The petitioner himself is free to write or send petitions to the United Nations.

Mr. GROSS: Does the Government of South Africa, so far as you know, Sir, send comments to the United Nations with respect to petitions?

Mr. DAHLMANN: I cannot remember any. I know that the South African representative sometimes makes speeches on this subject.

Mr. GROSS: Now, Sir, with respect to the exercise of the right of petition, would you say, Sir, that the transmission of petitions as contemplated by the League—do you know, Sir, are you familiar with the League of Nations rules regarding petitions? Are you familiar with this subject at all, Sir?

Mr. DAHLMANN: You mean petitions according to the Mandate?

Mr. GROSS: Yes, Sir.

Mr. DAHLMANN: I know what the Mandate says.

Mr. GROSS: Now, Sir, with respect to the transmission of petitions, do you as a political analyst regard it as an important aspect of the supervision of the mandates system, or is this a question beyond your ken as a political expert?

The PRESIDENT: Yes, Mr. Muller.

Mr. MULLER: Mr. President, surely the witness is asked to deal with a question as to whether that is a necessary part of supervision. Now he implies by that, supervision of the United Nations, and therefore that there is an obligation to send it, or a connection, in any event. I do object to that type of question.

The PRESIDENT: Mr. Gross, how do you justify, in terms of relevance of the witness's evidence, a question directed to him by merely producing the phrase "as a political analyst"? That does not make him an expert upon whether it is or is not important to have the right of petition. Surely that is a matter for the Court.

Mr. GROSS: Well, I tried seeking for the information, and I would hope for the benefit or value of the Court to elicit his opinion.

The PRESIDENT: Well, I do not think that you can elicit it from a witness such as this, nor do I think it is a matter for a witness to express an opinion upon, unless you propose to attack his credit. If you propose to attack his credit then the question will be allowed.

Mr. GROSS: Sir, I am seeking to attack his credit in the sense of presenting what seemed to be relevant facts regarding his opinions, attitudes and understandings with respect to the question about which he has testified, specifically the question of the role and activities of the petitioners in the United Nations.

The PRESIDENT: Very well, Mr. Gross. If you say you propose to ask the question on the basis of knowledge he has or any view he wants to express, or on the basis that you are challenging his credit, the question will be admitted; but you must understand that any answer given by any witness, as to whether it is important or not, is a matter for the Court. You will not be assisted by what any witnesses . . .

Mr. GROSS: Oh, indeed, Sir. The sole purpose, I need hardly assure the honourable President, in all of this testimony is the hope that it will elicit information and views which may be of benefit to the Court. I really, Sir, have only one more question with respect to the matter of petitions and petitioners, and that will conclude my cross-examination of this witness.

The PRESIDENT: Very well, Mr. Gross.

Mr. GROSS: And that is with respect to the petitioners, the role of petitioners in the mandate process. Is it your view that the system would be strengthened by the transmission of petitions and the commenting thereon by the Government of the Union?

Mr. DAHLMANN: Mr. President, the question of petitions is for the League of Nations, the League of Nations jurisdiction, and since the death of the League of Nations it is a matter of argument between the two parties—the United Nations and South Africa are arguing about this issue, and I think I cannot go into this matter. Generally speaking, I do not want to refer specifically to petitions, any means of communication is always a good thing.

Mr. GROSS: I have no further question, Mr. President.

The PRESIDENT: Thank you. Judge Jessup desires to ask certain questions of the witness.

Judge JESSUP: I do not have to ask any questions now, Mr. President.

The PRESIDENT: Thank you. Does any other Member of the Court desire to put any question to the witness? If not, Mr. Muller, do you desire to put any questions on re-examination?

Mr. MULLER: Yes, please, Mr. President.

The PRESIDENT: Proceed, please.

Mr. MULLER: Mr. Dahlmann, this morning my learned friend Mr. Gross read to you passages from a report of the Committee on South West Africa. It is a report Supplement No. 12A (A/4926) and he read from paragraphs 154 and 155.

Mr. President, may I for convenience, I have one copy here, ask my learned friend for his copy to give to the witness?

The PRESIDENT: I am sure that Mr. Gross will not mind, unless, of course, it has counsel's marks on the side.

Mr. MULLER: Mine is, I think, clear, if I could use . . .

The PRESIDENT: Have you any objections at all, Mr. Gross?

Mr. GROSS: Paragraphs 154 and 155 (b).

The PRESIDENT: Thank you.

Mr. MULLER: Having read the passages, my learned friend dealt with only two matters concerned in those passages; the first was with regard to the question of professionals practising their professions in South West Africa, and the second was the question of trade unions. Now I wish to deal with the allegations made by the Committee of South West Africa in this document, and ask you for your comment thereon.

In paragraph 155 the allegation is made that the Native population is not allowed to organize themselves into political parties. Is that correct or not?

Mr. DAHLMANN: No, Mr. President, that is not correct. The Native population is allowed to form political parties.

Mr. MULLER: It is further stated in the document:

"In the economic life of the country, the Native peoples have no share in the profits of trade, commerce and industry."

Is that correct, or not?

Mr. DAHLMANN: No, that is also not correct.

Mr. MULLER:

". . . in the utilization or exploitation of their agricultural, fishing or rich mineral resources, their only role being as a cheap source of labour for the benefit of the Whites".

Is that correct, or not?

Mr. DAHLMANN: That is also not correct; they are also in higher posts within these industries.

Mr. MULLER: There is also the statement in this that they have no right to own land. Is that correct, or not?

Mr. DAHLMANN: No, that is not correct and that applies not only to the Coloureds, that they are entitled to own land, it also applies to the Natives.

Mr. MULLER: With regard to land, they say—

". . . which has been alienated to the extent that only 26 per cent. of the total land area of the Territory has been reserved for the Non-European majority".

Can you express an opinion on that, or not?

Mr. DAHLMANN: Mr. President, I can only express an opinion as far as the quality of the land is concerned, allocated to the Natives.

The PRESIDENT: That is not the question. The question is percentage of land.

Mr. MULLER: The percentage of land—can you express any opinion on that?

Mr. DAHLMANN: The percentage, 27 per cent.: I do not know the exact figure offhand.

Mr. MULLER: Well, if you cannot I leave that. It goes on to say,

"Neither have the Natives the right to practise the professions or to engage in general trade". Is that correct, or not?

Mr. DAHLMANN: No, that is not correct.

Mr. MULLER: "... or to engage in ... commerce and industry": is that correct, or not?

Mr. DAHLMANN: It is not.

Mr. MULLER: "... nor even the right to organize themselves into trade unions"—is that correct, or not?

Mr. DAHLMANN: That also is not correct; they are entitled to organize themselves into trade unions.

Mr. MULLER: Now, I want to refer to certain questions put to you on Monday, by my learned friend, Mr. Gross, in the record. First of all at page 515, *supra*: have you got the verbatim record, Mr. Dahlmann?

Mr. DAHLMANN: Yes.

Mr. MULLER: Now, on that page you will find that Mr. Gross read to you from a *Hansard* Report, an extract from the speech of the Deputy Minister for South West Africa, a speech which was made on 6 May 1964, the portion quoted reading as follows:

"The Leader of the Opposition yesterday asked 'what about Katutura, the people are still in the old location'. I shall tell him why they are there, they are still there because they have been incited by Whites not to move; they are being incited by the Opposition not to move."

Have you studied the speech of the Deputy Minister?

Mr. DAHLMANN: Yes, I have studied the report.

Mr. MULLER: Did he explain in which particular way he meant that the Whites had incited the Natives not to move from Katutura?

Mr. DAHLMANN: The Deputy Minister for South West Africa states . . .

Mr. MULLER: Will you give the page; where does that follow in the speech itself?

Mr. DAHLMANN: It is in columns 5516 and 5517.

Mr. MULLER: What did he say in the particular portion you have in mind?

Mr. DAHLMANN: That is at the bottom of 5516:

"What about Katutura, the people are still in the old location? I shall tell him why they are there. They are still there because they have been incited by Whites not to move, they are being incited by the Opposition not to move. Today they are sitting there just to make things difficult for us. They want us to force them; they want an incident. They want the outside world to have a reason to act and to force us. Let me give examples. Recently the organizer of the United Party in South West Africa held a meeting at Marienthal, and one of the farmers asked this question: 'My farm falls in the area earmarked for a Bantu homeland. What must I do—must I move or not?' The organizer replied: 'My advice to you is not to move, stay there. Stay there for five years, then another five years, then another five years.' By saying that, they are setting an example to the non-Whites, because if the White man is told not to do it, the non-White also says 'Why should I do it?' That is a game that they are playing there. I can tell you that you are doing those people a disservice."

Mr. MULLER: Thank you. Mr. Dahlmann, also at page 498, *supra*, of the record of Monday, my learned friend, Mr. Gross, dealt with a petition, No. A/AC.109/Pet.215 of 13 April 1964, and he quoted a passage from the petition dealing with opposition to the Odendaal Commission report. Have you got that petition with you, or a copy of it?

Mr. DAHLMANN: Yes, I have got a copy of the petition.

Mr. MULLER: Will you tell the Court by whom that petition was signed?

Mr. DAHLMANN: The petition is signed by Jacob Kuhangua, National Secretary, South West Africa People's Organization and Moses Katjihungua, Representative, South West Africa National Union.

Mr. MULLER: Where did the petition emanate from?

Mr. DAHLMANN: This petition comes from Dar-es-Salaam.

Mr. MULLER: Do you know the two people referred to in that document, whose names you have just read?

Mr. DAHLMANN: Their names are familiar to me, I do not know them personally.

Mr. MULLER: Do you know whether they are in South West Africa?

Mr. DAHLMANN: They are not in South West Africa.

Mr. MULLER: Have you any information where they are?

Mr. DAHLMANN: As far as I know Moses Katjihungua, the SWANU representative, is living in Dar-es-Salaam and Jacob Kuhangua—I do not know where he is living; sometimes he is in the United States, sometimes in Africa.

The PRESIDENT: Were they ever, to your knowledge, in recent years in South West Africa?

Mr. DAHLMANN: I cannot say when they left South West Africa; to my knowledge they left South West Africa during the late fifties or early sixties.

Mr. MULLER: Mr. Dahlmann, another matter which I wish to clear up is: my learned friend, Mr. Gross, on the same day, that is Monday, dealt with a request made by Chief Hosea Kutako—it is at pages 493-494, *supra*—and I think 15 of his people, Hereros, to visit Ovamboland for certain political purposes, and that request was refused. Will you look at his question at page 494, which reads as follows:

“So that, Sir, on the basis of your knowledge of the Territory and the distance, speed in communications and the like, your assumption would be, as an expert or otherwise, that between the letter dated 30 January and the response dated 4 February, in that interval the Chiefs in Ovamboland, Kaokoveld and the Okavango Native Reserves have been consulted and have advised the Administrator of their objection to this proposed visit. Would that be your understanding, on the basis of your knowledge of the Territory, as a probable situation?”

And your answer was “It is technically possible”. I want to clear up the “technically possible”. Do you know what means of communication there are between Windhoek and Ovamboland?

Mr. DAHLMANN: There is radio-telephone between Windhoek and Ovamboland, and also between Windhoek and the other Reserves.

Mr. MULLER: Arising from that, do you know whether any meetings of different political parties were held in South West Africa at any place?

Mr. DAHLMANN: Many meetings have taken place in South West Africa—political meetings of one party and also joint political meetings of different parties.

Mr. MULLER: Thank you. Those are all the questions I wished to put, Mr. President.

The PRESIDENT: Thank you, Mr. Muller. Mr. Gross, do you desire Mr. Dahlmann to remain in attendance?

Mr. GROSS: No thank you, Sir.

The PRESIDENT: The witness will be released from further attendance, if you receive no other communication during the course of the day, Mr. Muller.

Mr. MULLER: I thank you, Mr. President.

The PRESIDENT: You are released from further attendance, Mr. Dahlmann, subject to my observation.

Mr. MULLER: Mr. President, the next witness will be General Marshall, and I just wish to know whether he is here—may I just ask whether he has arrived? I have given instructions that he should come. Yes, Mr. President, he is here, and with your permission I will proceed . . .

The PRESIDENT: Please do proceed.

Mr. MULLER: May I, in the meantime, indicate, Mr. President, that General Marshall's evidence will be directed at the issues arising under the Applicants' Submission No. 6, that is relative to militarization in South West Africa, and the particular point to which his testimony will be directed as notified to the Applicants is the following: whether the facilities in South West Africa which are described by Applicants as military bases can be regarded as such. May I ask that General Marshall be permitted to make both the declarations provided for in the Statute, that is as witness and as expert?

The PRESIDENT: Let the declarations be made. General Marshall, will you come to the podium?

General MARSHALL: In my capacity as a witness I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth. In my capacity as an expert I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

The PRESIDENT: Yes, Mr. Muller?

Mr. MULLER: May I proceed, Sir?

The PRESIDENT: Please do.

Mr. MULLER: General Marshall, your full names are Samuel Lyman Atwood Marshall, is that correct? You are a citizen of the United States of America, is that correct?

General MARSHALL: That is correct.

Mr. MULLER: May I read your academic qualifications, and you can tell the Court whether what I state is correct? You hold a degree of Doctor of Humane Letters of Wayne State University, is that so?

General MARSHALL: That is correct.

Mr. MULLER: And a Doctor of Law degree of St. Bonaventur University, is that correct?

General MARSHALL: That is right, but I would point out that those are honorary degrees.

Mr. MULLER: Good. Did you see service during the First World War?

General MARSHALL: I joined the Army of the United States, Mr. President, in May 1917, and was sent to Europe early and spent two

years over there, first as a Sergeant of Engineers, and when I returned in late 1919 I came back as a Lieutenant and Company Commander, and then I returned to my studies at Texas College of Mines.

Mr. MULLER: Did you join the Army again after that period?

General MARSHALL: I was briefly with the Regular Army in 1922, for about seven months.

Mr. MULLER: Can you describe to the Court what your position and occupation were in the period 1922-1942?

General MARSHALL: In 1922, while with the Army, I found that I could write and do professional writing. I left the Regular Army, resigned my commission, and from that time on began specializing in military studies on my own, working however as a newspaperman, principally as a war correspondent and foreign correspondent.

Mr. MULLER: In that period did you, as a correspondent, cover certain revolutions in the world?

General MARSHALL: I covered two revolutions in Mexico, one in Nicaragua and the war in Spain in 1936.

Mr. MULLER: What military experience did you have after the year 1942?

General MARSHALL: I was called back into service shortly after Pearl Harbour as (the title said) Expert Consultant to the Secretary of War, Henry L. Stimson; then after serving in that capacity for three months, I was asked to go back into uniform to establish the orientation course for the United States, which is our name for indoctrination, and I was its Director for one year. I was then one of three General Staff Officers who were set up to establish the historical division of the Army for the purpose of that war, and I served briefly in the Pentagon in that capacity, and then was sent out as the main field hand to establish our methods of operating under battle conditions. I first had ten months in the Pacific in that capacity during 1943 and the early part of 1944, and just before Normandy I was pulled out of the Pacific and sent to Europe on a sort of a crash mission to reconstitute the historical effort there. I was still a General Staff Officer on the War Department General Staff, but after I had been there for some months my status was changed, and I was made Chief Historian of the European theatre for the duration, and I remained in that capacity, not just having responsibility for American forces in the theatre, but also responsible for the co-ordination in the Allied effort, that is to say I was dealing with the British Army, French Army and the Canadian Army, and so on, and I continued until May of 1946 when I again left the Army.

Mr. MULLER: After 1946 did you have any further connection with the Army during certain particular periods?

General MARSHALL: Between 1946, when I was separated, and the Korean War I was called back to duty 47 times by the War Department, or Department of the Army as it became, and these were missions extending sometimes two or three days—the longest one was for six months.

Mr. MULLER: Were those missions to any particular war theatres, or did they include any missions of that nature?

General MARSHALL: They included missions overseas, but they were mainly General Staff missions in the Pentagon.

Mr. MULLER: When were you promoted to the rank of General?

General MARSHALL: 1951.

Mr. MULLER: Did you after that date have further connection with the Army, in America or overseas?

General MARSHALL: I was sent for service in Korea in the fall of 1950, and stayed there until the spring of 1951 as Operations Analyst of the Eighth Army, and then I went back to Korea in 1953 as a civilian correspondent, and within four days after getting there I was given a military mission by the Commander of the theatre, General Mark Clark, and I continued on military duty for four months at that time.

Mr. MULLER: Did you have anything to do with the Suez campaign in Israel?

General MARSHALL: I went to Israel shortly after the action started and joined the Israeli Army in the Sinai Peninsula, and stayed with them for the duration of the campaign; and my work was mainly to find out how they had conducted their operations.

Mr. MULLER: Did you have anything to do with the civil war in Lebanon?

General MARSHALL: I was in Lebanon for three months covering the civil war there in, I think it was the year that followed that.

Mr. MULLER: Later in the Congo, in the year 1961?

General MARSHALL: I was in the Congo for approximately three months. Again I was working as a correspondent, but I was also carrying out work for the Senate of the United States at the same time.

Mr. MULLER: Did you have any official duties relative to the war in Viet-Nam?

General MARSHALL: In 1962 I was sent there on a mission for the Department of Defence, along with Allan Dulles, the Director of CIA, and Mr. Carl Bendetson, the former Under-Secretary of the Army.

Mr. MULLER: Do you lecture on military matters at different military staff colleges?

General MARSHALL: I lecture at all of them in the United States with the exception of the Naval Staff College. I have never appeared there. I lecture at Camberley in England, at the NATO Staff College in Paris, the Israeli Command and General Staff College outside of Tel-Aviv, at the Nationalist Chinese Command and General Staff School not far out of Taipeh and at the Canadian Command and General Staff School at Kingston, Ontario.

Mr. MULLER: Are you the author of any works on military matters?

General MARSHALL: Twenty-six, which are published books, that is, books published for the public, and, I would say, somewhere between 10 and 14 manuals, or studies that are circulated only within the Services.

Mr. MULLER: Are they service manuals?

General MARSHALL: Yes, Sir.

Mr. MULLER: Do you contribute also to *Collier's Encyclopaedia* and *Encyclopedia Britannica*, on military matters?

General MARSHALL: I write on military categories for the *Britannica* and for *Collier's Encyclopaedia* and also on military terminology for *Random House Dictionary*.

Mr. MULLER: Now, General, are you conversant with the provisions of Article IV of the Mandate of South West Africa?

General MARSHALL: I have it before me; yes, I am familiar with it, Mr. President.

Mr. MULLER: May I just quote the last sentence in that? "Furthermore,



no military or naval bases shall be established or fortifications erected in the territory."

General MARSHALL: I have that.

Mr. MULLER: Do you consider that, with your knowledge and experience of military matters, you could assist the Court in expressing an opinion relative to the question as to whether a particular facility is a military base or not?

General MARSHALL: I believe I can, Mr. President.

Mr. MULLER: Have you visited the Territory of South West Africa?

General MARSHALL: I have visited it twice. I was there in April, the latter part of April.

Mr. MULLER: April of which year?

General MARSHALL: April of this year, for a period of eight days, and I returned in September of this year. I was there for four-and-a-half days.

Mr. MULLER: Now, in your first visit to the Territory, which portions of the Territory did you pay a visit to?

General MARSHALL: After arrival in Windhoek, I flew first to the Caprivi strip, then to Runtu on the Okovango River; and then to Ondangua in the Ovambo country; and then to the Uis mining country, west of Windhoek; and then down to Oranjemundi, to see the operation of the diamond fields. Then I visited various Reservations—the Herero Reservation, outside of Windhoek, and Rehoboth, the Baster Reservation, and met people there. I visited, to the limit allowed by my time, the schools in those areas that I passed through.

Mr. MULLER: On your second visit, what particular places did you go to? That was the visit in September, I think you said, of this year?

General MARSHALL: Starting at Windhoek, we flew to Ohopoho, and then flew from there to Tsumeb, and then back to Windhoek.

Mr. MULLER: Will you describe to the Court what Ohopoho consists of, what is there at Ohopoho?

General MARSHALL: Ohopoho is a remote station in a very desolate area. We flew 370 and some odd miles from Windhoek to get there, with no stop in between. We were travelling in a Piper Aztec. Over those 370 miles, we saw no flat ground until we got directly above Ohopoho and there was not a valley, but a cleared area—a generally cleared area—I would say, roughly, about three or four miles across, surrounded by small hills and relatively flat. The main airstrip that we came in on was 3,000 feet long, not very well tended—there were bumps in it—the cross-airstrip was approximately 1,500 feet long, and beyond the airstrip, approximately 250 yards, was a collection of houses—five main houses, as I recall, and two or three small shedlike affairs.

We visited the Commissioner, we checked into the facilities, I found out the size of the staff there, etc.—I do not know how much I am wanted to go on?

Mr. MULLER: First of all, will you tell the Court: the landing strip that you have referred to, with the smaller cross-strip, what does that consist of? Is it tarmac, bitumen or . . .

General MARSHALL: No, it is just relatively cleared sand. It is somewhat wider than this Courtroom and it is only in the centre that we found it well-maintained. It is slightly downhill. The air there seems to be very difficult. In taking off in the Piper Aztec, we needed 2,000 feet of the 3,000 feet to get airborne.

Mr. MULLER: Can any but a small plane land there? Could big planes land on this airstrip?

General MARSHALL: I would judge that you could get a Dakota or a C 47 in there. I do not believe it would be at all times a safe venture, that is all.

Mr. MULLER: Now, would you just explain to the Court what a Dakota is, and a C 47?

General MARSHALL: A Dakota is a small military carrier-type plane. It was the plane that we used principally in flying the Hump in World War II, in carrying supplies in to China. It is still a standard carrier with civilian airlines. You will see it all up and down the airfields of Africa. I think it is the principal vehicle.

The PRESIDENT: You see them all over the world, do you not, General?

General MARSHALL: Yes, indeed, they are all World War II relics, but they hold up very well.

Mr. MULLER: Are there any facilities at this particular airstrip, or at Ohopoho, as a whole, of a military nature?

General MARSHALL: No facilities whatever, of a military nature.

Mr. MULLER: Did you inspect the logbook kept by the Commissioner at Ohopoho, relative to the use of the landing strip?

General MARSHALL: The logbook actually is not kept by the Commissioner. The Commissioner has been there only two weeks and his European Deputy Commissioner, Mr. Roberts, has been there for a year and a half and the logbook was in his hands. It is with him that I saw the log.

Mr. MULLER: Can you give the Court an indication of the use of that landing-strip, according to the log, for a period of 12 months preceding your visit?

General MARSHALL: Eight planes had used the field, of which one was a military plane. That is to say it belonged to the South African Air Force, but the party was Mr. Botha, the Deputy Commissioner for Bantu Affairs, and a group of politicians. That was all that was identified in the logbook.

Mr. MULLER: Having regard to the strip itself . . .

The PRESIDENT: Could I ask a question of General Marshall? How far did the logbook go back, General? Did you notice that at all?

General MARSHALL: It went back for four years.

The PRESIDENT: Did you have a look at what appeared in the logbook over a period of time?

General MARSHALL: Yes, Sir.

The PRESIDENT: Can you give the Court some indication about the logbook during this time?

General MARSHALL: This was the average traffic. The year before that it had been seven. Mr. Roberts had had nothing to do with the logbook before that time and I talked to the Bantu deputy, who was the hold-over person, and I think there was one visit of 11 planes—one year showed 11 planes—another seven, and the Bantu deputy told me that that had been about standard during the years that the field had been in operation.

Mr. Muller: Would you say, General Marshall, that the landing strip is a military base?

General MARSHALL: No, I would not.

Mr. MULLER: Did you visit any other airstrips in the area similar to that at Ohopoho?

General MARSHALL: We did not visit any in that area. On the way up, I kept track of airstrips along the way. There were two. One was four miles off-line, the other was somewhat closer to us, that is two in 380 miles and these were all smaller airstrips, one with a single runway. They would be good for light planes but for nothing else.

The PRESIDENT: Mr. Muller, I think it might assist the Court if we had some information about the types of building and what they were used for and how far removed they were from the airstrip.

General MARSHALL: Mr. President, the buildings at Ohopoho?

The PRESIDENT: Yes.

General MARSHALL: These are the buildings where the staff live.

The PRESIDENT: Which staff?

General MARSHALL: The staff is composed of the Commissioner; Mr. Roberts, the Deputy Commissioner; and the Bantu Deputy Commissioner; and besides these, a veterinary surgeon, two stock inspectors and four policemen, one of them a European sergeant, one a European constable and two Bantu assistant policemen. The buildings in which they live: the main building is the residence of the Commissioner; the Bantu also live in this collection of houses. One thing that I failed to say, which I think should be made clear; I found that nobody took responsibility for this airstrip. As it was explained, the planes come in so seldom that they do not bother with maintenance until they get a message that a plane is coming in. The Commissioner and Mr. Roberts told me that it had been on this basis, that whoever happened to be on station at the time among the three, the Bantu sub-Commissioner, or Mr. Roberts or the Commissioner, would take responsibility for the clearance. There is no crew working it, there are three Bantu—I took their pictures while I was there—who had worked it over before our coming.

*[Public hearing of 14 October 1965]*

Mr. MULLER: General Marshall, just before the adjournment yesterday, you were dealing with certain facilities at Ohopoho, you had described the landing strip as well as certain accommodation at Ohopoho. Now, did you find any military personnel in attendance?

General MARSHALL: None.

Mr. MULLER: Were there any indications that there had ever been a military base at Ohopoho?

General MARSHALL: No, Mr. President. There were no indications whatever. To what I said yesterday, I should add that the general area where the field is located is of such a nature that, in my judgment, any plane that can land in that field could also put down safely in the Bush. It would be a little rough landing but the field does not add much to the safety of the area. There is no drainage at this field, no drainage system; there is no apron to this field; the fuelling system is rudimentary, it consists of a cart which is manhandled and kept among the houses and brought out—I think it probably has about a 500-gallon tank on it. There is nothing around there to indicate that the military have ever been interested in it because it would be more secured, better policed and under military guard and as far as I could see, there was no indication that the field had been changed—cattle roam the field throughout the day and when the field has to be cleared, it is largely a matter of tearing down the ant hills, which grow to a great size in that area, and of clearing

the cattle away. The cattle had to be cleared away before we could take off.

Mr. MULLER: You also told the Court that in April of this year, you had visited the Caprivi, the Okavango and Ovamboland. Did you then also travel by plane?

General MARSHALL: Yes, Mr. President, we travelled by plane during that entire passage except for the visit to the Herero Reservation and to Rehoboth. We made the Caprivi by plane and the strip in service there is more rudimentary than the one at Ohopoho because it is largely overgrown with grass. The one at Runtu is even more primitive, you cannot see it when you are directly above it because of the depth of the grass.

Mr. MULLER: And in Ovamboland?

General MARSHALL: In Ovamboland, the same way. There is a new field going in along the runways but the one we had was quite bumpy and I would say about 2,000 yards long off to the edge of where the new strip was going in.

Mr. MULLER: In your opinion, would any of these three facilities that you have now mentioned, that is at the Caprivi, Runtu in the Okavango and at Ovamboland, be a military base?

General MARSHALL: No.

Mr. MULLER: In your last visit to South West Africa, that is in September, did you also inspect certain military facilities at Windhoek?

General MARSHALL: I did.

Mr. MULLER: Would you tell the Court what those facilities consist of?

General MARSHALL: There are four installations altogether. When I went there I thought that the primary object of the search was to look up Regiment Windhoek and as soon as I got there, I found that there were other things that needed to be considered and I dealt with the South West Command. I went first to its Headquarters. I had arrived on a Thursday and I met the Commander of the South West Command and I told him that I wanted his entire staff to be present on the Saturday. We started at his administration building, the men were present, I checked that according to their duty roster—there were altogether 5 officers and 15 other ranks. We went first to the administration building which was a modern two-storey building approximately three blocks from the centre of Windhoek. It is not protected except by a light wire fence with three strands; it is right off the street; there is no sentry at the gate. The building is a normal administration building for the handling of military affairs and it is taken up mostly by the executive officers—that of the Commander, his Adjutant and so on. There is a file room, records room and there is a communications centre or a message centre and beyond these offices and the archival room is the only other feature of the building—a supply room. The supply room is probably a third of the size of this chamber as to floor space and it is given over almost wholly to quartermaster supply—I would say that there are about 60-80 bins there, the bins being not more than two feet by two feet by about four feet in depth. There are normal quartermaster items including even some items for navy personnel, which are supplies to navy cadets going to high school there. This is all clothing, canteens or first aid packs, something of that kind, except for one rack, which would be large enough to hold about, I would estimate, 50 rifles. In the rack there were 47 rifles, 43 of them were model 4, old-style, World War II rifles, they were not cleaned, and three of them were the modern Belgian full-automatic rifle.

Mr. MULLER: What other facilities did you see at Windhoek?

General MARSHALL: We went next to the camp at Windhoek, which is just off the edge of the town on the way to the airport. The reservation is approximately 500 yards by 500 yards. It too is surrounded by a simple wire fence of three strands, no barbs, and it is not guarded during the day. There is a parade ground in the reservation, about 100 yards by 100 yards. The rest of the section of land—it is approximately a section, is rough ground, rocky and too uneven for drill purposes. Now, within that reservation are five permanent houses, which are used by the married personnel, officers and N.C.Os. of the South West Command—the families live there. There is also a tent camp of 13 tents, rather dilapidated-looking tents, which is up close to the parade ground and these tents are occupied by 22 trainees from Walvis Bay, who come in there and do their six months training, getting credit for it, by guarding this camp: that is their sole duty. I measured this out with 22 men and on a reservation of the size I have described, 500 yards by 500 yards, you would have at least four picket posts at night or simply posts with men going two hours on and two hours off, that would mean the employment of 12 men every night, so there would not be much time for them to do anything else except do guard duty.

Now, beyond that there is a store room, which is given over altogether to re-supply for the motor facilities, that is to say it is a spare-parts room, a very small one, I would say about 10 feet by 30 feet in length, with at least two hundred bins in it because of the great variety of vehicularization. Then there is a motor shed, which is roofed over but has no walls to it, where they keep their transportation and there is a small pre-fab building, metal, which is used as a kind of a mess and club room by the personnel of South West Command. The entire camp is under the charge of a Sergeant-Major, who is part of the staff of South West Command. I believe that completes the description of the second facility.

Mr. MULLER: What other facilities did you see in and about Windhoek?

General MARSHALL: The third facility is a hangar, right next to the airport.

Mr. MULLER: Would you describe which airport?

General MARSHALL: The Windhoek airport—the civilian airport. It is a large hangar and in that hangar are weapons. The hangar is surrounded by two fairly high fences, they are not barbed-wire fences but simple wire with a space of about 10 yards in between them, and the door is covered by one sentry. We got into the hangar and I found in there 12 Ferrets—Ferrets are a small armoured car, standing about as high as I do, built somewhat in the shape of a small tank, they are a reconnaissance vehicle—8 of these mounted a 30 calibre machine gun. They open and close as does a tank, that is, the driver is either driving “buttoned up” so that he is looking through a periscope or else he is in the open air. They travel at around 30 m.p.h. These were the modern vehicles in the place and then, behind these there were six Mark 4 armoured cars and six light tanks, all of them World War II material, and half of them were out of commission—a little more than half were out of commission. Some did not have their tracks on, others had their turrets off. Then, there were 16 miscellaneous vehicles, World War II jeeps, trailers, three-quarter ton trucks and, besides these items which I have described, there was a six-pounder gun, which they told me was used for ceremonial purposes.

Mr. MULLER: Now, was there any other facility in addition to what you have described?

General MARSHALL: There was a rifle range about three-and-a-half miles out of Windhoek, amid the hills. It is a very ordinary rifle range with ranges running from 100 to 1,000 yards but this is not strictly a military facility although it is used, at times, by the military. It is owned by the municipality and at the time that I was there it was the site of a meet of the South West Rifle Association. There were 84 civilian competitors on the range and their wives were there preparing the meal for them.

Mr. MULLER: Now, do you consider any of these facilities, either singly or collectively, to constitute a military base, or bases?

General MARSHALL: No, I do not.

Mr. MULLER: Before you left on your last visit to South West Africa, was your attention drawn to certain allegations made in the United Nations relative to an atomic facility in the Tsumeb area of South West Africa?

General MARSHALL: My attention was drawn, though in a very vague way. I did not know exactly what it was that I was looking for. I was told that this had been stated and that I was to pay a visit there if I could—and the word atomic was used; there was also some reference to gas. I went out of my way, not exactly knowing what it was.

Mr. MULLER: Did you go to the Tsumeb area and inspect the area?

Mr. GROSS: Mr. President, I have waited, thinking that counsel would specify what these "certain allegations" were—to be more specific, Sir, with respect to "United Nations" allegations, as I believe he described them. Could it be requested, Sir, that there be some clear indication of what these alleged atomic installations were, or whatever they were, and by whom the allegations were made, and in what context?

The PRESIDENT: So that Mr. Gross may be able to follow the reference, Mr. Muller, would you please explain to the Court?

Mr. MULLER: Yes, Sir, I will. I referred to United Nations document A/AC.109/SR.345 of 14 July 1965. It is a document of the Special Committee of the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. It records statements by certain petitioners, *inter alia*, Mr. Make of the Pan African Congress, at page 8 of this document, to the effect that: "As part of its military activities, South Africa was now building nuclear reactors in its own country and in South West Africa."

The PRESIDENT: Is this document part of the evidence? It is difficult to keep track of all the documents, Mr. Muller.

Mr. MULLER: No, Mr. President, I do not think it is yet part of the record. Then, Mr. President, in connection with the same matter, United Nations document DC/PV.82, 17 May 1965. It is a provisional verbatim record of the 82nd meeting of the United Nations Disarmament Commission in which, at page 48, the allegation is made that: "the South African Government has established an atomic testing centre at Tsumeb in the Kalahari Desert in South West Africa."

The PRESIDENT: Do you propose to tender those documents at any particular stage?

Mr. MULLER: Mr. President, our intention is, as I have indicated before, to deal in argument with various documents relative to petitioners, statements made by petitioners, in the course of considering what

I refer to as the law-creating, or norm-creating, processes relied upon by the Applicants.

Mr. GROSS: Mr. President, with respect to the last allegation—I believe counsel used that term—may the record show, Sir, the document not being available to Applicants at this time, whether that allegation was made by a petitioner or by a United Nations Agency, Sir?

Mr. MULLER: The allegation in the last document, Mr. President, was made by Mr. Malecela of the United Republic of Tanzania.

Mr. GROSS: I see, Sir, and may I point out, for the record, Mr. President, with your permission, that there are no allegations made by the Applicants, no issue is drawn by the Applicants, in this case with respect to any atomic installations or nuclear capabilities in the Territory?

The PRESIDENT: I observe that, Mr. Gross. Mr. Muller, the allegations which you have referred to have never been put forward by the Applicants as being connected with, in any sense, a breach of the Mandate. What is the relevance of the evidence which you seek to obtain from General Marshall?

Mr. MULLER: Mr. President; it is quite correct that the Applicants have never named this as one of their specific complaints but the Court will remember that, whereas they started off with three so-called military bases in their Memorials, which were Walvis Bay, Ohopoho and the Regiment Windhoek, their later allegations in the Rejoinder became very wide. Then it was contended, in their Reply, at IV, pages 563-564, that there was general military activity throughout the whole of the Territory and that South West Africa must be regarded as in itself being a military base—the whole of the Territory.

The PRESIDENT: Would you give a specific reference where that is stated?

Mr. MULLER: At pages 563-564 of the Reply (IV). There it was contended . . . I shall read at 564. It is a long paragraph which refers to various matters and then at page 564 it was stated—

“ . . . at worst, where the Territory itself and its ‘White’ inhabitants have become armed and co-ordinated to the extent that the Territory has been transformed into a ‘military base’ . . . ”.

Now, with respect, Mr. President, we will argue later that these allegations refer back to reports of certain Committees and other organs of the United Nations and we will demonstrate how those reports were influenced by statements, of the nature that I have just referred to, of a petitioner, relative to conditions in South West Africa.

The PRESIDENT: Mr. Gross, have you the references to which Mr. Muller is referring?

Mr. GROSS: Yes, I do, Sir, and—may I continue?

The PRESIDENT: Yes.

Mr. GROSS: I was about to object to the reading of a clause in a paragraph without the reference to the context, Mr. President, and I think that if the clause is to be read into the record at this point, perhaps the paragraph might also be read into the record.

The PRESIDENT: That is the paragraph from the Rejoinder?

Mr. GROSS: From the Reply I should have said.

The PRESIDENT: From the Reply?

Mr. GROSS: Yes, Sir, from which counsel has quoted a clause.

Mr. MULLER: I have already indicated that, in their pleadings, they

do not mention this matter, the atomic centre, or alleged atomic centre, at Tsumeb. All I do indicate is that they made an allegation that as a result of—and I can read the whole of the clause—general military intelligence throughout the whole area, the whole of South West Africa must be regarded as a military base.

The PRESIDENT: Why do you not read the whole clause, Mr. Muller? Then we will know what it is all about.

Mr. MULLER: It starts off at IV, page 563, and after quoting, I think, three resolutions of the General Assembly of the United Nations, the passage starts as follows:

“Consequently, Applicants contend that Respondent’s admitted practice of maintaining an indeterminate number of landing strips which may be, and are, used by military aircraft of the South African Air Force, coupled with the increasing build-up of military strength in Walvis Bay, taken together with the apparently ever-increasing amount of military activity by cadet corps and ‘Commando units’ in the schools, communities and countryside of the Territory, joined with Regiment Windhoek, have created a situation where there is the equivalent of a series of military bases or potential military bases in the Territory, or, at worst, where the Territory itself and its ‘White’ inhabitants have become armed and co-ordinated to the extent that the Territory has been transformed into a ‘military base’ . . .”

The PRESIDENT: I think the evidence had better be taken, Mr. Gross. Your objection will be noted and the relevance of the evidence and the weight of the evidence will be determined by the Court in its deliberations.

Mr. GROSS: Thank you, Mr. President.

Mr. MULLER: General Marshall, did you then go to the Tsumeb area?

General MARSHALL: Yes, Mr. President, we went to the Tsumeb area. We flew on a direct west-east line from Ohopoho, approximately 170 miles, as I recall it. On that flight, we saw one other airstrip and that was servicing the tourist home at the Etosha Pan game reserve. When we got to Tsumeb, we circled the general territory three times to get an idea where the building was and also to get a general idea about whether it was possible to conceal anything in that territory that may escape the eye. It is relatively flat land. There are small kopjes there but it is quite barren country and we had no difficulty seeing this building on the outside of the community because it is quite conspicuous. It is out there, very close to a collection of Bantu farms and a few kraals.

We landed at the Tsumeb airstrip, which is the one good airstrip that I ran into in South West Africa. It has a tarmac surface and it has an apron. I think it is owned by the American copper company that operates in Tsumeb. The assistant to the magistrate took us out to this building. We found it located just seven miles from the edge of town. The building is unguarded. It is about 100 yards off the main road. There is no fence of any kind. There is no sentry there. I walked into the building and was halfway through it before I raised anybody. The building was a three-sided structure about the size and shape of an American ranch-house for an oversized family. It has two wings, no basement; all is in this one storey. In one wing, I found, after we were joined by the German technician, J. Jung, who is in charge of the place, that there are seven small rooms, two of them not being larger than closet-size, and each one of



these rooms contains electronic instruments of varying kinds. There are small instruments, standing no higher than a man, none of them are "hot". The rooms were all unlocked on that wing. We moved from room to room. I was able to open the instruments at will, where there were knobs, I could touch them, I observed the oscillations of the machines. I am not an expert in the electronics field, so I had to take J. Jung's word for their significance, what their function was. In the other wing, we found a dark-room for the developing of motion-picture film, with three tanks and one drying area and they were running film through it at the time we were there. Beyond the dark-room there were three guest rooms and then, on the base of the building, there was a large, airy recreation room and a large library without any books in it.

The PRESIDENT: How can you have a library without any books in it, General?

General MARSHALL: Mr. President, I exaggerated slightly there. There were 13 books but they looked as if they had come from the last century and had apparently been put there just to impress the visitors. He told me that they would get some books in time.

The only fixtures outside were a swimming pool—that is, immediately outside—a small swimming pool about 6 feet by 16 feet that did not have any water in it and a concrete rack for the servicing of motor cars. Then, a little more than a quarter of a mile away from the building, were four towers, one of them, the tallest one, obviously being a radio-sending tower and the others were antennae. This was the Max Planck Institute for Agronomy of Lindau, Germany. It was one of 200 such establishments that are fixed pretty well all around the world, according to J. Jung.

The permanent personnel of that establishment consist of two German technicians and four Bantu. The Bantu are given landscaping and house-keeping duties. The purpose of the station, as J. Jung tried to explain it to me, although I could not understand many things that he said, was the taking of beamings, sensings, from the atmosphere primarily for the purposes of pure science and secondly for long-range weather forecasting over the next 30-day period for the use of aircraft and ships at sea.

The PRESIDENT: These electronic instruments which you described before, are they, as you understand the position, connected with these functions?

General MARSHALL: He told me that this was their sole function.

The PRESIDENT: Did it look as if they had any military function?

General MARSHALL: None whatever. I asked him why it was that the dark-room was the only room that they kept locked and he said that it was because the people in the neighbourhood were afraid of the other rooms so there was no danger there, but he said that with the dark-room there was always a chance that they might go in and ruin the film at the wrong time, so that was the reason why that was the only place they kept secured.

The PRESIDENT: I think you said that you went into the dark-room, did you?

General MARSHALL: Yes, Mr. President.

Mr. MULLER: Can you, General Marshall, in your own opinion, state whether this facility is a nuclear reactor station or not?

General MARSHALL: It is not. It could not possibly be.

Mr. MULLER: Generally speaking, did you see anything in South

West Africa which you would regard as a military base or fortification?

General MARSHALL: I did not.

Mr. MULLER: In addition to the armaments which you have described in the hangar at Windhoek and in the administrative building at Windhoek, did you see any other armaments in the whole of the Territory of South West Africa?

General MARSHALL: The only armaments I saw, apart from those at Windhoek—and I am speaking of heavy weapons—were the hulls of three Sherman tanks in the C.D.M. property, the diamond property at Oranjemund. They had stripped them down and they were using the motor mechanisms to run the elevator shafts in some of the clearing operations.

Mr. MULLER: Is that a private company or not, operating at Oranjemund?

General MARSHALL: It is a private company.

Mr. MULLER: Now, I will read to you a portion from the Reply of the Applicants at IV, pages 563-564. Mr. President, this is the portion I had read and I would like just to read it again to the witness to put one specific question to him.

It is there stated, General Marshall, that:

“... Applicants contend that Respondent’s admitted practice of maintaining an indeterminate number of landing strips which may be, and are, used by military aircraft of the South African Air Force, coupled with the increasing build-up of military strength in Walvis Bay, taken together with the apparently ever-increasing amount of military activity by cadet corps and ‘Commando units’ in the schools, communities and countryside of the Territory, joined with Regiment Windhoek, have created a situation where there is the equivalent of a series of military bases or potential military bases in the Territory, or, at worst, where the Territory itself and its ‘White’ inhabitants have become armed and co-ordinated to the extent that the Territory has been transformed into a ‘military base’ within the meaning and intent of the Covenant and the Mandate”.

Now, having travelled throughout South West Africa and bearing in mind that Walvis Bay, which is referred to in this document, is not part of the Territory of South West Africa, what is your comment on this allegation?

Mr. GROSS: Mr. President?

The PRESIDENT: Yes, Mr. Gross.

Mr. GROSS: The allegation referred to would, on the witness’s part, it is submitted, call for a legal conclusion. This sentence which has been read, as counsel has brought out now, ends with the clause “within the meaning and intent of the Covenant and the Mandate”, and it is submitted that the request to the witness in the form of the question put would call for a legal conclusion in the form of a comment regarding this statement in the Reply.

The PRESIDENT: Mr. Muller, I think the objection is properly taken. It is not for the witness to say whether this or that installation, or together, were a military base or made the Territory a military base within the meaning of the Mandate. The witness gives his expert testimony in relation to facts seen. He is not entitled to express a legal conclusion. That is a matter for the Court.

Mr. MULLER: Mr. President, may I then put my question differently, *without reference to this allegation*, in just asking him whether whatever he had seen in South West Africa indicated that there was any military base, or whether the Territory, as such, constitutes a military base?

The PRESIDENT: In his opinion?

Mr. MULLER: Yes, in his opinion.

The PRESIDENT: Omitting the words "within the meaning of"?

Mr. MULLER: Yes. Thank you, Mr. President. General Marshall, will you indicate whether there is anything which you saw in South West Africa which you could regard as being a military base, or whether the Territory as such is a military base, in your opinion?

General MARSHALL: My answer is no. May I add that the Territory is less militarized and more under-armed than any territory of its size I have ever seen in the world.

Mr. MULLER: Mr. President, that is my last question to the witness. I thank the Court.

The PRESIDENT: Mr. Gross.

Mr. GROSS: Mr. President. General Marshall, in addressing questions to you, it will be assumed by the Applicants, and I am glad to state in the record, Sir, that you are indeed a recognized military authority and widely read as such in our native country.

I should like to refer to one or two statements in your testimony so as to refresh your recollection. You were asked during the proceedings yesterday, 13 October, at page 577, *supra*, by counsel for Respondent, Mr. Muller, this question:

"Do you consider that . . . you could assist the Court in expressing an opinion relative to the question as to whether a particular facility is a military base or not?"

and you answered on the same page "I believe I can".

Today, Sir, according to my notes, you have, several times in response to questions put by counsel, stated both specifically and generally your opinion as to whether a certain facility or installation is a military base or is not, and the same generally with respect to the Territory as a whole. This is according to my notes. Is this a fair summary of your testimony in this respect?

General MARSHALL: It is a fair summary.

Mr. GROSS: Now, as to the Rejoinder, VI, page 370, may I ask whether you have had occasion to read the sections of the pleadings or any of them with respect to the matter of the militarization or otherwise of the Territory?

General MARSHALL: I have read it but I do not have it with me and I would have to have my memory refreshed somewhat.

Mr. GROSS: I should be glad to do that, General Marshall. I do not intend to read lengthy excerpts, Mr. President. If the witness, however, wishes to have a copy of the pleadings before him, if it pleases the Court, I would certainly have no objections.

The PRESIDENT: Well, it might assist, Mr. Gross, and it may also avoid having to read lengthy excerpts.

Mr. GROSS: Yes, Sir. I understand the admonition, Sir.

In the Rejoinder, VI, page 370, you will notice at the bottom of the page, specifically in the context of discussion of the Regiment Windhoek, the last sentence says:

"The issue turns on the question whether the complex of what has been established and what is being done at the establishment constitutes a military base: Article 4 does not introduce the agency or command through which the establishment and activities are conducted as a relevant factor at all."

Now, of course I will not ask you questions which will involve a legal judgment or conclusion or inference. However, I should like to ask you two questions in relation to your expertise on this sentence.

First, the reference in the sentence to "Article 4 does not introduce the agency or command through which the establishment and activities are conducted as a relevant factor at all". You have testified as to your inspection (and I may say this is the first inspection of which the United Nations will have heard and this information will be transmitted to them), but with respect to your testimony with regard to the command as a relevant factor, did you, in your discussions with the command, consider that relevant to your inspection trip?

General MARSHALL: I did.

Mr. GROSS: Therefore you would say, as a military expert, that the agency or command through which the establishment and activities are conducted is a relevant factor with respect to military capability?

General MARSHALL: Very definitely so.

Mr. GROSS: Now, with respect to the beginning of that sentence—and this is a broader question—the issue turns on the question whether the complex of what has been established and what is being done at the establishment constitutes a military base. Calling your attention to the expression "what is being done", that would, would it not, refer to what is being done at a particular moment of time?

General MARSHALL: Precisely so.

Mr. GROSS: Therefore with respect to "what is being done" at a given moment of time, would that, or would it not, from a military point of view, have relevance to what may be done at another point of time?

General MARSHALL: It would.

Mr. GROSS: Therefore your testimony with respect to what you saw being done, if I may use the Respondent's expression, refers to the moment of your visit, or inspection, whichever you choose to call it. That is correct, is it not?

General MARSHALL: That is correct.

Mr. GROSS: Now, with respect to the more general question of the military nature of a base or installation, or the non-military nature as the case may be, would you accept as valid, from a military point of view, the dictionary definition of a military or naval base which is cited and quoted in the Respondent's pleadings in the Counter-Memorial at IV, page 50, which defines a military base or naval base as follows:

"The locality on which a force relies for supplies or from which it initiates operations . . ."

Would you say, Sir, that that is a tenable definition, or acceptable definition, of a military or naval base in terms of military expertise?

General MARSHALL: No, I would say it is a rather narrow definition. The definitions that have been submitted in the case all add up pretty much the same way in different language, but that is an exceptionally narrow definition.

Mr. GROSS: And, Sir, with respect to the further comment or conclusion

drawn by the Respondent, in the same volume of the Counter-Memorial, at IV, page 50, I read as follows:

“A common feature of these definitions [and that, incidentally, refers to the definitions in the several dictionaries from which the quotations were taken] is that a base is something *utilised* by a *force* or an *army* for the purposes of *operations* or a *campaign*.”

Do you regard that as an acceptable definition of a base?

General MARSHALL: I think that is an acceptable definition, Mr. President.

Mr. GROSS: With respect, then, to the interpretation of what is or is not a military base, would it follow, Sir, that the use to which it is put—and first should I say that the use to which it is put is a relevant factor: you would clearly agree with that, would you not, Sir?

General MARSHALL: I would.

Mr. GROSS: Would you say, Sir, that the potential use to which it may be put is also a relevant factor in determining its character?

General MARSHALL: I would say, Mr. President, that this would depend altogether on the circumstances. The potential use might be true in one case and in another case not.

Mr. GROSS: My question simply was whether, from the standpoint of military expertise, and analysis, as a recognized authority, Sir, whether or not you consider the potential use of an installation is relevant to the characterization or conclusion as to whether it is a military base or not.

General MARSHALL: It has a certain relevancy, that is as far as I could go.

Mr. GROSS: And there again, would you agree, Sir, that the relevancy involves (may I call it) the temporal question what exists at a particular point of time—would you agree to that, Sir? Do I make my question clear, General Marshall? I am not sure that I did, Sir?

General MARSHALL: I am afraid you do not. In other words you are saying that conditions may change and therefore this would be a conditional factor with respect to judging whether or not a military base exists?

Mr. GROSS: Well, I think that is a fair paraphrase of my question, Sir, but in fairness to you, to elicit your expert opinion let me, if I may, broaden the question. In respect of current military science or technology, it is true, is it not, Sir, that within a very short range of time—perhaps a matter of hours or days—the character of an installation may be radically changed?

General MARSHALL: Without a doubt, Mr. President; that is true.

Mr. GROSS: And if it is inspected as of a given point of time, does this then reflect upon its potential usability, in terms of the language used by the Respondent, Sir?

General MARSHALL: Mr. President, it does.

Mr. GROSS: As of that time?

General MARSHALL: It does.

Mr. GROSS: And at that time only, Sir?

General MARSHALL: It does, but this same thing may be said of any tract of ground.

Mr. GROSS: Sir, may I ask you when you were invited to make this inspection visit, was it, as you understood it, for the purpose of putting yourself in a position so that you could submit to this honourable Court

a first-hand, authentic and undoubtedly correct factual statement concerning what you saw, Sir, as a result of your inspection?

General MARSHALL: Mr. President, should I state the circumstances under which I made the trip?

The PRESIDENT: You are certainly invited to, so you may.

General MARSHALL: I made my first trip with no particular idea in mind, except that I got a call from my brother who wanted to know if I would join him on a trip to South West Africa and South Africa; and when that trip was completed I had no idea in mind that I would be brought before this Court as a witness. The change came about several weeks ago when I received a letter asking if I knew anything about Regiment Windhoek and the situation at Ohopoho, and I wrote back and said no, that I had not seen these because when I was in South West last I had not been under any instructions or stricture as to what I should see and how I should spend my time.

I was then asked, would I be willing to go to South West and look into the situation of Regiment Windhoek, which, incidentally, we have not touched upon at all, and also go to Ohopoho, and I replied that I would. And that is how I happened to make the trip.

Mr. GROSS: I realize that this is rather an obvious question, but would you, Sir, feel that you were in a position to testify on this matter unless you had made a careful survey and inspection of the facilities yourself?

General MARSHALL: I would not at all be ready to do that.

Mr. GROSS: Now, Sir, and I address this question to you again as a military expert, with regard to an objective of demilitarization, or neutralization, of a territory, would you, in the light of what you have testified or otherwise, regard supervision as an essential element in the determination of the potential military nature of a given facility?

General MARSHALL: Command supervision?

Mr. GROSS: Supervision in respect of any—I do not want to lead you into a legal issue regarding the Mandate, I know you are not here as a lawyer, Sir—but with regard to the necessity or otherwise of supervision or inspection of a demilitarization plan of any kind, let me take that generally, would you regard supervision of compliance with an undertaking of demilitarization as an essential prerequisite to the, let us say, assurance against use for military purposes?

The PRESIDENT: Mr. Muller.

Mr. MULLER: With respect, Mr. President, my learned friend should make clear what he means by demilitarization plan, before the witness can in any way answer the question.

The PRESIDENT: Well, I suppose the witness will know something about demilitarization, as to what is involved in it, and he will also know something about what he understands by supervision. If you clarify your question as to what you mean by demilitarization, in relation, for example to South West Africa—how you would demilitarize what he describes.

Mr. GROSS: Yes, Sir. I am referring, Sir, in my characterization, to the so-called military clause of the Mandate, Article 4, second paragraph, which you have stated in your testimony you have read and have before you (during the proceedings yesterday). You are familiar, I believe you testified, with that clause: that is what I am referring to.

General MARSHALL: I have it before me.

Mr. GROSS: And specifically with reference to—I do not wish to engage in a verbal exchange on this—my word “demilitarization”, would you

then transpose for my word "demilitarization" the military objectives of that article, and consider this purely in military terms?

The PRESIDENT: I do not know, Mr. Gross, whether he can do that, because if you ask him to do that are you not asking him to form a legal conclusion as to what the meaning of the Mandate is?

Mr. GROSS: No, I am not, Sir. I am merely trying to avoid that by confining this to military potential, the potential usability or usefulness of a given facility, in military terms, and the connection, if any, of inspection or supervision with regard to that military question. That is the purpose of my question, Sir. And I would like to invite you, General Marshall, if I may, to express your opinion, if you care to, with regard to the relationship, if any, between inspection or supervision of a provision which calls for, or which prohibits, the installation of military or naval bases or fortifications.

General MARSHALL: Mr. President, I cannot answer that question in this form, I really do not get it.

Mr. GROSS: You have testified that except for your personal visit of inspection, if I may call it that, you would not have felt in a position to state facts to this honourable Court or express an opinion as to whether or not these identified facilities were, or were not, military installations. That is correct, is it not, Sir?

General MARSHALL: That is correct.

Mr. GROSS: Now in that sense, and arising out of that testimony, then, I would like to ask you, Sir, whether you would apply the same reasoning to the matter of inspection generally. Would you say, Sir, that just as you had to inspect in order to be able to verify facts and to report on them to this honourable Court, that it would be possible for anyone to understand the military nature or military potential of a facility without some measure or capability of an inspection and or supervision? Do you understand my question, Sir?

General MARSHALL: I get it now, Mr. President. I would reply to that that it is perfectly possible for neutralization to take place without there being an accompanying inspection, but on the other hand, there can be no guarantee that it has taken place unless there is an inspection.

Mr. GROSS: And would you say, Sir, that in connection with disarmament proposals, I do not mean to get too general about this, or demilitarization proposals or agreements, would you regard verification and inspection in principle as an important element of any such plans?

The PRESIDENT: Is your question at large, Mr. Gross?

Mr. GROSS: As large as I can make it, Mr. President.

The PRESIDENT: I think you are making it very large, if I may say so; we are getting back to Geneva, are we not?

Mr. GROSS: We are getting back, Sir, I hope, to the basic question, if I may put it that way, of what is really necessary in order to achieve the objective of demilitarization in any form.

Now, Sir, the witness has testified in a very general, broad way with regard to whether a particular facility is or is not a military base, without definition or specification of what the words mean to him. I am now in, I think, a more general sense, attempting to elicit from the witness his expert opinion, if he has one, with respect to the relevance, if any, of inspection or supervision with regard to the military nature or military potential of a facility, Sir.

I do not know, Sir, whether you have answered my question or not,

but I would like to renew it because I am not certain whether you have given me an answer. Would you regard inspection as an essential or, let me put it first, relevant element, in a plan for disarmament, demilitarization or neutralization?

General MARSHALL: Relevant, certainly.

Mr. GROSS: Now would you regard it as, in any degree at all, important?

General MARSHALL: Yes, important.

Mr. GROSS: I think, Sir, that you have testified, have you not, that under conditions of modern technology and modern military science, heavy equipment—you have not mentioned heavy equipment, but I think on the basis of what you have testified—that heavy equipment can be moved rapidly in modern contemporary conditions. Would you agree to that, Sir?

General MARSHALL: Would agree readily—yes.

Mr. GROSS: And with respect, for example, to landing strips or cleared areas, you have not been asked and questioned with respect to technology, for example, such as helicopters. You have testified in response to the leading question that a C 47 or a Dakota might, with some difficulty, make an approach and landing at this particular airstrip. Would you describe, Sir, on the basis of your military expertise, in a very general way, to the Court, as briefly as possible, the nature of the current military technology with respect to helicopters or other methods of vertical envelopment?

General MARSHALL: In the simplest terms, Mr. President, if you have a piece of flat ground anywhere on earth, this can be made a military base if you want to strain the meaning of the term, because you can put a helicopter down on a pad of that size and it can fight from that ground, so there would be scarcely a bit of South West Africa that could not be thought of as a military base if one wants to argue that point of view. Almost any piece of ground there will accommodate a helicopter.

Mr. GROSS: Now, Sir, you are aware, are you not, that this Mandate was written and undertaken in 1920?

General MARSHALL: Yes, I am well aware of it, I have written about the Mandates.

Mr. GROSS: Yes, Sir. And now, military science and technology as it has developed since 1920 has, has it not, changed the nature of military bases and fortifications as known and thought of in 1920? Is that correct, Sir?

General MARSHALL: There have been changes and may I add that as I read the Mandate, some of those changes were anticipated in the language of the Mandate.

Mr. GROSS: And, Sir, you would agree, would you not, that new installations can be created or moved by speedy and perhaps—I am not making an allegation—but they could be moved by secret means through the application of modern military science and technology? You would agree with that, Sir?

General MARSHALL: There is no question, Mr. President, but that military material can be moved at tenfold the speed today than was possible when the Mandate was written.

Mr. GROSS: Now, Sir, the allegations made in the Memorials which were filed in April 1961 were made specifically on information and belief because of lack of inspection facilities. So with respect to allegations made



in 1961, would you say that they are necessarily relevant to the situation which you saw in September of this year?

General MARSHALL: I would have to go back over the allegations, but . . .

Mr. GROSS: But whatever they are, Sir, would you say that they are necessarily relevant to the situation, not . . .

General MARSHALL: I would not so regard them?

Mr. GROSS: You would not so regard them.

General MARSHALL: No.

Mr. GROSS: Now, Sir, going back again to the question of time as an element, and the point of time as an element in determining the usefulness or use, or potential usefulness of a facility, would you say that you can be confident of what the situation is today with respect to any of the installations you saw in September?

General MARSHALL: Pardon me, but I really do not understand the question.

Mr. GROSS: I said, Sir, would you say that you could state with assurance to the honourable Court what the situation is as of today, this moment, in the installations which you saw in September.

General MARSHALL: In other words, am I certain that they could not have been changed overnight?

Mr. GROSS: If you put the question that way, yes, Sir. I will accept that brief formulation.

General MARSHALL: No, I could not be certain. To the limit possible I checked through to find out by looking at muster rolls and looking at duty rosters whether the data I was getting from the South West Command and from Regiment Windhoek was correct, and also by interviewing personnel, because while I find it possible for one or two individuals to fabricate a story, if you check all up and down the line fabrication becomes impossible. That is the reason that I had the muster there on the Saturday. I wanted to check with N.C.Os., also to find out if there was any difference in the story. Yes, the situation I have described could change overnight, just as an emergency may arise overnight. Inspection is concerned only with what is seen at that time. An inspection does not guarantee that the situation will be continued, but one does look for fixes in such a situation to see whether this is the norm in the establishment.

Mr. GROSS: Sir, just by way of illustration, and in no sense implying fabrication or otherwise, for example, with respect to the complement of the staff at Regiment Windhoek, in the Counter-Memorial, IV, page 56, which was filed in 1963, it is stated, and I will read this one sentence:

“Only a small permanent force, administrative staff, consisting of three officers and seven other ranks, is permanently stationed at Windhoek.”

Now, without inviting your comment as to whether this is a big or a small staff, just as a matter of fact, Sir, in your testimony did you not say that when you met with the South West Africa Command at Windhoek that you met with 5 officers and 15 other ranks?

General MARSHALL: That is correct, Mr. President.

Mr. GROSS: Now this would, I suppose, would it not, Sir, indicate that situations do change from time to time with respect to the nature of the installations, or the number of persons there, without regard to whether it is a minimal change or not?

General MARSHALL: Right, but I would like to point out one area of confusion here. I think that we are talking about two different things. You are talking about Regiment Windhoek and I am talking about the South West Command, and these are not the same.

Mr. GROSS: I was talking, Sir, about the permanent force, administrative command, and I understood you to say that you met with them.

General MARSHALL: But this is hardly concerned at all with Regiment Windhoek.

Mr. GROSS: Well, what is the relationship, Sir? My notes may be faulty on this.

General MARSHALL: South West Command is from the standing establishment, and it has only an administrative relationship to Regiment Windhoek, and that is limited to simply making sure of the personnel programming—moving people to Regiment Windhoek and moving them out, and also issuing them equipment when they go to their homes. South West Command is not an operational Command. In terms that we use in the United States this is a headquarters which is set up primarily for the induction of personnel and for processing to get the young men of the Territory into military service. They start monitoring them when they are 17 years of age, then move them up for medical examination, and then after they get their medical examination and go into training; from that time on this headquarters has to keep track of these men.

For instance, if a man goes to South Africa instead of staying in South West, they still monitor that individual to make sure that he is fulfilling his obligation, and their only relationship to Regiment Windhoek is in this same capacity, just making sure that the individuals in there are doing their duty, and making sure that the regiment gets its numbers, and that it returns its equipment when the men have finished their obligation. These rifles that I saw in their store-room were rifles that had been brought in from men who had finished their obligation, and they would in turn be passed on to men who were being assigned to Regiment Windhoek. They would take their rifles with them to their homes, for Regiment Windhoek does not train in the Territory, and it does not train under this headquarters.

Mr. GROSS: Just to avoid any possible confusion which I may have engendered arising out of your testimony as to the nature of the South West Africa Command, it is stated in the Rejoinder, VI, at page 373:

“The said headquarters [this is in connection with the administrative headquarters of Windhoek, I believe], known as the South West Africa Command, consists of a Permanent Force staff of three officers and seven other ranks permanently stationed at Windhoek.”

Just for the sake of clarity, is this the group to which you referred in your testimony?

General MARSHALL: That is the group to which I am referring.

Mr. GROSS: Consisting, now, when you saw it, of 5 officers and 15 other ranks?

General MARSHALL: Five officers and 15 other ranks.

Mr. GROSS: With regard to the Command structure as distinguished from the administrative structure, did you in the course of your enquiries and analysis and inspection look into the nature of the Command structure of the Regiment Windhoek, and to what higher echelons they report in the line or chain of command? Would you state that to the Court?

General MARSHALL: The Regiment throughout the year is embodied mainly in its Commander, its Adjutant and its Quartermaster; otherwise the Regiment does not meet at any time, because it is scattered through the Territory; it is not based on Windhoek really, though some of its individuals live in Windhoek, but the law requires that if a man lives 10 miles beyond the point at which he is to appear for temporary drill, for periodic training, he need not comply, and the dispersal of the Regiment makes it impossible for them to form during the year, and they get together for three weeks in summer, that is, two-thirds of the Regiment, every year, goes to summer camp in Bloemfontein and there takes its training, and it is under South Africa Command, not under South West Command.

Mr. GROSS: In other words, the Adjutant reports to what commanding officer, do you know?

General MARSHALL: The person?

Mr. GROSS: No, the rank, and the place in the table of organization.

General MARSHALL: For administrative purposes, again where he is dealing with personnel or equipment, he does deal with South West Command, but where it is a matter of dealing with training, this is scheduled from Army Headquarters, South Africa.

Mr. GROSS: In South Africa?

General MARSHALL: Yes.

Mr. GROSS: And on the basis of your observation and study in a military operational sense—if you can answer this question—would deployment of personnel, movement of logistical equipment, for example in case of emergency, be under the command and direction of South Africa Headquarters?

General MARSHALL: That would be under South Africa Headquarters.

Mr. GROSS: Would you then from a military point of view regard Regiment Windhoek on the basis of its place in the scheme as an adjunct of South African military forces in any sense of the word?

General MARSHALL: Definitely so.

Mr. GROSS: You have not testified, I think you have not been led by counsel, in respect of Walvis Bay—am I correct in that? My notes do not show that you have testified on that subject—am I wrong in that?

The PRESIDENT: No, you are quite right.

General MARSHALL: Mr. President, I went to Walvis Bay . . .

The PRESIDENT: You went to Walvis Bay, but you did not testify about it.

General MARSHALL: I went to Walvis Bay because, before I undertook this mission, I told the authorities that I would go only provided I was permitted to see what I pleased.

Mr. GROSS: Since you have not testified with respect to Walvis Bay I could not, I think, with propriety cross-examine you on this subject which you did not open up. I would, however, in connection with the South West Africa installations or facilities as to which you have testified and their military use, ask you, did you encounter in your inspections any information with respect to whether aeroplanes, say jet planes, from Walvis Bay overfly South West Africa on any missions?

The PRESIDENT: "Overfly on missions" has a peculiar sense, Mr. Gross; "overfly" alone is probably sufficient.

Mr. GROSS: Overfly, yes, Sir. I was thinking of reconnaissance or any other missions of a military nature, including training.

General MARSHALL: No, I did not run into it, and I saw none.

Mr. GROSS: As a military analyst could you say whether, on the basis of your own visit to Walvis Bay, planes taking off from the airfield there would have to either fly over the water or over South West Africa?

General MARSHALL: They would certainly be going around by Robin Hood's barn if they didn't travel over South West.

Mr. GROSS: One other question, with regard to the following conclusion or statement by the Respondent in the Counter-Memorial, IV, page 50—do you have that? The bottom third of the page, following the sentence which I have already read, beginning "A common feature of these definitions" and so forth, on which you have commented. The sentence to which I should now like to call your attention reads as follows:

"Consequently, failing the purpose of utilization for operations or a campaign, actual or prospective, by a force or an army, a place cannot be said to be maintained as a military or naval base."

Would you regard that as an accurate or fair description or characterization of a military or naval base?

General MARSHALL: I would consider that a fair definition, yes.

Mr. GROSS: The question of whether such an installation or facility, present or as it might be revised, is properly to be called a military or naval base depends, does it, on the "purpose of utilization for operations or a campaign, actual or prospective, by a force or an army"? That is what you say you agree with as a fair characterization of a definition of a military or naval base?

General MARSHALL: I would agree, yes.

Mr. GROSS: In your answer to the questions led by counsel as to whether or not a particular installation or facility is a military or naval base, when you testified that it was not in the cases in point was that answer based in any respect upon your analysis or understanding of what a prospective use might be?

General MARSHALL: It was based rather upon the nature of these installations and of the force-levels in the force-relationships. For one thing, you cannot think of Regiment Windhoek as a field force, because it is not in action, it is not a standing force, it has no being except when it is in training. In our country speaking of reservists as a field force would be considered a misnomer—I think it would anywhere in the world—that they constitute a field force simply because they have a military obligation. There is no Command structure over Regiment Windhoek, and Regiment Windhoek does not have the material outside of its rifles that would enable it to campaign even if it were a standing force. One of the sources of confusion, I believe, in this discussion is in including automatically naval bases and military bases in the same context, because a naval base is a very definite object, it is not just any naval installation, it is a port or a harbour facility.

The PRESIDENT: You cannot change a naval base very much overnight.

General MARSHALL: No, Sir, it is a hard establishment, prepared for one purpose—to service, supply and support the fleet or some part thereof, whether it be the Navy Air Arm or submarines, but it is a hard establishment, and I cannot conceive of a sentence in which a naval base is referred to as such and a military base is spoken of and this latter would refer to any kind of camp, post or station. It seems to me that this would be absurd, that there must be a consideration of equivalents here, that

a military base is an establishment that is set up and prepared manpowerwise and as to equipment to support forces in the field.

Mr. GROSS: Would you say that, as distinguished from a naval base, a military base is, as you have, I believe, already testified, readily susceptible of very speedy conversion, expansion or change of character?

General MARSHALL: Yes, indeed I would, Mr. Gross, though now I would not say that this is true of a naval base, nor is it true of a military base if we consider the history of the time when this Mandate was written, when they must have been thinking about the rise of air power and therefore defined it as a military base rather than strictly an Army base. One cannot make a real air base overnight; one may make an airfield, a landing strip, but as for being a main base, no.

Mr. GROSS: A main base, Sir?

General MARSHALL: A main base in the sense that it would be able to field air power in the way that a naval base can float and support the fleet.

Mr. GROSS: With respect to the character of a military base in contemporary conditions, would the question of whether a particular installation or facility, as it exists from time to time, or may be converted, taking it whichever way you wish, does the character depend upon the terrain which it occupies, the nature of the country in which it exists and, if I may add, the potential use to which it may be put? Are all these relevant factors in the event?

General MARSHALL: To a certain extent this is true, for one cannot imagine a military base—a base supporting field forces—being put other than at the hub of a road network. For example; it would invariably be so placed at the point where it could cover the greatest radius of operation. I was just going to make another point, adverting to what I said a minute ago, that the other word in this prohibition that interests me is the word "fortification", because this means only one thing: it does not mean any armed place; whereas the word "fort" has come to have a loose meaning in our time this is not true of "fortification". "Fortification" means "where man-made works have strengthened the position"; you can have 100 soldiers on a hill and have them armed—it would be an armed position, but it would not be a fortification until they had done some work to strengthen it; and so fortification is a very, very definite thing.

Mr. GROSS: Would you say, *à propos* of your testimony just now with regard to fortification, that from your experience, let us say in Korea or elsewhere, concrete emplacements or fortifications can be erected very speedily?

General MARSHALL: Yes, even 10 yards of trench is a fortification.

Mr. GROSS: If I may revert for just one moment to the question which I asked you earlier and to which I do not recall having had a response. With respect to the Respondent's comment or conclusion or definition, whatever it may be, on page 50 of the Counter-Memorial, IV, where one of the elements which is referred to is actual utilization for operations or a campaign, actual or prospective, I believe I asked you whether in your investigations and enquiries you had had occasion to discuss with any officials the general question of prospective use of facilities?

Mr. President, I believe the pending question, if my memory serves me, is my question to General Marshall with respect to whether or not during the course of his visit did you, Sir, have discussions or consul-

tations with any Government officials concerning any prospective utilization of these installations or facilities?

General MARSHALL: By Government officials, does the question include army officers?

Mr. GROSS: Military or civilian officials of the Government.

General MARSHALL: No civilian officials; I talked to the commanders.

Mr. GROSS: At what level, Sir?

General MARSHALL: At the South West Command level, but none in Pretoria.

Mr. GROSS: So, there was no occasion, I take it, was there, Sir, for you to discuss or enquire into the question of contingency planning for the possible utilization of any facilities in South West Africa?

General MARSHALL: Mr. President, a visiting officer from abroad does not enquire into this kind of matter when in foreign territory, it is indiscreet.

Mr. GROSS: No further questions, Mr. President.

The PRESIDENT: Does any Member of the Court desire to ask the General any questions? If not, I would like to ask you one or two questions.

General MARSHALL: Yes, Mr. President.

The PRESIDENT: I think you said that you had written upon the Mandate—written some articles upon the Mandate: had you?

General MARSHALL: Not any articles, Mr. President; two years ago I wrote for the American Heritage Company *A History of World War I*, and that got me into the Mandate.

The PRESIDENT: Oh, I see.

I am interested in your description of fortifications; I do not wish to challenge your expertise, General, but I understood you to say to Mr. Gross that if there are established 10 yards of bunkers, that would be a fortification.

General MARSHALL: Yes, Mr. President.

The PRESIDENT: Is that the meaning you would say is to be given to the word fortification, as it was used in 1921?

General MARSHALL: I would give it that meaning.

The PRESIDENT: So that a foxhole is a fortification.

General MARSHALL: A foxhole would be a fortification. Any man-made work, no matter what it is . . .

The PRESIDENT: No matter what it is?

General MARSHALL: Correct, Sir; it is a fortification.

The PRESIDENT: So that if troops operating over training ground dig themselves foxholes, for the purpose of obscuring their party, then that is a fortification?

General MARSHALL: Yes, indeed, Mr. President, they have fortified the ground, and these must be regarded as "fortifications" even if they were used within a training frame.

The PRESIDENT: I see; and in the context of when you speak about naval and military bases or fortifications, as a military man, do you say *that* would be the meaning in 1921 of the word fortification?

General MARSHALL: Right, Mr. President.

The PRESIDENT: Can you quote any authority at all, apart from your own view, that a fortification would include any man-made bunker or foxhole?

General MARSHALL: Any authority?

The PRESIDENT: Yes.

General MARSHALL: The French-English *Military Dictionary* and the dictionary which is in use in our services.

The PRESIDENT: What is the name of the dictionary?

General MARSHALL: I think it is Jensons.

The PRESIDENT: Jensons Dictionary?

General MARSHALL: I think that is it.

The PRESIDENT: The military dictionary?

General MARSHALL: The name has been given in the paper that I wrote, and I do not have access to that at this moment.

The PRESIDENT: Well, may I just follow it a little bit further?

If, for example, you have troops in training, cadets in training—16-year olds, to take for example—and they are part of the military establishment where they are being compulsorily trained, and in their training ground they throw up bunkers, trenches 10 or 15 yards long, and then they are exposed to the weather: once having been dug, it remains a fortification? It is a fortification and remains a fortification for all time thereafter?

General MARSHALL: Mr. President, it would remain a fortification, even if it is on an old battlefield, until it has finally eroded.

The PRESIDENT: Until it has finally eroded? So, when you see throughout the world even old gun-pits which could not be used at all for modern military purposes, would you still call them, in modern terms, fortifications?

General MARSHALL: Mr. President, you would call them fortifications, antique it is true, but they would still be fortifications.

The PRESIDENT: Even if you could not use them at all for military purposes?

General MARSHALL: Right.

The PRESIDENT: I see, that is all I wanted to ask you, Sir.

Yes, Mr. Muller, do you want to re-examine?

Mr. MULLER: No further questions, Mr. President.

The PRESIDENT: Would you call your next witness, please.

General, you are released from further attendance; I do not think you will require him, will you, Mr. Muller?

Mr. MULLER: No, Mr. President.

The next witness will be Professor Manning, and, with the permission of the Court, Dr. Rabie will introduce the witness and put certain questions to him.

Mr. RABIE: Mr. President, Professor Manning's evidence will relate to Applicants' Submissions Nos. 3 and 4.

In July, Mr. President, the Deputy-Registrar and the Applicants were informed that Professor Manning's evidence would be directed to the following points—I quote from the letter which was sent at the time:

“(1) Group relations generally.

(2) The advisability of applying measures of differentiation between population groups in countries such as South West Africa.”

Subsequently, Mr. President, the Respondent's Agents sent a further letter to the Applicants, in which Professor Manning's evidence was set out more specifically, and I propose to read from a copy of that letter, which was dated 11 October 1965:

"Points to which evidence will be directed:

On the basis of Professor Manning's studies and reflections in the sphere of International Relations, he will testify as to the importance of the sociological phenomenon of group personality, particularly in the case of ethnic and tribal groups, and particularly in relation to promotion of the well-being of such groups and their members.

He will illustrate the theme with reference to practical examples pertaining, *inter alia* to the Polish nation, British Guiana, Mauritius, India, Pakistan, the former Ruanda-Urundi, Cyprus, Canada, Belgium, the United Kingdom, and South Africa. Against this background he will consider the effects of the application of a suggested rule of non-differentiation in South West Africa."

It was then stated that in the course of his testimony Professor Manning would refer to certain publications, which are set out in the letter.

The PRESIDENT: Mr. Rabie, will you now call Professor Manning?

Mr. RABIE: Yes, may I now introduce Professor Manning?

The PRESIDENT: Mr. Gross?

Before you call Professor Manning, Mr. Gross desires to be heard.

Mr. GROSS: Thank you, Mr. President.

Very briefly, Sir, the Applicants would wish respectfully to reaffirm objections, both specific and general, previously made with respect to testimony given or proffered on the basis of a formulation similar to that now stated in the letter just read into the record:

"Against this background he [that is, the witness] will consider the effects of the application of a suggested rule of non-differentiation in South West Africa."

Sir, if I may just refer, by citation without comment or discussion, to the verbatim records of 21 June, X, pages 103-108 and 122-124; 22 June 1965, X, pages 131-133 and 138-139; and finally 7 July, X, pages 335-336, 341-342, and pages 348-349. Sir, in conclusion to the general objections already laid and which are reaffirmed respectfully, the Applicants would contend that the confusion and the ambiguity to which they referred in the previous formulations, is now compounded by reference to a "suggested rule of non-differentiation", which is a meaningless phrase in the Applicants' understanding or comprehension, and therefore the objection is reaffirmed and specifically made applicable to this formulation as well, Sir.

The PRESIDENT: Mr. Gross, the general objection is noted, and your specific objection is noted.

The practice I think the Court will follow is that which we have followed before, and when the question is put to which you specifically desire to take objection, which involves the submissions which you have made to the Court, it can then be taken and the Court can consider it, but until the question is put, sometimes the problems which are foreseen do not really occur; so, the question will arise only when objection is taken to a specific question.

Mr. GROSS: Mr. President, may I say, Sir, with respect, that because of the very ambiguity of the expression used as the point to which the evidence will be directed, the Applicants' complete inability to comprehend what is intended by it, it will be difficult, if not impossible, for the Applicants to raise specific objections with respect to specific questions



because we do not know what any of those questions will be actually directed to, since this formulation is not understood by us.

Therefore, with the President's permission, I should like, on behalf of the Applicants, to state and reserve a general objection to all questions and all answers which may be asked on this foundation, reserving also the right, with the President's permission, to raise specific objections, if it is guessed or estimated that a specific question is directed any more than any other against this foundation, Sir.

The PRESIDENT: Whatever right you are seeking to protect, Mr. Gross, will be protected by your general objection and, as I have indicated before, in the case of evidence which is given by any witness, the Court itself, if there is any question of relevancy, will have need to determine it when it proceeds with its deliberations. So, having taken a general objection, you may rest assured that that course will be followed. However, the normal way in which an objection is taken to the evidence of a witness is when a question is put. If it is then taken that it is not relevant to any issue in the case, at that time the objection ought to be taken and it ought not simply to be dependent upon a general objection.

Mr. GROSS: Then, if staccato objections are filed then I hope the honourable Court will . . .

The PRESIDENT: By all means, you have complete right, Mr. Gross, to object to any question, if you think that the question is not relevant to any issue before the Court. Mr. Rabie.

Mr. RABIE: Mr. President, may I ask that the witness make first the declarations provided for in the Rules of Court—that is, both as a witness and as an expert.

The PRESIDENT: Let the declarations be made.

Mr. MANNING: In my capacity as a witness I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth. In my capacity as an expert I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

Mr. RABIE: Professor Manning, your full names are Charles Anthony Woodward Manning, is that correct?

Mr. MANNING: Quite correct.

Mr. RABIE: Are you a South African?

Mr. MANNING: Yes, I am a South African. I was born of British parents in what was then the Cape Colony. I have since then lost my British nationality and so now I am simply an English-speaking citizen of the Republic of South Africa.

Mr. RABIE: Where do you live, Professor Manning?

Mr. MANNING: At present, I live in England. I came from South Africa in 1914 and since then I have had four jobs, two of which were in Switzerland and two of them in England. I have not yet returned to South Africa.

Mr. RABIE: You have been back to South Africa on various visits?

Mr. MANNING: I have been back nine times, four times in the last 15 years for periods of two to three months at a time.

Mr. RABIE: You stated that you were an English-speaking citizen of the Republic—do you attach any special significance to the fact that you are English-speaking?

Mr. MANNING: Yes, Mr. President, I would say that it is of interest that I was formerly a warm admirer of General Smuts.

The PRESIDENT: I don't think this really matters, does it, Mr. Rabie?

In what way does this go to the qualification of Professor Manning as an expert witness?

Mr. RABIE: Mr. President, only in this way, it seems to me that the witness would like to state just where he stands and how he sees things. Politics are involved in this and he would like to say that, although he is English-speaking, things have happened in South Africa which have had an influence on him, and he is going to tell the Court . . .

The PRESIDENT: I don't think you can tell us at the moment precisely what he was about to tell the Court.

Mr. RABIE: Mr. President, he is also going to refer to conditions in South Africa as part of his thesis and I think the witness rather thinks that he would like to say this to make that more clear to the Court.

The PRESIDENT: I do not think it is admissible at all, Mr. Rabie. The question whether he has a bias one way or the other does not arise at all unless he is cross-examined along those lines by Mr. Gross. The only evidence that you can direct yourself to at the moment is his expertise and what evidence he is going to give as an expert and as a witness of fact.

Mr. RABIE: As the Court pleases, I shall proceed to the next question. Professor Manning, will you tell the Court what academic training you have had?

Mr. MANNING: Before the First World War, throughout which I served in the British Army, I had one year at what is now the University of Cape Town. At Oxford after the war, I studied philosophy and law and I attained the degree of Bachelor of Arts in what is called Greats, *Litterae Humaniores* in the official designation. I took a degree in Jurisprudence and I took the degree of Bachelor of Civil Law. I was called to the Bar in 1922 and later, for a time, I held a Fellowship at Harvard University where I laid the basis for my subsequent thinking on the problems of the organization of peace and the prevention of war.

Mr. RABIE: Professor Manning, have you published anything on the topics to which you have referred?

Mr. MANNING: Over the years I have published some articles and in 1962 a book *The Nature of International Society*.

Mr. RABIE: That is the name of the book?

Mr. MANNING: Yes.

Mr. RABIE: Would you tell the Court what posts you have held in the course of your career?

Mr. MANNING: On completion of my studies at Oxford, I served for a short while in the diplomatic division of the International Labour Office in Geneva and then for a little over a year I was Personal Assistant to the Secretary-General of the League of Nations. Then, for over six years, I taught legal subjects in Oxford, mostly Roman law, jurisprudence and international law and then, for more than 32 years, I held the Chair of International Relations in the University of London. I should just add that it is not correct, as is said in the Respondent's Rejoinder, that I was ever a Professor of International Law. Twice, during the absence from Oxford of Professor Brierly, I did deliver courses of lectures in his stead, and on the second of these occasions, I was formally gazetted Deputy Professor of International Law, but I never held the Chair, so there has been some confusion there.

Mr. RABIE: What did your teaching of international relations involve?

Mr. MANNING: I must try to be brief with this, Mr. President. From the outset, I saw my subject not so much as a branch of history or of con-

ventional political science but rather as a species of political sociology, focused, as it was, on human society in its widest dimension, its world-wide dimension. I saw it in principle and in fact as a kind of sociology of the social universe, a cosmology of the social universe perhaps.

Mr. RABIE: Could you explain that a little further, please?

Mr. MANNING: Perhaps I can best reply to that question by recalling my continuing interest in international law, the very existence of which seemed to me to presuppose the idea of a society of sovereign States. In this idea there is, at least for diplomatic purposes, a society of States, and it was with the way of life in general, as opposed to its specifically legal aspects, in that society, that the subject of international law relations would, I judged, be suitably concerned. Basic, therefore, to the study of international relations, was the understanding of the characteristics of that society, or as I rather prefer to call it that *quasi* society, of sovereign States. It is the milieu in which international happenings occur. Among other matters coming within the purview of the subject are the workings of international institutions, including, for example, the mandate and trusteeship systems, and such developments in the domestic affairs of States as have an impact upon international issues.

Mr. RABIE: Professor Manning, in what ways do you consider yourself to have furthered the development of your subject?

Mr. MANNING: One of my first concerns was to stress the importance of an exploratory approach to the interpretation of social phenomena as opposed to an ideological one. Later, I came increasingly to insist upon the need for an essentially philosophical treatment of certain sorts of issue as, for instance, the basis and nature of the binding force of law, questions of international morality, and the elucidation of concepts such as group personality, nationhood, world opinion, self-determination, sovereignty and the like.

I also found myself emphasizing the relevance to an understanding of politics and especially perhaps of international politics of what is sometimes termed the sociology of knowledge, though I prefer to call it the sociology of appreciation. I drew attention in this regard to what I have called the iron law of partisanship, meaning thereby, the influence of men's political sympathies upon what they see and what they say and, in general, I found it necessary to stress the role of prejudice, of fashion and of public and private expediency in the determining of what men believe and what they disbelieve of what they read and what they hear. The purpose of it all is, I suppose, to make a man a connoisseur as far as possible of what are sometimes called world affairs. Necessary to a connoisseurship of international situations is the clear perception of the alternative courses effectively open to political decision makers at any given point. Dispassionate enquiry into the nature of these alternatives demand an everlasting awareness of the difference between two angles of mental vision, the angle on the one hand of the detached investigator and the angle of the man of political affiliations on the other. Appreciation of this distinction can be helpful.

Mr. GROSS: Mr. President.

The PRESIDENT: Mr. Gross.

Mr. GROSS: Forgive the interruption, Sir, but if the witness is being sought to be qualified as an expert on all of the concepts, doctrines, etc., to which he has now been referring, Sir, there would, I think, be an objection in respect of this statement, if it is intended as a basis for quali-

tion as an expert to testify with regard to the general range of matters he has covered. If this is a statement of personal *credo* and if the Court wishes to hear it on that basis obviously, Sir, the Applicants would have no objection to that.

The PRESIDENT: It is a little unusual, the way in which you are qualifying Professor Manning as an expert. It is perfectly permissible for him to indicate that he has pursued the course of the study and personal investigation in respect of these particular matters, but so far it has very largely been an expression of his own philosophical approach to certain matters of world affairs.

Mr. RABIE: With respect, Mr. President, opinions will be expressed in the light of these studies. My next question will be whether the norm, if I may call it that, and I will quote from the Applicants' own replies so that there can be no misunderstanding of what is intended, whether his subject has any relevance to the issue raised in the formulation of that norm, and Professor Manning will then say whether he regards his subject as being relevant to that issue.

The PRESIDENT: You may, as I have said, qualify him by indicating the extent of his expert knowledge, but that is something different, Mr. Rabie, from the witness stating some of the things that he believes in, or some of the things which have interested him, unless he has pursued his studies, which I presume he has. It can be covered very simply by a question to Professor Manning: have these things of which he has spoken been the subject of special study on his behalf, and, if so, what has been the nature of that study. Why do you not put a question such as that to Professor Manning?

Mr. RABIE: With respect, Mr. President, he has said what sort of thing he has studied—what his studies have taught him. I now propose to ask him whether his studies have any relevance to this norm.

The PRESIDENT: Very well, the question of the value of his testimony as an expert will depend upon the extent to which you qualify him and you must take your own course, Mr. Rabie.

Mr. RABIE: As the Court pleases.

Mr. GROSS: Mr. President, the Applicants specifically object to any question based upon the reference to "this norm" or any similar language characterizing the purpose of the questions.

The PRESIDENT: I think we must first wait for the question, Mr. Gross.

Mr. RABIE: Mr. Manning, my question to you is this: It has been contended in this case that there exists an international norm or standard which prohibits the official—and now I quote from the Reply, IV, page 493—allotment of "rights, duties, privileges or burdens on the basis of membership in a group, class or race rather than on the basis of individual merit, capacity or potential". Now, I would like you to say whether your subject has any relevance to this issue—to the issue as defined?

The PRESIDENT: Yes, Mr. Gross?

Mr. GROSS: Mr. President, objection on grounds stated previously, specifically reaffirmed to this question, to which there is added the further objection that the question calls for a conclusion of law, an interpretation of the Applicants' pleadings and, even in that context, the legal argument of the Applicants is not fairly set forth in the Respondent's out-of-context summarization.

The PRESIDENT: Mr. Gross, the quotation, if my memory serves me correctly, is taken from your Reply, IV, page 493.

Mr. GROSS: Mr. Rabie quoted one sentence.

The PRESIDENT: Well, after all, the value of the question will be determined by the Court. If Mr. Rabie does quote out of context, or not fully, then the value of the evidence will be judged accordingly, but I do not see that Mr. Rabie can be prevented from putting the question to the witness as to whether any words—using words taken directly from the Reply—have been the subject of a study of the witness.

Mr. GROSS: It is the Applicants' respectful submission that the quotation of this sentence does not fairly reflect the context and legal basis of the Applicants' arguments. That is one added basis for my objection, Sir.

The PRESIDENT: That will be judged by the Court.

Mr. GROSS: Thank you, Sir.

The PRESIDENT: Continue, Mr. Rabie.

Mr. RABIE: Professor Manning, would you say whether your subject has any relevance to the issues so defined?

Mr. MANNING: Yes, Mr. President, I consider especially relevant my analysis of the long-debated problem, and, for the sociologist, the crucial problem, of the nature of groups and the group personality.

Mr. RABIE: Would you be a little more specific, if you can, please?

Mr. MANNING: The first thing I would say about group personality is that it matters. Group personality matters. It is a tremendously important element in that reality which it is the political sociologist's particular business to explore. The next thing is that, while group personality is sufficiently real to be tremendously important, the question is in what sense is it real? It is to this question that I try to give an answer. Man's membership of various groups is, of course, a matter of common observation and everyday language takes it for granted. A group is, of course, composed of its individual members. It is thus a human aggregate. The question is whether it is that and nothing more? And if it be something more, in what sense is it more? The answer I would offer to this question of the nature of the group, and of group personality, hinges upon a distinction I have learnt to draw between three stages, or levels, in man's apprehension of social phenomena.

In stage one, he uncritically accepts, without reflecting upon just what is involved, the imputing of personality to an endless variety of groups, from the family and the tribe to the nation and even to "the world". This stage I am disposed to label the stage of primitive impressionism because that is how I think things tend to strike us at first.

Next, comes the attitude which insists that the only persons are individual human beings. Adolescent scepticism is what I call this, or naive realism.

The third stage is one which I think of as that of sociological maturity, or sophisticated realism. It is the stage which comes to terms with sociological reality, in other words, with the way in which matters are viewed in practice in social life. This stage perceives that while the family, or the committee, as distinct from its several members, is indeed not objectively a person, it nonetheless is a person in effect. For socially important purposes, it is as if the family, or the sovereign people, or the electorate, were indeed a person, so, though it is not in the literal sense of the term a person, not, that is, a person in point of fact, it may yet be a person in point of theory, whether it be legal theory, or constitutional, or diplomatic theory or, what I would like to refer to as socially prevalent social theory, theory prevalent in society about the nature of society.

Perhaps the term "theory" in this context may be misleading for, as I have said, the personality of the group is a sociological reality. What I am talking of is the body of largely unverbaliized, largely unarticulated assumptions in the light and on the basis of which the affairs of community life are ordinarily conducted. One finds in this sphere certain socially indispensable notions, whose value lies in their social utility irrespective of their literal truth, for it is not merely by a fiction of the law that a college, for instance, may be said to be a person. Man's propensity for the personifying of abstractions, organizations, institutions and groups is, I think, more deeply rooted in him than the mere conventions of the law.

The attribution of personality to the group is thus socially prevalent, the group being indeed, for important purposes, socially viewed as a person. Society sees the individual, and he sees and feels himself, not just as one of a number, but as part of a whole, a social whole. The individual becomes aware of himself as participating in the collective selfhood of his family, his tribe, his fraternity. He has his image of himself, his image of the group, or groups, to which he belongs, and his image of his social cosmos as a whole. His image of his group is held by him in common with those others who, with him, are the members of that group. Their collective self-image is a part of what gives them their cohesion, their solidarity, as a group.

Mr. RABIE: Mr. Manning, is what you are saying now true of every group?

Mr. MANNING: It is true, but not everywhere and always in equal measure. The cohesion, the solidarity, of the group, be it the family, or the nation, is a matter of more or less; a question of degree, depending on the circumstances of the moment and of the particular situation.

In 1948, for example, when Mr. Winston Churchill called upon Europe to arise, had Europe been collectively a self, she might perhaps have done so.

Mr. RABIE: Mr. Manning, I really interrupted you when I put my last question to you. You were suggesting that group personality had a bearing on the issue to which I have referred. Will you continue with that, please?

Mr. GROSS: Mr. President, I object to the question for reasons already mentioned and, if I may, in order to preserve the Applicants' rights, Sir, with your permission, also confess to a dilemma as to how best to preserve the Applicants' rights. I feel it is not clear to the Applicants as to what issue, to what point, this statement, or this type of testimony is really directed. Therefore, it is difficult to know whether to reserve rights of possible cross-examination or whether to object, on grounds of relevance, in connection with statements made. References are made that group personality matters, that group personality is important. The Applicants consider and conceive that group personality matters and that it is important. If the witness is addressing himself and his testimony to a justification of the policy of apartheid with respect to South West Africa, which is the issue drawn in these proceedings, with all respect, it would be helpful to the Applicants to know that that is the case, and therefore determination could be made, subject to the Court's permission, as to what should be reserved by way of objection and what should be reserved for cross-examination, if any, Sir.

The PRESIDENT: All I can say to you, again, at the moment, Mr.

Gross, is, that if you object to what is being said now, then the objection must be ruled upon in the sense that the Court must indicate to you the course it will pursue.

It seems to me that what is about to take place in the witness's evidence is that it is about to be directed to the norm, upon which you have directed a great deal of your argument to the Court, and, reading the statement which was contained in the letter addressed to you, as Agent for the Applicants, the course which Respondent is now about to engage upon is to consider the norm in relation to the welfare of the people of South West Africa, and it seems to me that the direction of the evidence is designed to establish that if such a norm were applied it would be inconsistent with the welfare, the social progress and the development of the people of South West Africa. That seems to me to be the direction which the evidence is taking.

Mr. GROSS: Mr. President, thank you, Sir. At the risk of repetition, and subject to your indulgence, the norm for which the Applicants actually contend is not properly characterized as a suggested rule of non-differentiation. The Applicants believe in differentiation, and they believe in group personality. The norm for which we contend, Sir, and to which this evidence apparently is not being directed, is our alternative contention that an international rule does exist which prohibits official discrimination.

If the witness is attempting by his testimony to support official discrimination on a basis of race, the Applicants would like to know that with clarity, Sir, if it is possible.

The PRESIDENT: Well, I think we will have to be a little patient. I understand the reason why you take objection, Mr. Gross, but whatever the norm is which you are contending for, the Court will be able to determine that. And if the evidence does not direct itself to that norm, then the evidence may be quite worthless, so at the moment we must wait to see to what extent the evidence is connected up with the norm which the Applicants have put before the Court.

Mr. GROSS: Thank you, Sir. Any objection is noted, is it, Sir?

The PRESIDENT: Oh, by all means, and whatever rights you have will be protected, Mr. Gross.

Mr. RABIE: If the Court pleases. Professor Manning, will you continue with what you have been saying with regard to group personality.

Mr. MANNING: I think you asked me whether it had any bearing on the issue to which you had referred. Yes, I think it has . . .

The PRESIDENT: Can I ask Professor Manning this question, it may clarify it.

Professor Manning, have you read the Reply, at IV, page 493, where there is set out a norm by the Applicants in full?

Mr. MANNING: I believe I have, I have not the page with me now.

The PRESIDENT: Well, I think perhaps it might be shown to the witness so that there can be no doubt about it; and ask the witness if what he is about to say is directed to that particular norm, not to any particular part of it at the moment.

Just take your time and read it, Professor.

Mr. MANNING: Page 493?

The PRESIDENT: That is right, page 493; it's at the top of the page on the left-hand side.

Mr. GROSS: Mr. President, may it be respectfully suggested that page

493 begins with an incomplete sentence and it might be fairer to the witness, Sir, if it is agreeable to the President, that he start reading from page 492, where the context actually begins, to the conclusion on page 493?

The PRESIDENT: Would you commence at the bottom of page 492, Professor, and read it through until the end of the first main paragraph, I think, on page 493. That is correct, is it not, Mr. Gross?

Mr. GROSS: Actually, Sir, it is the third sentence on page 492 and then down. There are three asterisks and then begins the context in which this statement appears.

Mr. MANNING: Well, I understand it, Mr. President.

The PRESIDENT: You have read it?

Mr. MANNING: I had read it some time ago.

The PRESIDENT: It is just being brought to your notice at the moment, Professor, so as to lay the foundation for the question which Mr. Rabie will now ask you. Having read that, is what you are about to say directed to the norm as stated in what you have read?

Mr. MANNING: I believe it to be, Mr. President.

The PRESIDENT: Well, that is the best you can do at the moment, I expect.

Mr. GROSS: Excuse me, Sir, for the repeated interruption, but would it be permissible, and perhaps necessary, for the witness also to state whether he has studied the Oral Proceedings, which are of extreme importance, in the Applicants' respectful submission, and the development and explanation of the legal analysis in issue here, Sir.

The PRESIDENT: Mr. Gross, I should hope that the fact that he had not would not disqualify him from being an expert. If every expert had to read all that has taken place in this case he would have to take a couple of years off, I think.

Mr. RABIE: Mr. President, may I make my position clear. With respect, the witness's evidence is being directed to a certain point; if our understanding of what the norm or standard is is wrong, the Court will obviously know how to judge the evidence. Until such time, Mr. President, as we are completely agreed as to precisely what my learned friend's norm is, I would submit, with the greatest respect, that we are entitled to lead our witness on the Applicants' case as we understand it to be. We, with respect, have little doubt as to what it means: my learned friend, on the other side, does not agree, but, Mr. President, in my submission, that does not disentitle us from leading the witness on the Applicants' case as we understand it to be.

The PRESIDENT: Yes, Mr. Gross.

Mr. GROSS: Mr. President, it is utterly irrelevant what the Respondent thinks. The Respondent is not testifying, Mr. President. It is a question of what the witness understands as to the points to which his testimony is directed. The basis of our objection, Sir, does not relate to the Respondent's understanding or misunderstanding of our contention: that would be before the Court and has been placed and will undoubtedly be further discussed, but the question does not arise as it is expressed by the Respondent's counsel. It is not the Respondent's understanding or misunderstanding, it is whether the witness knows what he is directing his testimony towards, Sir.

The PRESIDENT: Mr. Gross, my recollection is that in the transcripts which are numbered from 31 to 36, on more than one occasion you



indicated to the Court that the norm and or standards that you were relying upon were stated at IV, page 493 of your Reply. That is said more than once. That is what you have stated in your argument. Now, on my recollection of it I think that it is quite sufficient to show to the witness what is stated on page 493 to make the evidence admissible, because it is based upon precisely the norm as stated by you, more than once, over a period of about five days in those transcripts.

The evidence will be admitted.

Mr. RABIE: Will you continue please, Professor Manning.

Mr. MANNING: In this case, Mr. President, one is concerned with the importance or unimportance of ethnic groups, and within them of tribal groups, as well as with the idea of the advanced nation, and the idea of the people which is not yet able to stand by itself. It makes a difference, and this not merely in philosophical analysis but in administrative practice and in constitutional planning, whether one thinks of the individual as the only reality, or, of the group as equally real, or whether one is prepared to accommodate and embrace within one's social picture both the primordial reality of the individual and the social reality, or *quasi* reality, of the group: for you find two competing dispositions or tendencies, the one stressing, the other seeking to minimize, the differences between various ethnic groups—the one accepting and paying respect to the diversity of cultures within the confines of a given territory; the other tending to disregard the multiplicity of lesser communities within the totality of a country as a whole.

On the one hand, there will be those who think of the advanced nation as being just a plurality of advanced individuals, and a less advanced people as just a collection of individuals who are individually not yet able to stand by themselves. That, of course, is what I refer to as "adolescent scepticism". Others will think of the nation and the people as social wholes, and will understand the descriptions "advanced" and "less advanced" as attaching to those social wholes and only in an indirect and derivative sort of way to the individual members.

Some will think of the right of self-determination as residing in the nation as an entity in itself. Others, as something to be claimed and exercised by the individual members of the nation. But not even this latter school of thought, who conceive of self-determination as being an individual's right, will be heard to interpret the expression "a self-governing people" as meaning a multiplicity of individuals, each of whom governs himself. For the institutions and practices of self-government are those not of the individual but of the people as a social whole. The "self" here in question is a collective self: the relevant selfhood is a potential nationhood.

Mr. RABIE: Professor Manning, what, if any, importance is involved in the fact that personality in the sense you have indicated is ascribed to an ethnic group?

Mr. GROSS: Objection, Mr. President, on the grounds previously stated.

The PRESIDENT: The objection is noted, Mr. Gross.

Mr. MANNING: I think the big point about personality is that no two personalities are identical. Personalities are not interchangeable. They are not even commensurable. For every personality is unique. Persons are in no sense to be thought of or treated as fungible things; so conceiving of groups as persons involves seeing them as if they were each one an individual and possessed of an irreplaceable individuality. No two

nations are in all respects alike; neither are any two tribes, nor any two ethnic groups. This means that if peoples are to be able to stand by themselves in the modern world, it may well be that different sorts of assistance will be needed by each, and it may be that it is through different sets of institutions that they will best be led to self-awareness, self-esteem, self-fulfilment, and a capacity for self-maintenance and self-assertion.

Mr. RABIE: Professor Manning, can you give examples from modern history to illustrate what you have been saying.

Mr. GROSS: Objection, Mr. President, on the grounds previously stated.

The PRESIDENT: Objection noted.

Mr. MANNING: Mine, Mr. President, is in no sense a historian's expertise. I have no academic qualifications in history, but there are certain situations in the world involving relations between groups and peoples which are matters of fairly common knowledge, and in view of the bearing which they have on the subject-matter under discussion I have given thought to them. I therefore feel justified in referring to them as illustration of and support for what I have been saying.

My contention is that it can be confirmed from history, for anyone anxious to comprehend and to make sense of the development of events in the field of human co-operation and conflict, that collective selfhood is no mere administrative fiction, but partakes of that kind of *quasi*-reality which the political sociologist cannot afford to ignore.

We may not believe in a *volksseele*, in the soul of a nation, but often it is *as if* a nation had, indeed, a soul. Had the British people not been possessed of something very like a soul, it is doubtful if in the crisis of 1940 they could so confidently have been called upon to pursue the struggle, "if necessary alone". And the British are not peculiar. What nation, I asked myself, would admit that it lacks a soul. Be that as it may, the nation, I maintain, has a collective "self". Nationhood is a form of collective selfhood. One thinks of the Polish nation, which was deprived by the Third Partition in 1795 of the last territorial symbol of its nationhood, yet it remained emotionally and spiritually self-aware under the inspiration of a shared collective self-image, until on the ruins of three empires, Poland returned in 1918 to the map as a united and sovereign State.

Mr. RABIE: Mr. Manning, is every country or population of a country collectively "a self" in your view?

Mr. GROSS: Objection on the grounds previously stated.

The PRESIDENT: What is the meaning of that question, then, Mr. Rabie? I do not follow it myself. We may as well know what you mean.

Mr. RABIE: Mr. President, with respect, it means whether every group of people necessarily has such an image or a personality as the witness has spoken of.

The PRESIDENT: Is the Professor qualified to express that view on his expertise?

Mr. RABIE: With respect, yes, Mr. President, from his study of international affairs and how people react, I would submit that he is entitled to express his opinion.

The PRESIDENT: Proceed, Mr. Rabie, that will be a matter for the Court to judge.

Mr. RABIE: As the Court pleases.

Mr. MANNING: If the question concerns a country as such, I think I

can answer it, Mr. President. In point of diplomatic theory I would say that it can be said that, for some purposes at least, every country, that is every State of which diplomatic theory has cognizance is, in principle, a collective "self". But for sociology the position is less clear-cut. Under certain conditions, it has been said, the only possible form of government is some kind of oligarchy, as for instance when the people are deeply divided by racial, ethnic or caste differences. I think there is truth in that.

Sometimes again, peace and order may be maintained among a number of collective selfhoods through the mechanism of the one-party State. Or again, there may be government by some external power, such as an imperial, or colonial, or quasi-colonialist authority. It is when a colonial authority makes ready to withdraw that the question arises: Who henceforth shall rule? What shall be the constitutional architecture of tomorrow's new independent State? Current examples of what I have in mind are British Guiana and Mauritius. In both of these territories one finds the co-existence of two strongly differentiated communities, being in British Guiana the rural East Indian and the urban Negro communities, and in Mauritius the Hindu-led working-class majority, and the general population represented by the Parti Mauricien. In both cases this co-existence presents the prospect of a struggle for ascendancy, whether at the conference table in the negotiation of independence, or subsequently in the working of a constitution which leaves this issue undetermined.

In the case of Mauritius it appears that it is the Hindu community which has now prevailed. In the words of the London *Times*, 25 September, even the many safeguards that have been written into the new Constitution, leave the general population at a disadvantage if the Hindu Party does not show quite remarkable humanity and restraint. I have the quotation here:

"The Parti Mauricien have won a record number of minority safeguards . . . Only time will show if paper safeguards will protect the minorities from the economic discrimination which they allege would follow the rule of a mainly Hindu Party. In the long run, minorities anywhere get a fair deal only if the majority which elects and controls the government is humane and restrained."

The PRESIDENT: Professor, could you tell the Court who are the two main ethnic groups in Mauritius.

Mr. MANNING: There is on the one hand an Indian majority of some 66 per cent., I believe, and the rest are rather a composite community, many of them middle-class, propertied, people, make up what is called the general population.

The PRESIDENT: But what ethnic groups are they? Do you know anything about Mauritius itself?

Mr. MANNING: I am not sure whether one would call them ethnic groups, but there are categories. There are English, there are French, there are Chinese, I believe, and they make up what feels itself to be a community as opposed to the majority community in a "we/they" situation. "We" the general population, "they" the Indian majority.

The PRESIDENT: In that particular case the general population is made up of a number of different groups. Small groups some of them.

Mr. MANNING: I would think so—yes, Mr. President. But you have the "we/they" situation. There is not a common "we" which embraces the whole population of the island.

Mr. GROSS: Mr. President, it appears from the letter which has been cited by counsel into the record, that, if I may put it this way, with respect, that the honourable Court is about to be led on a wide tour of a discussion analysis of agonized social tensions and cultural and racial problems. The question, therefore, which I raise is in addition to the general objections already made, as well as the specific ones with respect to the formulation, the ground, the foundation to which this witness's testimony is being directed and for which it is being proffered, and is the question of relevance of, and the reason for, the Respondent's apparent contention that it is relevant for the witness to circle the globe with problems of social agony and tension, which apparently is contemplated in terms of the letter which has been put before the Court.

The PRESIDENT: Mr. Rabie, the Court will adjourn shortly. I think it is necessary for you to harness Professor Manning's evidence more directly to the norm which you have quoted from IV, page 493, of the Reply. It does not present the Applicants with a proper opportunity to object to the relevance of evidence when you simply give a very general question and then, in effect, permit the Professor to engage in a long presentation of views, a great deal of which is based upon the views of other people that he has read. So between now and tomorrow I would be grateful if you would seek to put more direct questions to Professor Manning in relation to the specific matter of the norm.

*[Public hearing of 15 October 1965]*

Mr. RABIE: Professor Manning, at the adjournment yesterday you had referred to British Guiana and Mauritius. My next question to you is this: do you say that when there is more than one ethnic group, each with its own sense of identity, in a particular country, one must necessarily and always have differential arrangements?

Mr. MANNING: I would say not necessarily.

The PRESIDENT: Is that the question?

Mr. RABIE: Yes, Mr. President.

Mr. GROSS: Mr. President.

The PRESIDENT: Mr. Gross.

Mr. GROSS: Excuse me, I did not understand that that was the question, but now that I understand it is, may I note the objection on grounds previously stated?

The PRESIDENT: Yes, certainly. Did you want to develop the objection at the moment, Mr. Gross?

Mr. GROSS: Sir, the objection is that the foundation upon which the testimony is laid, and in this specific context, with respect to this question, the doubts concerning the relevance of the question to the issues framed, the ambiguity which is implicit in the question in terms of its relationship to any issue drawn by the Applicants, in view of the fact that "differentiation" as such is not in issue, and this would seem to the Applicants to be a specific illustration, justifying the general objection which has been previously made and noted.

The PRESIDENT: Mr. Rabie, you first drew the attention of Professor Manning to what appears on IV, page 493 of the Reply commencing from the bottom of page 492; then, from there on, the witness was in effect allowed to take his own course, to give the indication of his studies and his general views upon the question of groups. Is it not possible to

get back again to the norm as stated at page 493 of the Reply, ask him in relation to that particular norm the necessary questions to base his opinion, and then for him to express the reasons why he reaches that opinion? What you are doing is simply saying "Well, last time when we finished you were speaking about this—now, will you just go on?"—kind of thing. But the correct way to present evidence of an expert, if I may be forgiven for saying so, is, normally, first to ask his opinion in relation to a particular issue which is in dispute, and then seek his reasons. Is this not possible with this witness? I drew attention to that yesterday, but no attention appears to have been given to it overnight.

Mr. RABIE: Mr. President, with respect, we take the Applicants' case to be that there is to be no differentiation. My learned friend said yesterday that they believed in differentiation—I forget his exact words, but that was the import of it. We do not understand their norm to be that, and what the witness is trying to say, Mr. President, as I understand him, is that when you look at what has happened in various countries one will observe that differences make it necessary to differentiate, and the examples to which he has referred are cases in which there have been difficulties because of differences between various groups; and what I am trying to get from him is to refer to countries where differences have either led to differentiation or where, in his view, there ought to be differential measures.

The PRESIDENT: That I understand, Mr. Rabie, but if you look at page 493 it would appear, that is all I need say at the moment, that the norm upon which the Applicants rely and which they stated they relied upon during the course of the Oral Proceedings, particularly referred to in the transcript and to which I drew attention yesterday; they anchored themselves, if I may use that term, upon the norm as expressed at page 493—that, they said, is the norm. If you present evidence in respect of some other norm, or if you misconstrue the norm which the Applicants are relying upon, then that is a matter which is for you alone to determine. It is difficult for a court at this stage, before it proceeds to deliberation, to say certain evidence is quite irrelevant, but if you misconceive the norm which is relied upon by the Applicants, then whatever the consequences are is a matter entirely for yourself. That is all I need to say to you.

Mr. RABIE: Mr. President, after having dealt with some more examples I am going to take the witness to South West Africa and ask him what he knows about it, the different groups there, and then having done that he will proceed to say what in his view would be the effects if one were to apply this suggested norm.

The PRESIDENT: That may of course be directly tied up with the norm as stated at page 493 of the Reply. Mr. Gross, your objection is noted and, as I indicated yesterday, whatever your rights are they are protected.

Mr. GROSS: Thank you, Sir.

The PRESIDENT: Proceed, Mr. Rabie.

Mr. RABIE: Mr. President, are you permitting me to let the witness say what he wishes about these examples before we get to South West?

The PRESIDENT: You just ask him the questions, Mr. Rabie.

Mr. RABIE: Yes, Sir. Professor Manning, will you be brief about this, and just say what you wanted to say about the other examples to which I refer?

Mr. MANNING: I would say not necessarily, but in some cases it may be necessary; one may simply say it is always a possibility that where there is more than one ethnic group, differential arrangements will be required. Each situation demands its own analysis. So long as an external authority retains responsibility for an area wherein co-exist a plurality of self-hoods, these may continue together in comparative peace. So it was in British India until in 1947, when the decision was announced in London that power would be transferred at a date not later than June 1948; then it was that it was found necessary not simply to think in terms of safeguards but to envisage the creation not of one new State but two. In Ruanda-Urundi too, as is well known, it was the United Nations itself that decided upon partition as the indispensable concomitant of independence. A single territory while under Belgian mandate, the area was now divided into the two States of Rwanda and Burundi. The question arises whether even so they went far enough. In the case of Cyprus it is evident that since the almost complete withdrawal of British sovereignty the formula has not yet been discovered for ensuring a peaceful co-existence of the Greek and Turkish sections of the population.

Mr. RABIE: Professor Manning, could you give us an example, or what you consider to be an example, of what may happen when sufficient recognition is not given in constitutional arrangements to the existence of different ethnic groups in a country?

Mr. MANNING: Where the population of a country is a single people with a single, all-inclusive self-hood and a single collective self-image, there is naturally no problem. The difficulties arise when within the ambit of a single polity there are included one or more less dynamic collective self-hoods whose presence and potentialities are not sufficiently allowed for in the given constitutional scheme. Examples of this are not hard to find, and they all provide an object-lesson for the political sociologist, I may say. In Canada, for instance, where the constitution reflects no positive recognition of a distinct and irrepressible self-hood within the compass of the projected all-Canadian nationhood, there is now at work a Royal Commission on Bilingualism and Biculturalism. According to its recently published preliminary report Quebec as a whole is showing a very clear determination to achieve "liberation". The report cites a French-Canadian lawyer who declared (p. 99) that "When we French-Canadians speak of equality we do not mean civil rights at all, we mean collective national rights"; and I have other quotations in the same vein from that report. Here is an example of a collective self-hood inadequately allowed for in the constitutional system, and so confronting contemporary statesmanship with a challenge.

Mr. RABIE: You refer to Canada as an example—are there any others you wish to mention?

Mr. MANNING: I would like to cite briefly three other cases, each in its way, to me, very instructive. In Belgium, under the Constitution of 1831, the two communities of the Flemings and the Walloons were grouped together into one. In particular the self-hood of the Flemings seems since then to have proved increasingly unassimilable. At this moment there is under consideration a proposed revision of the Belgian Constitution in such a sense as to require the support of two-thirds of the Deputies from each linguistic group for the passage of any new legislation seen by either group as capable of affecting the balance as

between them of the present constitutional structure. This matter is referred to in a recent report of a Belgian commission, Senate Commission Report No. 278 dated 30 March 1965.

In the United Kingdom again experience has given proof of what may happen when an unassimilable, lesser collective self-hood is sought to be retained without special recognition within an otherwise sufficiently homogeneous national community. At a time when the differences between Scots and Welsh and English had dwindled to the dimensions of a kind of family joke, the collective self-hood of the Irish so asserted itself that in the end, after bloodshed, the British and Irish peoples came to a parting of the ways. One may wonder whether under sociologically more appropriate constitutional arrangements this outcome might not have been averted.

There is a further case, Mr. President, that I feel warranted in referring to, as belonging within my own experience, and so entitling me to claim some understanding of what this problem I have been discussing can mean. In South Africa, too, where we have the English and Afrikaans-speaking communities standing very near to each other in standards of civilization, manner of living and so forth, our attempt since 1910 to build a nation has been affected by the presence of at least one collective selfhood not envisaged in the original plan—I refer to the Afrikaner people. There have been, at times, considerable strains and stresses, sometimes affecting one group, sometimes the other. Although progress is being made along the road of nation building, it has taken a long time and we are not at the end of the road yet. The essential point, however, as I see it, Mr. President, is that the enterprise was initiated by the two groups working together. It was not something prescribed for them from outside. And this, in my view, is a major reason why we are already so far along the road to full success in our undertaking.

Mr. RABIE: Now, Professor Manning, in the light of what you have said so far, I am going to ask you what you think of the applicability in South West Africa of the Applicants' suggested norm to which we referred before but, before doing that, will you first indicate to the Court on what factual basis you intend to proceed as far as South West Africa is concerned?

Mr. MANNING: I ought perhaps to begin by saying that I do not claim first-hand knowledge or expertise about details of conditions in South West Africa. But I have read a fair amount about the Territory including the descriptions in the Respondent's Counter-Memorial and in the Odendaal Commission report of the composition of the population of South West Africa. I assume the correctness of these descriptions for the purposes of the views I am about to express. The Territory would appear to me to be a veritable continent in miniature, inhabited by a diversity of peoples not in general yet able to stand by themselves in the world. Even so, they are, I would gather, fully conscious each of its own distinctness from the others. Individuals in general do very well know of what group they are a part. I do not assume that the group consciousness of these several communities is as yet in the nature of a national consciousness. In some cases it may well be. For instance, with the Ovambo. But that is not a necessary part of my theme. My concern is simply with the diversity of these ethnic groups and the unmistakably separate identity of each.

Mr. RABIE: Now, Professor Manning, I now ask you what, in your

opinion, would be the effects of the application of this norm in South West Africa?

Mr. MANNING: I would like to look at this matter from two related, but independent, points of view. The first concerns the present, and the conditions for the development towards full maturity of the various ethnic groups; the second concerns the future, and the desirability of ensuring to the various peoples, as they reach the necessary stage of their development, the fullest opportunity to make their own independent choices in respect of their own political future.

Mr. RABIE: Now, what do you say about the present—would you first deal with that please?

Mr. MANNING: Had there been in South West Africa an ethnically homogeneous population, all at a more or less identical level of development, I can conceive that the application of a rule of non-differentiation in the regulation of their lives might well have been propitious.

Mr. GROSS: Mr. President, the reference to the "rule of non-differentiation", with respect, Sir, is counter to what is understood to be the point to which the evidence is directed, as has been clarified by counsel—the point is simply noted to avoid confusion and to make it unnecessary to cross-examine on this point.

The PRESIDENT: I appreciate that, Mr. Gross, but whether you cross-examine or not is a matter for your own choice. The Court expresses no view. Mr. Rabie, the words "norm of non-differentiation and non-discrimination" sometimes did not appear to be, at least to me, clear; whether it meant group differentiation or whether it meant the differentiation between individuals or whether it meant a combination of both, and then finally, it appeared for the first time, defined at IV, page 493, of the Reply. Is it not important that in seeking to make Professor Manning's evidence as an expert relevant, you avoid the mere use of that phrase unless it means precisely what is stated at page 493? If Professor Manning says: when I use that term I have in mind the definition given at page 493, well, that then is tied clearly to the norm as so stated. If you simply leave it at large then much will depend upon the details of his evidence, whether it is relevant to the norm stated at page 493—do I make myself clear?

Mr. RABIE: Yes, Mr. President. I have taken the witness so far to refer chiefly in any event to differentiation between different ethnic groups. He will later answer the question on differentiation between individuals.

The PRESIDENT: Well then proceed, Mr. Rabie.

Mr. RABIE: Will you proceed please, Professor Manning?

Mr. MANNING: What I cannot subscribe to, Mr. President, is the applicability of such a rule where one is dealing not just with one community but with several together. The concept of non-differentiation is to me the concept of non-recognition, non-recognition, that is, of relevant differences. To treat all the peoples alike might perhaps be administratively quite convenient, once you had decided whose needs and aspirations were to be taken as typical of the needs and aspirations of all; once you had decided, that is, whether to treat the Whites as if they were Bushmen or the Bushmen as if they were Whites or both as if they were neither. But I find it hard to believe that it would prove conducive to the speedy development and greater well-being and progress of all. My difficulty about the suggested rule is much the same difficulty as I would feel about any other essentially ideological or doctrinaire approach to



this problem of promoting the well-being and social advancement of relatively under-developed peoples. This task of promoting their well-being seems to me to be one of social gardening rather than of social engineering. The advancement of peoples cannot be blue-printed in detail beforehand on a drawing board. What it calls for is a tentative, clinical, sociologically pertinent treatment.

Mr. RABIE: What do you mean when you say "sociologically pertinent"?

Mr. MANNING: Given the composition of the population of the Territory and the duty of the South African Government to promote well-being, it would seem to me only logical to look at the needs of each group separately and so far as possible to deal appropriately with each one's important needs. Only so will one be able to give to each group a heightened sense of and a more lively pride in its own identity, enabling it through the modernizing of its own traditional institutions to move forward towards a genuine self-determination in a world and a South West Africa made safe for diversity. How, I ask myself, can the well-being of these variously significant peoples be promoted if their individuality as peoples is not made for them the basis of their expanding self-esteem? How shall the Ovambo, the Nama and the rest of them continue, without a sense of frustration, to insist on being authentically themselves, if administratively they are treated as if all interchangeable. At the present time, it is, of course, between the European and the non-European groups that the widest differences in levels of civilization and ways of life obtain: but, even where there is no European element in the Territory, my view would still be the same. For it is by giving to each ethnic group its independent opportunity to flourish and to grow that the stage will be soonest reached when, with due understanding of the choice that it is making, it may decide what path to follow in the further pursuit of its own ideals.

Mr. RABIE: Now, Professor Manning, you have been speaking of the development of the groups up to now, what have you to say about well-being and development of the individual?

Mr. MANNING: It is true that what one has been considering so far is how far it is conducive to the well-being of an ethnic group or people to further the development of its corporate feeling, its group consciousness, its sense of being not just a human aggregate but a community, with traditions, with a culture, with a future of its own. In my view it is salutary to do this, not merely for the advancement of the group, as distinct from its members, but also, and perhaps more importantly, for the sake of the maturing personalities of the individual members of the group. Though there could no doubt be exceptions, it is, I take it, a truism that in general, it is in community that human personality finds its earliest and most spontaneous fulfilment. The personal self-image of the individual has its most natural development if vitally tied in with the collective self-image of the social whole. One might almost suggest it as a maxim—take care of the dignity, the maturity and the self-assurance of the group and the dignity of the individual will take care of itself.

Mr. RABIE: I am now coming to what you described earlier on as your second point of view—that is the one concerned with the future. What have you to say about that?

Mr. MANNING: This follows immediately, Mr. President, from what I

have been saying about the dignity both of the individual and of the group. It is, in my view, necessary to the dignity of every ethnic group that it be given the right of self-determination. Indeed it is as much for this reason as for any other that I have such doubts about the suggested rule of non-differentiation, for a rule of non-differentiation seems to be radically incompatible with the essential idea of self-determination as this should, in my opinion, be understood. In fact, I can see three distinct stages or contexts in which, in one's promotion of the process of self-determination, one might find oneself embarrassed by such a rule.

Mr. RABIE: Will you deal with those stages in turn, please? Take your first one.

Mr. MANNING: The first takes a little longer than the second and the third, I think.

What I have referred to as the incompatibility of the two philosophies, the philosophies of self-determination and of non-differentiation, is not, I think, generally acknowledged. Indeed, it is, I suppose, in the name of self-determination that the suggestion is sometimes made that the question of the eventual destiny of the territory should be referred for decision to the population, or to the spokesman for the population, as a whole. The inhabitants of the territory would, on this basis, be treated as if all alike, their membership of different communities being ignored, and the combined membership of all the different communities being lumped together and treated as if together composing one single community only. And this in the name of self-determination!

But that, I am afraid, Mr. President, is not at all my understanding of what self-determination essentially means. The idea of self-determination presupposes, I should myself have thought, the existence of a given self, or selves, whose possible aspirations to self-rule are to be ascertained and given effect to. But when two or more communities are lumped together into one, what happens to their respective self-hoods and their claims to self-determination and the opportunity for self-rule? In their stead, there is erected a new synthetic unit, an artificial self; and it is to this sociological monster that the opportunity for a so-called self-determination is accorded. Thus is there made a mockery of the very principle of self-determination as I would think it should properly be understood. The fact is that for a group to be joined with other groups before it has achieved the needed understanding of itself and its situation will not necessarily conduce to its well-being. For the result may be to land it in the predicament of those who, having no developed self-hood of their own, find themselves at a disadvantage in their association with others who, in the strength of a mature collective self-hood, know precisely what they want and how they mean to get it.

If groups for whose well-being a Mandatory is responsible are to be launched in more or less indissoluble union with others, onto the waters of independence, I think it should be as a result of their own uninhibited choosing and not in consequence of a decision made on their behalf when they are not yet mature enough to be fully party to what is being done.

There is all the difference in the world between a marriage between partners who have freely chosen one another and the kind of child marriage that is, I believe, still the custom in certain parts of the world.

Mr. RABIE: Will you proceed there to what you call the second stage of context?

Mr. MANNING: This stage is reached if self-determination, in the sense

of self-determination for the several ethnic groups, is not precluded at the first stage.

Suppose then that it is accepted that until the day when any given community will be qualified to participate, in full awareness of what is at stake, in the determination of what its future is to be, the unique and independent self-hood of each community must be respected and maintained. Suppose that this principle, for me axiomatic, is conceded, what for any given community is to signalize the arrival of that day? And is the rule of non-differentiation to preclude the application of different measures for the speedier advancement of the several communities and their preparation for constitutional change? Is the entire convoy to move with the slowest ship? Is self-determination for community A to be delayed until community B is prepared for it as well, or is self-determination to be thrust upon community B because the time has come for community A to have it?

Mr. RABIE: Now, finally, Professor Manning, your third stage of context.

Mr. MANNING: The third possibility arises, Mr. President, in the event that ships are not required to move in convoy, and that, whether simultaneously or at different moments, self-determination is being accorded to each of several communities in its own independent right. What happens then? Self-determination, if it means anything, means for me the free exercise of a choice; and, if free, a choice may go one way or it may go another. This means that with self-determination different groups might go different ways. I wonder how such a result could, under the regime of a rule of non-differentiation, be endorsed and implemented? If the mandatory power is to be debarred from differentiating, how is it at one and the same time to give effect to the choices of more self-determining communities than one? We cannot assume that the choices they make will turn out to be all the same.

Mr. RABIE: That, Mr. President, concludes my examination.

The PRESIDENT: Mr. Gross?

Mr. GROSS: Mr. President. Mr. Manning, in accordance with the procedure, I shall attempt to cross-examine you on the basis of your testimony. With regard to hastily scratched notes here I may misquote or distort—but if I do, Sir, will you please correct me. Any such mistakes will be unwitting.

First of all, Sir, may I ask you, Professor Manning, whether, in your study of the Applicants' contentions, particularly as set forth on IV, page 493, in the context of the arguments to which that page refers, would you please be good enough to state whether, in the first place, you consider that your evidence relates to both branches of the Applicants' case and, if I may, Sir, specify that for ease of understanding. Do you consider that your evidence relates to that major branch of the Applicants' case which poses the theory that Article II of the Mandate should be interpreted in the light of certain standards to which page 493 refers or, secondly, that your evidence also is intended to relate to the alternative and cumulative contention that such standards have, by reason of general applicability, achieved the status, legally speaking, of a rule of international law quite apart from the question of the interpretation of the Mandate as such? Do you understand the Applicants' contention to be that, Sir?

Mr. MANNING: I have been tempted, Mr. President, to remind myself

that I once had some legal training and to interest myself in the strictly legalistic aspects of the case now before the Court, but it was in relation to the possibility of appearing as a witness that I really addressed myself to these problems and, perhaps, it is over-simplified but I did indeed address myself to the question of whether a norm of non-differentiation would be in the interests of the well-being of the peoples of South West Africa. This, I would claim, is the point to which my evidence relates, and is germane, and is relevant. It is not for me to judge whether I am right in this, or what the value of my evidence is, but I have understood my task to be to do some thinking about what would happen in South West Africa if a rule of non-differentiation was sought to be applied.

Mr. GROSS: Sir, of course I think the honourable Court will fully understand, as I myself do, that it is not appropriate to engage in a colloquy of a legal nature with a witness as distinguished a lawyer as you are, Sir, as I know, for many years, but my question is what your understanding is of the point, or your intention with respect to the point, or points, to which your evidence is directed, what you wish the Court to infer your expert opinion to relate to. In referring to what I describe as the two major alternative branches of the Applicants' case, I was simply asking you, Sir, without reference to the merits, or validity, or otherwise, of either major branch of the Applicants' case in this respect, whether your evidence was intended by you to relate to the first major branch, which is expressed and clarified in the Applicants' pleadings, the standard which we assert—the Applicants assert—should be applied by the honourable Court in interpreting the obligations of Article II of the Mandate? Was your testimony intended to be directed toward that branch of the Applicants' case, in your understanding, Sir?

Mr. MANNING: I think I should be more comfortable in trying to answer that question if attention could be drawn to particular statements I have made. I might address my own mind to the question whether they were relevant.

Mr. GROSS: Well, Sir, may I ask you whether, generally speaking, in any statement you have made, that you can recall, and I am sure you can recall them better than I can from my scribbled notes, was it your intention to relate to, by refutation, or otherwise, that aspect of the Applicants' case which rests on the contention that Article II of the Mandate should be interpreted in the light of certain standards which are referred to on page 493 (IV)?

Mr. MANNING: I have thought of this case as one of what sometimes is called mixed fact and law and I have not myself been addressing my mind to the legal side of this question. I have seen the point as arising in this shape: supposing it were deemed incumbent upon the Mandatory, or had been deemed incumbent upon the Mandatory, to avoid differentiation as between groups, what would have been the consequence and would it have been for the well-being of the peoples? If this was not germane, then I would judge that my evidence had been of very little value.

Mr. GROSS: Sir, for the sake of clarity, did I understand the phrase you used to be "differentiation between groups"; is that what I understood you to say? I am not trying to put words into your mouth, I am not sure that I got your wording. Would you mind repeating it, if you can and if the President permits?

Mr. MANNING: I think I referred to differentiation in the allotment of

rights, burdens, etc., on the basis of the fact that there are a multiplicity of groups and they are not all interchangeable. This is the way I perhaps rather crudely formulated the question for myself.

Mr. GROSS: Now, Sir, in connection with the description of the content of the standards for interpretation and the norm which is asserted by the Applicants, alternatively and cumulatively, to have developed in the international community, in connection with the paragraph to which the honourable President called your attention and to which you testified, at page 608, *Supra*, of the verbatim of yesterday that you had read and that what you are about to say was directed to the norm as stated in what you had read—I refer to the colloquy between the honourable President and yourself at page 608 of yesterday's verbatim, and your answer was "I believe it to be, Mr. President". Did you, Sir, in that reading, consider, in the context of the honourable President's question, the following: that, in addition to what was read by learned counsel yesterday . . . Would the witness care to have a copy of the Reply, Mr. President?

The PRESIDENT: Yes, I think it would be more convenient, Mr. Gross. Perhaps you might read him his answer to my question.

Mr. GROSS: I beg your pardon, Sir, I thought I had; I apologize.

The colloquy to which I make reference is on page 608 of the verbatim of yesterday, and the President said:

"Having read that [I believe I am correct in saying that the reference was to p. 493], is what you are about to say directed to the norm as stated in what you have read?"

Your answer was: "I believe it to be, Mr. President."

Does the honourable President wish any more to be read?

The PRESIDENT: No, that is sufficient, thank you.

Mr. GROSS: Now, the passage, to which I called your attention, reads:

"In the following analysis of the relevant legal norms, the terms 'non-discrimination' or 'non-separation' are used in their prevalent and customary sense: stated negatively, the terms refer to the absence of governmental policies or actions which allot status, rights, duties, privileges or burdens on the basis of membership in a group, class or race rather than on the basis of individual merit, capacity or potential: [and now I call your attention to what was not read aloud yesterday] stated affirmatively, the terms refer to governmental policies and actions the objective of which is to protect equality of opportunity and equal protection of the laws to individual persons as such." (IV, p. 493.)

Now, pausing there, Sir, with regard to the affirmative context, would you say that your testimony was directed or intended to be directed to establish that in anything, let me say, in any respect, the protection of equality of opportunity and equal protection of the laws to individual persons as such, would in any sense be invalid or not customary or not applicable to South West Africa?

Mr. MANNING: I should imagine that if this norm, as worded thus, had been incorporated in the Mandate, there might on some occasion have been conflict between the requirements of the norm and the requirements of Article 2 as at present worded, and my testimony related to Article 2 as at present worded, and to whether non-differentiation would always serve the purposes of Article 2.

Mr. GROSS: Sir, with respect to the use of your term differentiation, do you use that as synonymous with, let me take the word, discrimination, or non-discrimination as used in the quoted passage?

Mr. MANNING: I have seen both these terms used in a variety of contexts with a variety of meanings, but my cursory study of the antecedents of these proceedings led me to the view that non-differentiation was a less invidious term to use, in that non-discrimination seems to suggest that there might be detriment to those who were differentiated against, whereas non-differentiation is completely neutral on this point, and it was to that that I addressed my mind because I understood that that term had been used.

Mr. GROSS: By whom, Sir?

Mr. MANNING: I understood that it had been used at some stage by the Applicants.

Mr. GROSS: And you understood, Sir, that this was the basis upon which the Applicants based their contention? Is this what you were advised by Respondent, Sir?

The PRESIDENT: You cannot ask him that at all, Mr. Gross.

Mr. GROSS: I withdraw that question, with your permission, Sir.

Was that your understanding, Sir?

Mr. MANNING: My understanding was that it would be relevant to testify, in the light of such expertise that I have, on the question whether it was desirable to avoid differentiating in one's attempt to fulfil the requirements of Article 2 (2) of the Mandate.

Mr. GROSS: Sir, would your understanding go so far as to say that you had comprehended or understood the Applicants' case towards the question whether, for example, differentiation between minors and persons of age was not permissible under the Mandate—did you consider that that type of differentiation, to use your phrase, would be intended by the Applicants to be not permissible?

Mr. MANNING: I would not myself have thought so, because I thought that the issue was really between the groups as such—the groups being described in such a manner as not to invite attention to this problem of the minors.

Mr. GROSS: So that the question or the point to which your testimony is intended to be directed does not, as I understand you now, Sir, proceed from the premise that the Applicants consider or contend that any differentiation among individuals is in itself not permissible?

Mr. MANNING: I have no doubt in my mind that these issues might perhaps be very important in this case, but they were not the issues to which I directed my mind for the purpose of this testimony.

Mr. GROSS: Now, Sir, would you say that discrimination, if I understood your answer to my question correctly, had an invidious connotation—was that the point of your comment in your response to my question, Sir?

Mr. MANNING: No, I think the point of my response was that I had understood that the term differentiate had come to be preferred.

Mr. GROSS: By the Applicants, Sir?

Mr. MANNING: Well, in the course of discussion and presumably by the Applicants.

Mr. GROSS: I see, Sir, so that was your understanding, Sir?

Mr. MANNING: I understood that it was germane to discuss differentiation as such.

Mr. GROSS: I see. Now, Sir, may I invite your attention to the remaining paragraph or two on page 493 which are relevant to the context:

"As is shown below, there has evolved over the years, and now exists, a generally accepted international human rights norm of non-discrimination or non-separation, as defined in the preceding paragraph. Such a norm is evidenced by international undertakings in the form of treaties, conventions and declarations, by judicial decisions, the practice of States and constitutional and statutory provisions by which such a norm is incorporated into the body of laws of States." (IV, p. 493.)

Now, Sir, was it your intention in anything you testified to, or concerning which you made comments or expressed opinions, to relate it to this paragraph and specifically the second sentence thereof?

Mr. MANNING: In so far as I referred to my distaste for any doctrinaire or ideological approach to a problem which seemed to me to be one of social gardening, in that sense perhaps I was indirectly referring to this sort of paragraph. But this related to something which was not my concern; I knew that the Court would be concerned with this question, but I did not feel that I was.

Mr. GROSS: Do I take it from that response, Sir, that your testimony was not intended by you to be directed towards establishing or otherwise the correctness or not of the statement, the obligation or conclusion which is set forth in the second sentence of the paragraph I have just read?

The PRESIDENT: That is the sentence beginning: "Such a norm . . .", so you are only being asked whether your evidence was directed to the sentence reading: "Such a norm is evidenced by international undertakings . . .", etc., down to the words ". . . laws of States".

Mr. GROSS: That is right, Sir.

Mr. MANNING: No, not at all, Mr. President.

Mr. GROSS: Now, Sir, the next sentence:

"The existence and virtually universal acceptance of the norm of non-discrimination or non-separation, as more fully described below, gives a concrete and objective content to Article 2, paragraph 2, of the Mandate." (IV, p. 493.)

With reference to the phrase ". . . more fully described below", did you in your testimony intend to direct your comments to the material which is ". . . more fully described below . . ."?

The PRESIDENT: That is the "sources", is it not?

Mr. GROSS: That is right, Sir.

The PRESIDENT: So you understand, Professor, that Mr. Gross is referring to the various sources which are described in the pages following, commencing at the bottom of page 493, and the question is whether your evidence was directed to the existence and virtual acceptance—the universal acceptance—of the norm of non-discrimination or non-separation as described in those pages which commence to run from the bottom of page 493. Is that clear?

Mr. MANNING: I can be quite categorical about that, Mr. President. My testimony was not in any sense directed to that question.

Mr. GROSS: Sir, the next paragraph:

"Such a norm of non-discrimination is, moreover, generally accepted as a *minimum* norm of official policy and practice on the part of the government toward persons subject to its jurisdiction."

Was any of your testimony, Sir, intended to relate to that comment, either to refute it or to affirm it or otherwise?

Mr. MANNING: I think this answer which I am now giving is a reiteration of what I have said already.

Mr. GROSS: Which is what, Sir?

Mr. MANNING: Which was that I have not been directing my attention to this theory of there having been established an international norm which was legally binding upon anybody.

Mr. GROSS: Would you say, Sir, that with respect to the general question or questions to which your evidence was directed you took as a point of departure, or would be prepared to agree, that in connection with any norm, in the sense in which it is defined by the Applicants, specifically in this case a rule of international law which is stated as an alternative contention, as I have made clear, there are at least the three elements: the content, the source and the application? Would you agree generally that that is the correct description of the major elements of the norm to which your testimony was intended to be directed?

Mr. MANNING: It sounds to me the sort of thing one might say about any rule of law.

Mr. GROSS: Now, Sir, with respect to your testimony, would you advise the honourable Court whether your testimony was intended to be directed in any respect to the source of the rule contended for?

Mr. MANNING: Not at all.

Mr. GROSS: And with respect to the content of the rule, or norm, as described by the Applicants, is your testimony intended to raise a question about the validity or otherwise of the description by the Applicants of the content of the norm?

The PRESIDENT: The validity in terms of law?

Mr. GROSS: In terms of anything to which his evidence was sought to be directed, Sir. If my question is not clear . . .

The PRESIDENT: Well, validity rather assumes that it is a valid norm at law.

Mr. GROSS: I beg your pardon, Sir. I think I may say with respect that the President is quite right. By "validity" I meant to say the accuracy from the standpoint of content, that is, whether or not this is, from the expertise of the witness, an accurate way of describing a rule or norm of non-discrimination. Would you disagree with that as a description from the point of view of political science?

The PRESIDENT: That is the first paragraph on page 493 of the Reply, IV, Professor. Did you regard, in your approach to your evidence, the definition of the norm of non-discrimination or non-separation as set out in that paragraph as being, in substance, an accurate way to describe content? That is the question, is it not, Mr. Gross?

Mr. GROSS: Yes, Mr. President. Thank you, Sir.

Mr. MANNING: As being accurate?

Mr. GROSS: Yes, Sir. Did you raise any question concerning its accuracy or, if I may add with your permission, Mr. President, accuracy may possibly not convey my full meaning, so I would like to say: from the point of view of political science, would you express a view as to whether this is or is not a valid or acceptable method of describing a norm of



non-discrimination, if you have a view on this point? I do not mean to force a view, Mr. President.

The PRESIDENT: Mr. Gross, I think it is a little confusing perhaps. Would you permit me to put a question to the witness?

Mr. GROSS: Yes, if you please, Sir.

The PRESIDENT: You will see, Professor, that the paragraph starts as follows:

“The following analysis of the relevant legal norms, the terms of ‘non-discrimination’ or ‘non-separation’ are used in their prevalent and customary sense: . . .”

and then they are stated negatively and positively, and that is the definition which the Applicants give to the terms non-discrimination or non-separation. You are not asked to express a view as to whether there exists in law such a norm. As I understand the question, it is: when you refer to non-discrimination or non-separation, as you did in your evidence, did you refer to it in the same sense or in another content?

Mr. GROSS: That is very good, Sir, thank you very much.

Mr. MANNING: I think I was more conscious of the first branch than the second branch of this definition in the thinking I gave to this problem, and I ought, I believe, to admit that I accepted, for the purpose of my thinking, the relatively simplified paraphrase of this, which is reflected in the term “non-differentiation”, which I have kept on using. I thought of this as the question on which I ought to testify: namely what would be the effect if the norm was to be observed, whether it was indispensable that groups should not be differentiated between.

Mr. GROSS: I should like to ask you whether you consider that your testimony, and the theories and points of view to which your evidence was led, which you have given to the honourable Court, reflects, or is based upon, objectively determinable standards, irrespective for the moment of the merits or soundness or otherwise of any such standards, let us say in a political science sense?

Mr. MANNING: My disposition would be to differentiate between standards which have, and those which have not a legal status, the demonstration that they had this legal status being strictly a technical matter for lawyers. Alternatively, they might be standards which had what one might call a moral status, in that they were an element in the social philosophy of particular individuals, and a matter for discussion, which could go on indefinitely, among those who adhered or subscribed to these standards and those who had doubts about them. I am not sure that political science would tell me very much about this, but philosophy might tell me a good deal.

Mr. GROSS: Well, whether it is based on one discipline or another, you are, of course, are you not, testifying here as an expert with regard to these questions and the judgments you have expressed with regard to the norm, irrespective of the definition of the norm—would you agree that your testimony as an expert was based upon or reflected certain objectively determinable standards from political science, philosophical or sociological or any other sense, or were they purely subjective expressions of view?

Mr. MANNING: I am afraid that I will not accept that dichotomy, these two alternatives. I would say what my testimony had been about. I saw myself as testifying as a purported expert in the field to which I have

devoted my thought for a good many years, and which I have defined as the field of political sociology. Now, sociology is not a branch of philosophy and the evaluation of social values is something which lies in the field rather of social philosophy than of political sociology. It is as a political sociologist, in my own view, that I have appeared before this Court, in the belief that political sociology is comparable to economics in that it is a field in which, when issues arise on which experts may differ, anybody testifying as an expert can do no more than give the position which he himself has reached and be prepared to try to defend that position. That is all that I have come here to try to do and I hope my testimony has been appropriately guided by this conception.

Mr. GROSS: I am sure that it has been as helpful as it has been interesting but, with reference to political sociology, would it then follow, or would it not, that your testimony with regard to the relationship between the individual and the group and the social order—if you will accept that simplified phraseology—that your testimony with respect to this range of subjects, which are included under what you describe as “differentiation”, reflects objectively determinable standards in the field of political sociology? Would you agree with that or not?

Mr. MANNING: I would not claim that. I am not sure that I had allegedly objectively ascertainable standards in mind in addressing myself, in what I called an exploratory spirit, to the question of what would be the effect of applying the norm, as I conceived it, in the conditions of the Mandate, governed as the Mandatory is by Article 2, paragraph 2, of the Mandate.

Mr. GROSS: But, testifying as an expert on these matters for the enlightenment of the Court, and referring to the expertise which has been established in the qualifying questions addressed to you by learned Counsel, would you say that your testimony (I ask you this as a political scientist or sociologist or whatever) proceeded in no respect from what you regarded as, scientifically or politically, standards which could be objectively determined by you as a basis for your expert testimony?

Mr. MANNING: I am not sure that I would claim to be able to establish, scientifically and objectively, moral standards.

Mr. GROSS: I am not talking about moral standards in this context, although I would be glad to include those if you wish, but I was referring to standards which a scientist, a political scientist, or an expert in the field of political sociology, would conclude, on the basis of his studies, represent certain generally accepted political, sociological standards which are, let us say, accepted by the fraternity. There are such standards are there not, Sir, or conclusions reached in your disciplines?

Mr. MANNING: I think in every culture you get fashionable views.

Mr. GROSS: You think that with respect to the disciplines which you, Sir, represent with such distinction, there are no conclusions of a generally accepted nature, which may be referred to as standards or principles, in respect of which specific opinions are formed in a particular context?

Mr. MANNING: I would certainly say that *prima facie* one does need to consider with great respect any views which prevail widely among thinking people; but in relation to this particular problem, I should have thought that what one was concerned with was the specific obligation to promote well-being of the peoples, and this was not something, it seemed to me, that could be fulfilled by any doctrinaire approach.

Mr. GROSS: Sir, I am sure that was not intended by my question, and I

am trying to simplify the matter, addressing my questions to you as a political scientist, political sociologist and, generally, an expert in the fields for which you have been qualified: and I am simply asking you, Sir, whether, and I would have thought, with frankness, that this was an axiomatic question, but apparently I am not addressing it to you in clear enough terms, whether it is not true that in the social or behavioural sciences there are generally accepted standards or conclusions, reflecting the best judgment or thought of the science or discipline concerned, upon the basis of which an expert would express his views and reach his conclusions in a particular context—is that not axiomatic, Sir?

Mr. MANNING: It is not axiomatic to me that an expert could express views other than his own, however widely they were held.

Mr. GROSS: Well, Sir, I will not quarrel with you about that. I just would like to ask one question—how does an expert then safeguard, or assure the honourable Court that he is safeguarding, against the inevitable human consequences of emotional bias or other personal predilections or prejudices? I am not accusing you of anything of that sort, Sir, but how is one to assure against that, again as a matter of behavioural, or social, or science, or just human affairs—how does one safeguard against that?

Mr. MANNING: Well, I think, as I said yesterday, that it is very hard always to bear in mind the difference between the two angles of mental vision—of the detached investigator on the one hand and of the man of sympathies on the other. But one has to try, if one is really looking at such a question as you are now putting to me, which is not the sort of question I was discussing in my evidence . . .

Mr. GROSS: Well, Sir, I was referring not to what you were discussing in your evidence but the basis upon which you consider your testimony to have been presented in terms of your expertise, or proffered expertise. Now, I will not press that point any further, unless you wish to add to what you have already said, Sir, except to ask you one question. When you say "detached": how does one detach oneself from the purely subjective or possibly charged emotional or psychological involvement? How does one detach oneself without reference to objective standards for the purpose of expert testimony, Sir?

Mr. MANNING: It all depends what question one is trying to understand and answer.

Mr. GROSS: Well, let us say that the question is one of racial relations, separation, or discrimination; take that as an example, Sir.

The PRESIDENT: How would you detach yourself from any suggestion—one which has not been made against you, but the question is—how would you detach yourself, Professor, from any racial or emotional bias? If you have none you have got nothing to detach yourself from, but if you had any how would you detach yourself?

Mr. GROSS: If I may add, Sir, unless by reference to some objectively determinable standard.

The PRESIDENT: But that was not the question which you put, Mr. Gross.

Mr. GROSS: Well, Sir, may I reserve the right to rephrase my question, to put my question more clearly?

The PRESIDENT: Yes, certainly.

Mr. GROSS: And now, with respect, I believe I have done so by taking the liberty of adding to your . . .

The PRESIDENT: That is the reason why you and the witness were at cross purposes.

Mr. GROSS: Thank you, Sir. Now, do you understand this question, after this colloquy, Professor Manning?

Mr. MANNING: I would like to answer the question as it was formulated by the honourable President . . .

Mr. GROSS: That is your privilege, of course.

Mr. MANNING: I would have thought that it was a good thing to bear in mind that if we say that we have no bias we deceive ourselves, but that does not prevent us from having the ideal in mind of being as detached as we can be. Cleanliness is something which we never achieve, but we aim at it. We are always aiming at cleanliness, but perfect cleanliness is never achieved. And perfect objectivity is never achieved. But if people are not conscious of the conflict, between the ideal of objectivity and the orientation given to a man by his sympathies, then they will not be able to make even the necessary attempt to detach themselves.

I would not say at all that my views are detached, but I would certainly claim that I try to make them detached.

Mr. GROSS: Sir, applying this more generally now with respect to the issue in hand, and that is with respect to the racial or ethnic policies which are implicit, indeed explicit, in the doctrine or policy of apartheid—and I am referring specifically to the Territory but if you wish to include the Republic as a cognate problem, of course, I would have no objections if the Court had none—but with regard to the elements involved in the issue of apartheid, would you say, Sir, and I am speaking now about South West Africa, that the question of detachment from self-interest, from bias, from any motivation, would be difficult, at best, in the case of the application of certain policies or practices by official action of a dominant or ruling group?

Mr. MANNING: I would say, Mr. President, that detachment in these matters is as difficult for defenders of apartheid as it is for critics of apartheid. Defenders of apartheid are quite commonly members of the privileged society into which I was born, and it is notorious amongst sociologists that privileged people find it difficult to be detached in thinking about their own situation. This does not preclude me, as a would-be political sociologist, from trying to address my mind as objectively to the question of what is being done, in what circumstances, and for what reasons, in a given country, even if it is my own country, as I do when I try to understand the policies of the governments of other countries.

Mr. GROSS: Yes, Sir: thank you. Would you say, however, in further amplification of my question to you with regard to the difficulty of detachment, of objectivity, on the part of a ruling or dominating group in respect of the application of policies which relate to those which are not in the ruling group, would you say in that context of difficulties of detachment and objectivity, that it would be relevant to inquire whether the methods by which, the areas in which, the time when, movements towards political independence, as it is called in the record here by the Respondent and by the Odendaal Commission, do you believe, Sir, that they will be determined or are likely to be determined objectively and with detachment by the ruling or dominant group?

Mr. MANNING: Responsible statesmanship, in my view, Mr. President, can never be detached and it ought not to be detached. A statesman has responsibilities, he has objectives, he has ideals, and he has to look, in

any given situation, at the desirabilities and feasibilities and do the best he can, as the doctor has to do the best he can in the presence of a sick patient, because all societies are in some respect sick, and I think statesmanship is a task in social therapeutics and this is a matter which is guided by the desire to make the patient better, but there are all sorts of inhibitions in any of us in trying to do good in the world, and it may be that particular statesmen on particular occasions are affected by a number of different considerations. But I am concerned as a political sociologist, looking at the thing from the outside in no matter what country, to see what was the situation in which these people found themselves, what were the possibilities, what were the considerations that must have borne upon their decision, and only so do I judge whether this is the kind of decision which I could endorse.

This is the question I address myself to; but I do not attribute to any statesman, in the field of practical action, that quality which we call detachment. It is not possible for a statesman in the field of action to be detached. He has to be influenced by his values at every step.

Mr. GROSS: Sir, may I ask one more question; perhaps the witness will be good enough to think about it during the break.

The PRESIDENT: You do not want his answer now?

Mr. GROSS: No, Sir, but I would like a considered answer, if he is willing to give it.

The PRESIDENT: By all means: give him the considered question and you will get a considered answer!

Mr. GROSS: The question is this, Professor Manning. Would you care to express a view to the honourable Court as to methods or procedures by which responsible statesmanship, in a context of the sort we are discussing here, would seek to assure itself against being motivated by interests, by self-interests, competitive interests, or other subjective emotions or attitudes?

The PRESIDENT: You are not called upon to answer the question now, Professor. The only question I ask you—do you understand the question that you are to cogitate upon over the next 20 minutes?

Mr. MANNING: I should like to be sure, Mr. President, whether I have understood it. As I see it, it asks me to consider whether statesmanship, addressing itself to practical problems, is able to assume an attitude of detachment.

Mr. GROSS: No, Sir.

The PRESIDENT: Apparently not, if any human is able to do so in any given circumstances. Mr. Gross will put the question again before we recess.

Mr. GROSS: Very briefly, Sir. Thank you, Mr. President.

From a political science, or a political philosophy, or sociological point of view, what safeguards, what methods, if any, would responsible statesmanship adopt, or install, or follow, in order to assure to the maximum extent against decisions taken out of self-interest or other, shall we say, subjective, or, if I may say, unworthy motives (if I may use that phrase, which I will withdraw if you do not like it)? Do you understand the question, Professor?

The PRESIDENT: You understand it now, do you Professor?

Mr. MANNING: I hope I do, Mr. President, I will think about it.

The PRESIDENT: Do you remember the question that was put to you, Professor? Well, as best you do remember it, what is your answer?

Mr. MANNING: It would suit me better if it were repeated, Sir. I should be quite sure that I was answering . . .

The PRESIDENT: I am sure that you would not get the same question.

Mr. MANNING: Well, Mr. President, shall I answer the question I thought I was asked?

The PRESIDENT: Yes, you can give your answer that way.

Mr. MANNING: I thought I was asked the question about what safeguards statesmanship could properly bear in mind, and have available, to ensure that the bias arising out of their material and other interests would not unduly affect their judgment on what circumstances called for as being social prudence. "Social prudence" is the term I would use for the criterion by which the actions of statesmen should be judged.

Mr. GROSS: Excuse me, Mr. President. May I enquire whether this is part of the question or part of the answer.

The PRESIDENT: I think he is trying to restate the question that you put to him, although he has not used the same words. I suppose if you put the question again you would not use the same words.

Mr. GROSS: Well, Sir, I am sure it would be as unintelligible as before.

The PRESIDENT: Well I think it might be well to get the answer of the Professor which generally raises the issue which you put to him, and then I think that, perhaps, we could discontinue this philosophical penetration of his mind.

Yes, Professor, proceed.

Mr. MANNING: Well, Mr. President, I realize that statesmen do sometimes find themselves in a situation of great perplexity. I know of one instance in which one of them wrote about one of his colleagues who had resigned over a moral issue, "no such luxuries for me". He felt that his sense of responsibility required him to stay at his post and to do what was feasible in the situation in which he found himself, regrettable though it might be that he should have to do this. And I should have thought the statesmanship is fettered by all sorts of factors, including, of course, the need to retain the support of the public that has entrusted them with the tasks of statesmanship, including also the conscience with which they wake up in the middle of the night to think about what they have been doing and what they are going to do, and including that decent respect for the opinion of mankind which is due from all statesmen, in all circumstances. But I would certainly contend that the old saying *securus judicat orbis terrarum* is an overstatement. It is a simplification. It is by no means necessarily true that whatever the world thinks is right is inherently and necessarily intrinsically right, and the statesman must obey his own conscience even though he be in a minority of one—if he is a *man*.

Mr. GROSS: Sir, in your reference I will now observe the honourable President's admonition and not attempt to probe your philosophical processes, but with regard to the very practical aspect of the problem, at least as the Applicants would view it, would your response, with reference to the support of the electorate in the specific situation in South West Africa refer to the persons who are, by reasons of colour or otherwise, or non-colour, entitled to participate in the franchise in the central government? Would this be the kind of support which you had in mind when you referred to the necessity of statesmanship having the support of the people, the electorate, the populace, or whatever phrase you used?

Mr. MANNING: Are you asking me for a technical definition of what an electorate is?

Mr. GROSS: No, Sir, I am asking you for an elaboration or clarification of your response in which you, I think, referred to one of the elements or safeguards in respect of responsible statesmanship, the maintenance of the support of, did you say parenthetically, electorate, or populace or some other phrase? I do not recall your phrase.

Mr. MANNING: I do not think I put the electorate as a safeguard. I thought the demands of the electorate were a limitation on freedom rather than a safeguard.

Mr. GROSS: Well, Sir, which elements of your response were intended to be responsive to the question with respect to safeguards? I had misunderstood you. Were any elements in your response intended to relate to the question I asked, other than conscience of course?

Mr. MANNING: Well, why other than conscience?

Mr. GROSS: Because I wanted you to know that I had understood that, Sir.

Mr. MANNING: But why other than conscience?

Mr. GROSS: I just explained, Sir, without engaging in a colloquy any further.

Mr. MANNING: There is also a sense of responsibility . . .

Mr. GROSS: Yes, Sir. Were there any other safeguards which you intended to imply or refer to in your response?

Mr. MANNING: I did intend to mention the decent respect for the opinions of mankind.

Mr. GROSS: I see, Sir. As interpreted by the responsible statesmen, no doubt, Sir?

Mr. MANNING: Well, I would say that sometimes those opinions are quite clearly available. The question is whether they have to be deferred to.

Mr. GROSS: Are they available, Sir, in the form of, in any sense, objectively determinable standards, would you say?

Mr. MANNING: Sometimes there is pretty clear evidence as to what the opinion of mankind is.

Mr. GROSS: Would you use this as synonymous for standards or are you . . .

Mr. MANNING: No. I do not need the word "standard".

Mr. GROSS: I see, Sir. You do not, do you, reject it in this context, Sir?

Mr. MANNING: I think it is a matter of taste whether one uses a particular terminology.

Mr. GROSS: Yes, Sir. Now with regard to the question of the electorate to which you did not refer, would you say, Sir, that the attitudes of the electorate (I am using the phrase and not attributing it to you, Sir) are, as a practical matter, in terms of political science, or behavioural science, or political sociology, or whatever—would you say that a safeguard against biased or self-interested action on the part of statesmanship is the existence of an electorate?

Mr. MANNING: When you speak of bias are you speaking of personal bias, personal interest?

Mr. GROSS: Well, I am speaking of people as individual human beings, not as members of groups. I am not referring to statesmen as a group, I am referring to individual officials who, from time to time, may be in office. May I clarify my question Sir, by reference to an article which

you wrote for *Foreign Affairs* in October 1964, Volume XLIII, No. 1, published in the United States by the Council on Foreign Relations entitled "In Defence of Apartheid". Now, you recall this article, Sir. At page 140 you wrote, did you not, the following:

"The apartheid programme is the programme of a particular Party—the National Party—and it is germane to reflect in what circumstances that Party had its birth."

And then you proceeded, did you not, to explain the origins, in a very interesting fashion, if I may say, of the Party. Now, Sir, is it still your view (this was October 1964) that the apartheid programme is the programme of a particular Party—the National Party. Is that still your view?

Mr. MANNING: This was meant to be an historical statement.

Mr. GROSS: Well, is it still your view as an historical statement?

Mr. MANNING: As I understand it, the Party has not abandoned that policy.

Mr. GROSS: And, Sir, did you not say also on page 141, and if this is out of context you may wish to bring this out, but I think it is in context but I may be wrong:

"Thus, in the context of any discussion on alternatives to apartheid the *raison d'être* of the National Party needs to be seen and appreciated for what it is, and if apartheid is to be understood it should be studied in terms of the assumptions on which it is practised by the National Party rather than simply in the light of those prejudices which ensure its acceptance by enough of the voters to permit its resolute application."

Do you still adhere to these views, Sir?

Mr. MANNING: I think in all, the analysis of any policies pursued by democratic governments one can differentiate between the considerations in the light of which a given policy was thought appropriate, and the sentiments of the electorate which make it possible for the Government to pursue such a policy without losing power in the process.

Mr. GROSS: And, Sir, if the electorate were opposed to such a policy, would that not be a safeguard in respect of the pursuit of that policy by the leaders of the day?

Mr. MANNING: One could almost say that if the electorate was flatly against a particular policy it would be a guarantee that the policy would not be pursued by any party.

Mr. GROSS: Would it then follow, Sir, that the composition of the electorate and the eligibility to participate in the franchise would be a very important aspect of the decision-making function of the Government?

Mr. MANNING: I am not sure if I understand the question.

Mr. GROSS: Would it follow, Sir, that the composition of the electorate, the determination of those eligible or not to participate in the franchise, would be an important aspect in the decision-making process and the pursuit of particular policies, whatever they may be. Would you say that this is an axiomatic statement, Sir?

Mr. MANNING: No, I am afraid that I do not understand the question.

Mr. GROSS: Do you think that the composition of the electorate has anything to do with the decisions taken by the Government, Sir?



Mr. MANNING: I think the theory of democracy is that the electorate speaks for the people and the sovereign people rule.

Mr. GROSS: Could I take it that the answer to my question is yes, or no, or any other qualification?

Mr. MANNING: No, I am afraid I did not sufficiently understand the question.

Mr. GROSS: Is the composition of the electorate of importance in respect of the question whether a government pursues a certain policy or not?

Mr. MANNING: It would be very difficult to answer that one, Sir.

Mr. GROSS: I see, Sir. In respect of the situation in South West Africa, is it true or is it not, Sir, that the non-Whites are not permitted by reason of their ethnic origin, or any other reason, to participate in the franchise for central government?

Mr. MANNING: I am not sure that one talks about permitting people to participate. People either have the franchise or they have not, and those who have it can exercise it.

Mr. GROSS: Who determines whether they have it or not in particular instances?

Mr. MANNING: I should usually consult the law on that.

Mr. GROSS: Who writes the law, Sir?

Mr. MANNING: If you mean literally writes, you don't mean literally writes, you mean who enacts the law.

Mr. GROSS: I said who writes the law. If you would rather say who enacts the law, I will rephrase my question. Who enacts the law?

Mr. MANNING: The procedure is very familiar to students of parliamentary government.

Mr. GROSS: Sir, you would not deny—and I am sure you do not attempt to evade what I think are axiomatic questions and I even apologize for asking them—is it or is it not true, Sir, would you say, as a political scientist, or otherwise, that (I will be more specific now) in South West Africa the non-Whites do not have the right to vote in the elections for a central government? Is that a fact, or is it not; is it a law, or is it not, Sir?

Mr. MANNING: I believe it to be the case.

Mr. GROSS: Now, who makes the determination? Is it the central government which makes the determination as to who is eligible for participation in voting?

Mr. MANNING: I should have thought the officers at the election.

Mr. GROSS: The what, Sir?

Mr. MANNING: The officers, the polling officers. These are the people who judge whether the would-be voter is eligible to vote.

Mr. GROSS: You mean, Sir, that if a law states, or provides, that a non-White may not vote, then it would be the registering officer or the polling officer who would have any discretion with respect to allowing him to vote? Surely you do not mean that, Sir.

Mr. MANNING: I should be astonished at any system where there was discretion given to vary the law.

Mr. GROSS: That's right, Sir. I am just trying to ask an obvious question, but not getting a response, I don't think I should press this any more than perhaps to make sure that you have not misunderstood me. Do you know or do you not know, Professor Manning, whether in the Territory of South West Africa there are legal inhibitions upon the right

of non-Whites to participate in elections for the central Government?

Mr. MANNING: These are not the words I would use; I would simply ask myself who under the existing law is eligible to vote, and we know that in this particular case the authority over South West Africa was vested in a government which is answerable to a parliament which sits in Cape Town, which is answerable to an electorate, the membership of which is defined in the law of South Africa.

Mr. GROSS: The electorate as defined in the law of South Africa, does it exclude non-Whites, so far as you know, from voting in the central Government?

Mr. MANNING: The word "exclude" does not appeal to me . . .

Mr. GROSS: You used it, Sir.

Mr. MANNING: What does it include? is the question, surely?

Mr. GROSS: Whatever word you choose—I thought I was using your word—I will not pursue this line any further, unless you wish to elaborate your answer. You consider that you have answered my question?

Mr. MANNING: I am quite willing to answer your question.

Mr. GROSS: Do you have anything to add to what I have already asked you?

Mr. MANNING: Yes, I have something to add.

Mr. GROSS: Please, if you don't mind, Sir—I certainly do not want . . .

Mr. MANNING: I should have thought it was very well known that the Mandate had been conferred upon a country whose governmental system was a parliamentary oligarchy, and that this is still the case.

Mr. GROSS: I see. Now, with respect to the excerpts which I have taken the liberty of reading from your article in *Foreign Affairs* titled "In Defence of Apartheid", to get back to my question and the reason why, the context in which, I read these excerpts: what safeguards against the possible consequences of policies pursued by the National Party in respect of the Mandate, the Territory of South West Africa, if any, other than the conscience of the Mandatory or the officials composing the National Party or any other party in power from time to time . . .

The PRESIDENT: Mr. Gross, is this in relation to his knowledge as an expert or his knowledge as an individual?

Mr. GROSS: Sir, I have, with respect, frequently found a difficulty to distinguish between these two, and I recall at an earlier phase when this question came up that it was pointed out, as I understood it, that there were very considerable difficulties in distinguishing between testimony proffered as a witness and as an expert. I have observed that distinction difficult to follow as well. The intent of my question is to obtain from the witness his views as an expert, if he has such views, regarding the safeguards against self-interest, self-dealing, or the possibilities thereof in respect of the Territory of South West Africa; this is really the sole purport of my question. . .

The PRESIDENT: Very well.

Mr. GROSS: Could you answer that question, Sir?

Mr. MANNING: You have asked me not to refer to the sense of responsibility of the statesman?

Mr. GROSS: No, I have not asked you not to refer to anything, I wanted to let you know that I understood your answer in that respect; I am glad you say whatever you do say.

Mr. MANNING: My quick answer to that is that in the first place there is a sense of responsibility of the statesman who knows what the Mandate

says, and there is also the conscience of the public, which is also in a position to acquaint itself with what the Mandate says; and there are always those in a country governed under the parliamentary system, who are interested in having the Government turned out, discredited; and any handle given by the action of the Government to those who would like to discredit it would be seized by those who are canvassing the case for the supersession of this Government by another party, and this I would say was quite an effective safeguard in a country where the public have some sense of the difference between right and wrong.

Mr. GROSS: Professor Manning, you have studied the Mandate, have you not, from time to time and over the years, and you are familiar with its provisions regarding administrative supervision, or Article 6 in particular?

Mr. MANNING: I would like to be asked a particular question.

Mr. GROSS: My particular question is whether you are familiar with Article 6—are you familiar with the terms of Article 6 of the Mandate, would you like to have it read?

Mr. MANNING: I would like to have it read, please.

Mr. GROSS: Yes, Sir:

“The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4 and 5.”

Article 2, as you are certainly aware, is the article with respect to the promotion of the welfare, etc. And are you familiar with Article 22 of the Covenant of the League of Nations?

Mr. MANNING: Fairly.

Mr. GROSS: And paragraph 7 thereof, which reads:

“In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.”

You will recall that. And in connection with Article 22, paragraph 1, do you recall that, or would you like me to refresh your recollection about its terms? Perhaps I can read it to you, if you wish?

Mr. MANNING: I have it here.

Mr. GROSS: Tell me when you have read it, if you will, if you wish to read it again. Have you read it?

Mr. MANNING: I have read Article 22.

Mr. GROSS: I call attention particularly in the context of my questions to the phrase:

“... there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant”.

You have read those words, have you not? With respect to the problems we have been discussing and to which you have referred in respect of the safeguards, securities, or—I used the phrase assurances or guarantees—against actions inspired by self-interest, as an example, would you express an opinion as an expert or on the basis of your knowledge or

study of the mandates system and the Covenant of the League, as a professor of international relations for some years, whether or not the system of supervision envisaged in the Covenant and the Mandate is an essential part of the system as a security, is one of the securities for the faithful performance of the trust?

The PRESIDENT: Mr. Gross, that type of question has been dealt with before: that is a matter for the Court to determine, not for any witness to express his view at all. It is one of the very questions which the Court has to determine, and it cannot be put, unless of course you are seeking to challenge his credibility as a witness—if you are not, it cannot be put.

Mr. GROSS: I understand very well, Sir, the admonition, but I had thought that in the examination of the witness's view, as distinguished of course from such view or conclusion as the Court itself may ultimately reach, with respect to these very broad and important matters to which he has testified on direct in connection with the norm, his view regarding the nature, structure and important elements of the mandates system would go to the question of the weight to be attached to his expert testimony, either as to credibility, not in the veracity sense of course but in the terms of the weight to be attached to it; this was my intention, but I will not press the point.

The PRESIDENT: If that is the sole purpose of your intention, then the question may be put, direct to the witness's credit, it being understood that whatever reply he gives will be of no value whatever to the Court in terms of the question it itself has to decide; it can only go to the weight of his evidence.

Mr. GROSS: That was my sole purpose, Mr. President, not in any way to suggest or imply usurpation of the Court's function or prerogative.

The PRESIDENT: Very well, you may put the question to the witness.

Mr. GROSS: Would you care to answer that question—your own view?

Mr. MANNING: I think the question was whether this obligation to report to the Council was an essential part, an essential element, in the mandates system.

Mr. GROSS: Whether in your view the obligation of reporting or international accountability was an important part of the mandate structure.

Mr. MANNING: An important part of the mandate structure was the obligation to report to the Council.

Mr. GROSS: Are you now voicing or implying a legal conclusion?—this is just for information.

Mr. MANNING: I thought you were asking me a legal question.

Mr. GROSS: No, Sir, that's the point. I am asking your opinion as a political sociologist, a political scientist, a professor of international relations, a student of the mandates system and the Covenant of the League, whether it is your opinion or not that the principle of international accountability, and I say "was" because I do not want to prejudice the issue before the Court of whether or not the Mandate is still in existence, was an important part of the mandates system.

Mr. MANNING: A specific accountability to the Council was provided for in the Covenant and the Mandate; that *was* an important part of it.

Mr. GROSS: You have no comment you wish to make with respect to the principle of accountability as such? I am not trying to extract one from you if you do not wish to answer the question.

Mr. MANNING: I am very happy to answer if I am allowed simply to

repeat that that principle, as embodied in that provision, was certainly an essential part of the system.

Mr. GROSS: Now I would like to ask a few quick questions, and will try to assure their brevity in terms of the question asked. With respect to the countries you enumerated, for example Canada, Cyprus, Belgium and the United Kingdom, would you say that in any or all of those States the respective Governments, through official action or policy, allot status, rights, duties, privileges or burdens on the basis of membership in a group, class or race rather than on the basis of individual merit, capacity or potential?

Mr. MANNING: I should have to make a special study before I could answer that question, it requires research.

Mr. GROSS: Would you say, then, that in your testimony with respect to these countries that I have mentioned it was not intended by you to imply, nor did you seek the Court to infer, that in these countries which you mentioned in the context of the reference to the norm, the practice in these countries was by official policies or actions to carry out the policy which I have just read?

Mr. MANNING: The whole point of my allusion to these countries was to reveal my view as to how far it was compatible with the well-being of ethnic groups to put them in a situation in which they would find themselves, as it were, with political bed-fellows that they might not have chosen. I brought attention to the fact that there are countries in which there are collective self-hoods, dynamic and limited, which are difficult to accommodate within the scheme of what was meant to be a relatively homogeneous nationhood, and when you have this situation you can have tension, you can have unhappiness, you can have discontent, and I was discussing whether anxiety on this score should be present in the mind of a mandatory in envisaging the ultimate future for the peoples of such a country as South West Africa. I gave warning as to what might happen to peoples who were not put in the position to make their own mature and independent choice on their own ultimate destiny by finding themselves instead in a situation which they would never have chosen had they been sufficiently sophisticated, sufficiently politically aware, to appreciate what the choice was.

Mr. GROSS: I think you have testified, if I am not mistaken—correct me if I am wrong, please, Professor Manning—that you do not yourself claim first-hand knowledge or expertise about conditions in South West Africa—is that a correct rendition of your testimony?

Mr. MANNING: I have only spent one week in the country in my life.

Mr. GROSS: I mean is this a correct rendition of your testimony? The record will show, I just did not want to misquote you.

Mr. MANNING: Yes, these were my words.

Mr. GROSS: With respect then, however, to the reading which you have done to which you have referred, would you have any knowledge of the situation with respect to the persons classified as Coloured in the Territory as distinguished from Natives, or Whites, or Asiatics?

Mr. MANNING: I have to confess, Sir, when we get down to detail, I am afraid I have reached a time of life when I read a lot which I do not remember. I have read the documents and I have read the Odendaal Commission report but I do not retain the details in my mind. If you would like to put a specific question to me, I will tell you whether I can answer it.

Mr. GROSS: Yes, of course, that would be only fair. Do you recall, Sir, from the Odendaal Commission report, that it is stated that there are some 12,700 Coloureds in the Territory?

Mr. MANNING: "Coloured" meaning?

Mr. GROSS: Coloured is the definition of the census classification which has previously been read into the record and it means according to the census classification as follows:

"(a) *Whites*.—Persons who in appearance obviously are, or who are generally accepted as white persons, but excluding persons who, although in appearance are obviously white, are generally accepted as Coloured persons.

(b) *Natives*.—Persons who in fact are, or who are generally accepted as members of any aboriginal race or tribe of Africa.

(c) *Asiatics*.—Natives of Asia and their descendents.

(d) *Coloureds*.—All persons not included in any of the three groups mentioned above." (I, p. 109.)

So that to clarify the point raised by your question, Coloured are persons who "although in appearance are obviously White, are generally accepted as Coloured persons" and "all persons not included in any of the three groups mentioned above", specifically Whites as defined, Natives as defined and Asiatics as defined—does this clarify what is meant by Coloureds, Sir?

Mr. MANNING: It sounds to me like the classification which obtains in the Republic of South Africa.

Mr. GROSS: Does this clarify your question about what is meant by Coloureds, Sir?

Mr. MANNING: Yes.

Mr. GROSS: The Odendaal Commission report, I have asked you whether you are familiar with it regarding Coloureds, and I believe that you said that you would appreciate having the specific references called to your attention, is that not correct, Sir?

Mr. MANNING: Well, I understand the question better.

Mr. GROSS: The first reference I would have in mind is page 33, paragraph 121:

"The Coloureds, numbering 12,708 and constituting 2.42 per cent. of the population, also have a strong Caucasian strain and for the most part maintain a Western culture and way of life. Their language is chiefly Afrikaans. A considerable number hail from the Cape Province. The Coloureds are found mainly in the larger towns such as Windhoek, Walvis Bay, Luderitz and Keetmanshoop, where they are employed or have their own businesses in industry. Many are artisans in the building trade. A small proportion make a livelihood as stock-farmers."

Do you know, Sir, from the basis of your own reading or study of the Odendaal Commission report or otherwise, whether it is proposed in the Odendaal Commission report recommendations to have a separate homeland for the Coloureds, Sir? Do you happen to know?

Mr. MANNING: I ought to say that I am hazy about that. My recollection is—no I am not quite certain—I think not.

Mr. GROSS: Actually Sir, I did not mean to tax your recollection. It is, I think, undisputed in the record that there is no such plan. The plan,

Sir, is it not or do you know, is that three Coloured townships or locations will be proclaimed at some unspecified date and that the Coloureds will be persuaded there in terms of the Odendaal Commission report so as to have a say in their own affairs—that was the language that has been placed into the record. Are you familiar, Sir, with those contemplated provisions?

Mr. MANNING: I should like to look at the specific passage.

Mr. GROSS: I will try to find it as quickly as possible. I did not have it in my notes because I did not anticipate that this question would arise. I do not have my own copy of the report with me.

The references begin at page 107 and following paragraph 416, where it says "12. In Respect of the Coloureds . . . The Coloured of South West Africa are distributed over the whole White area, etc." I won't read it unless you wish me to, Sir. Then, it goes on, paragraph 418, paragraph 419 and then at the top of page 109, paragraph 420:

"That in due course the Coloureds be settled in the three above-mentioned towns in properly planned and proclaimed Coloured Townships where they shall enjoy the right to own property."

In any event, there is no question, I take it, that the Odendaal Commission report does, as this indicates, recommend or envisage the establishment of Coloured Townships to which it is expected that the Coloureds, as classified in the census, will be persuaded to go. Just to complete the picture, there is, in paragraph 422, reference to a rural irrigation settlement for Coloured farmers, that, of course, I did not mean to exclude for the sake of completeness, I mention it so that there will be no confusion on it. Now, Sir, with respect to the persons classified as Coloured, my question relates to your evaluation if any, as an expert, with regard to problems of what you call differentiation, whether the problem of the Coloureds, for whom no homelands are contemplated, are an exception to any of your testimony regarding the relationship between the White and the Native groups. Would the problems presented by the Coloureds in the society of South West Africa, if you have an opinion on this, be definable and analysable on the same terms as your analysis would apply in your own view to the relationship between the White and the Native groups?

Mr. MANNING: In so far as I have come here as an expert, I have testified to the broad principle on the applicability or non-applicability of the norm of non-differentiation. It would be quite improper for me to pose as in any sense an expert on the detail of the way in which this philosophy is being applied. It may be that if I knew more about it, I could give an adequate explanation for everything that has been done, but it would be quite wrong for me to stand here and purport to be a source of enlightenment for this Court on the reasons for which particular things are done in the fulfilment of a policy which seems to me to be the wise policy in its basic philosophy.

Mr. GROSS: And, Sir, in considering the validity or otherwise of its basic philosophy, I take it from what you testified that, for any reason satisfactory to yourself, you did not regard it as of significance to consider the problem of the Coloureds either as a special problem or otherwise—is that fair to say so?

Mr. MANNING: Yes, I should think the Coloureds are a special problem, as are the Hereros, and as are the Ovambo, and so forth. They are indeed a special problem.

Mr. GROSS: Would you say, Sir, that the Whites are a special problem?

Mr. MANNING: I should have thought policy in relation to the Whites was again a problem.

Mr. GROSS: Now, Sir, that leads to the following question, if I may, Mr. President. I believe you testified that, in expounding your philosophy or expertise, various groups could not achieve their, I am paraphrasing from my notes, aspirations, and I have in quotation marks "if they were all administratively to be treated as if they were interchangeable"—is this a fair rendition of your testimony?

Mr. MANNING: I certainly said that if groups were treated as interchangeable it implied that the uniqueness of each group was being overlooked.

Mr. GROSS: Now, Sir, I was interested and thought possibly the honourable Court might be, as to what the significance is that you seek the Court to draw from the word "interchangeable" in that context?

Mr. MANNING: I am tempted to quote the writer who said that the doctrine of human equality was the convenient methodological fiction of the administrator, pointing out that, in the Christian view at any rate, every individual is unique, no two people are interchangeable or commensurable—I am tempted to quote that. My point is, when I use the word "interchangeable", that if you do not recognize the difference between the different groups, you will feel it won't matter very much which of them you are dealing with when you apply particular policies.

Mr. GROSS: Then, with respect to the interchangeability aspect of your testimony—would that relate to individuals as well as to groups?

Mr. MANNING: Within a group there might for some purposes be matters in respect of which the individual members of that group could be treated as interchangeable.

Mr. GROSS: Do you regard, Sir, in the sense in which you use this term, I will not press this, I think, beyond this question, all Whites as interchangeable?

Mr. MANNING: No, that was not the purport of my answer. My answer was that there are situations in which all Whites might be interchangeable. For example, if there was a law determining where Whites might reside, it might be necessary to see whether a particular candidate for residence in the area concerned was White, but if he were White, it would not matter which White man he was.

Mr. GROSS: So that you are really speaking in the context that the word "interchangeable" referred to those practices and policies which reflect the concept of apartheid—is that what you meant by the word "interchangeable"?

Mr. MANNING: I spoke of the non-interchangeability of ethnic groups.

Mr. GROSS: Did you understand, Sir, that the Applicants were contending in respect of their rule that groups were not or were interchangeable as the case may be?

Mr. MANNING: I certainly did understand, at least on one interpretation of a principle of non-differentiation, that groups would not be differentiated between and would be treated as interchangeable.

Mr. GROSS: I see, Sir. That is as far as you care to go or do you wish to go further in clarifying what the concept or term "interchangeable" is in that connection?

Mr. MANNING: No, I think in that context I have explained what I meant by the term.



Mr. GROSS: Then, with respect to another point of your testimony, I think you said, did you not—you expressed a maxim which, if I caught it correctly, was—"Take care of the dignity of the group and the dignity of the individual takes care of itself". Is that substantially correct?

Mr. MANNING: I think I said one might almost suggest it as a maxim.

Mr. GROSS: Now, do you think it could be turned around as well and put almost as a maxim that: "take care of the dignity of the individual and the dignity of the group takes care of itself"?

Mr. MANNING: I feel very doubtful about that one.

Mr. GROSS: You would question that?

Mr. MANNING: Yes, I think I would call it adolescent scepticism.

Mr. GROSS: That is what you referred to, then, when you said, at page 605, *supra*, of the verbatim record of 14 October:

"... the attitude which insists that the only persons are individual human beings. Adolescent scepticism is what I call this, or naive realism."

Is this what you were referring to just now—that testimony?

Mr. MANNING: I used the term "adolescent scepticism" also at another point in my evidence, when I was speaking of the attitude of those who thought that the uplifting of peoples unable to stand by themselves was a matter of enabling individuals to stand by themselves.

Mr. GROSS: I see, Sir. And, this is my final question, Professor Manning, would you consider that, in determining the relationship between the individual, the group and the social order, in the context of South West Africa, the role and freedom, specifically limitations of freedom, upon persons because of colour or race, are based upon and reflect a higher priority being given to the group than to the individual? Would you agree with that proposition?

Mr. MANNING: With all respect, I am afraid I find very great difficulty in answering the question so worded. I do not think in terms of "limitations" imposed upon people because of their colour or race. I do not think of it in these terms. I think of the Mandatory as having to have an over-all policy for trying to advance the well-being of all the peoples, and then I would go and see what are the implications of this policy, and what opportunities can be given, in what places, and to whom. I do not think of limitations being laid upon people, I think of opportunities being provided.

Mr. GROSS: This, I am afraid, does require a footnote question. Are you aware, from your readings about South West Africa, of limitations placed upon economic freedoms and freedom of movement in South West Africa on a non-White basis?

Mr. MANNING: I would agree that in South West Africa, as in all countries, there is legislation which does determine what people are free to do and what they are not free to do, and this legislation can be described as imposing limitations on their freedom, in so far as there are limits. But I would not say that there was anything particularly special in the case of South West Africa in this regard. I would say that there are people who are classified in categories and there is legislation which determines what are the opportunities for these several categories.

Mr. GROSS: And the limitations of freedom in South West Africa, so far as you are aware, do they or do they not reflect, and are they not based entirely on ethnic classification, specifically, for example, to the

limitation in the job reservation acts with regard to employment in the mining industry?

Mr. MANNING: I should have thought that the regulations in any given area were determined by which community was seen as paramount as regards its interests in that area. But I would also have thought that the over-all scheme of what was best for the country as a whole might affect the question of what opportunities particular categories of the population had in particular places.

Mr. GROSS: And by reference to what group is paramount, do you mean that the limitations or restrictions upon job opportunities or promotion are, in the case of the specific question to which I have referred, based upon the fact that the Whites, being paramount in the modern economy, seek to protect themselves from the competition of the non-Whites by restricting the jobs to which they may hope to aspire? Would you agree to that?

Mr. MANNING: I am afraid that I expressed myself badly. I tried to say that those whose interests are paramount—not they who are paramount, but those whose interests are paramount in a given area—and I was thinking more particularly of the areas of the undeveloped peoples, areas in which the opportunities are reserved for them . . .

I know the situation is rather more complex in the area which is described as the White area, but I would not have thought that the basic principle was different in this case. I should have thought that in this case, equally, the policy of the Mandatory was to do what is best for the country as a whole, which involved in this particular case providing a source of revenue from which to finance the development of the country, which meant encouraging European enterprise to establish itself in that part of the country in the interests of all. This might have implications and it might, in some cases, involve limitations upon the freedom of particular individuals, but on the over-all picture I would say we have, in the kind of law I have studied, a maxim called "hard cases make bad law". You ask yourself: Is this a wise law? And then you go on to say: What can we do about the hard cases, if any? But you do not necessarily modify the law merely because there are some individuals who find it operates to their disadvantage.

Mr. GROSS: I have no further questions, Mr. President.

The PRESIDENT: Thank you, Mr. Gross. Does any Member of the Court desire to put any questions?

Mr. RABIE: I have no re-examination, Mr. President.

The PRESIDENT: Is it desired that the Professor should remain in attendance, Mr. Gross?

Mr. GROSS: No, Mr. President.

The PRESIDENT: In those circumstances I think the Professor will be released from further attendance. Thank you, Professor, you are released from further attendance.

Mr. MANNING: Thank you, Mr. President.

The PRESIDENT: Mr. Rabie, who is your next witness?

Mr. RABIE: Mr. President, unfortunately we have no other witness available today. It was not anticipated that this witness would be disposed of before lunch. We rather regret it, but it would be impossible . . .

The PRESIDENT: That is understandable, Mr. Rabie. Perhaps it is not so unfortunate with the weekend just about to commence.

Mr. Gross, I wonder whether you could assist me. When you spoke about the Coloured people, at page 420, I cannot at the moment find the reference where you said that the Coloured were to be persuaded to move to the Coloured townships.

Mr. GROSS: I am sorry, Mr. President. Could I supply it on Monday morning?

The PRESIDENT: Yes, that would be quite sufficient. Thank you very much. I cannot find it myself at the moment.

Mr. GROSS: It is in a section different from the one that I have referred to, Sir. May I detain the Court, Sir, just for a few minutes because I think I am on the trail of it.

The PRESIDENT: Yes, certainly.

Mr. GROSS: Yes, it is page 119, paragraph 452.

*[Public hearing of 18 October 1965]*

Mr. MULLER: Mr. President, we have the last witness today, that is, Professor Possony, whose evidence will also relate to the Applicants' Submissions Nos. 3 and 4. The points to which his evidence will be directed were indicated in a letter of 14 October 1965<sup>1</sup> to the Applicants as being the following:

- (a) the absence of a general practice of a suggested norm and/or standards of non-discrimination and non-separation as relied upon by the Applicants;
- (b) that the attempted application of such a suggested norm and/or standards would in many instances have an adverse effect on the well-being and progress of the persons concerned; and
- (c) that on the basis of the facts concerning South West Africa as on record from other evidential sources, the Territory falls within the instances mentioned in (b).

However, Mr. President, in a letter of subsequent date, 16 October<sup>1</sup>, the Applicants were informed that Professor Possony will no longer deal with the third matter mentioned in the earlier letter, and, that is, he will not deal with the situation in South West Africa.

I may indicate to the Court that Professor Possony's evidence will fall mainly into three groups. The first is a brief historical development of group relations in the world; the second, an analysis of certain situations regarding differential treatment, or otherwise, of population groups in various parts of the world; and the third, attempts in the international sphere to formulate uniform objectives with regard to the treatment of individuals and ethnic groups.

Mr. President, this evidence, as the Court will appreciate, covers a very wide field and Professor Possony would have to refer to many documents. He has, however, for convenience, recorded his documentary sources by way of notes, although the documentary sources are also before the Court.

May I ask that Professor Possony come forward, Mr. President, and make both the declarations provided for in the Rules.

The PRESIDENT: Certainly. Mr. Gross.

<sup>1</sup> See XII, Part IV.

Mr. GROSS: Mr. President, perhaps it would be the preference of the honourable President to have the witness make his declarations before making comment?

The PRESIDENT: Yes, Mr. Gross. Let the declarations be made.

Mr. POSSONY: In my capacity as a witness I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth. In my capacity as an expert I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

The PRESIDENT: Mr. Gross.

Mr. GROSS: Mr. President, reserving the right to object, the Applicants respectfully urge upon the Court to apply, with regard to the evidence proffered for this witness, the procedure indicated in the statement regarding procedure announced by the honourable President on 24 May 1965<sup>1</sup>. Specifically, Mr. President, the Applicants refer to paragraph 3 thereof, as follows:

"3. In calling any witness or expert the Respondent would indicate in Court, with reasonable particularity, the point or points to which the evidence of each witness or expert will be directed, and the particular issue or issues to which such evidence was said to be relevant."

The Applicants submit, Mr. President, that the statement of the point or points to which the evidence of this witness and expert is said to be directed, far from being indicated with reasonable particularity, are obscure, and that the Respondent has not indicated, in Court or otherwise, the particular issue or issues to which the evidence of this witness is said to be relevant.

In respect of paragraph (a) of the letter of 14 October, which has been read into the record by Mr. Muller, learned counsel, it is not clear, to the Applicants at least, what is meant by the juxtaposition of the phrases "general practice" of "standards". It is understood, Sir, and the Applicants, as has been previously indicated in Court, have no objection in principle—if the Court wishes, subject to the will of the Court—if Respondent deems it desirable or necessary to continue its legal argument concerning the sources of international law, with respect to the Applicants' alternative contention under Article 38, paragraph (b)—to continue such argument through a witness or expert, the Applicants have indicated no objection to that course. However, with respect to the question of the testimony proffered regarding standards, this point to which the testimony is said to be directed is indeed obscure and unintelligible to the Applicants, in view of the fact that in their pleadings, the Applicants have sought to make clear the sources of standards, including the United Nations Charter and other sources set forth at length in the Reply and elaborated in the Oral Proceedings, the sources upon which the Applicants rely in support of their contention that Article 2 of the Mandate should be interpreted in the light of standards which concededly and undisputably exist, in the form of the United Nations Charter, resolutions, other international instruments and so forth.

Therefore, it is not clear to the Applicants, with respect, what point, if any, is really the point to which the evidence is sought to be directed

<sup>1</sup> See Minutes, VIII, p. 46.

in respect of the "standards" branch of the Applicants' major argument, as distinguished from the alternative branch of the argument with respect to the international legal norm.

Secondly, Sir, the obscurity, in our submission, is deepened not only by the terms in which the proffered evidence is cast, but also by the formulation of paragraph (b) of the letter, which sets out as a point to which the evidence of this witness is to be directed—

"That the attempted application of such a suggested norm and/or standards would in many instances have an adverse effect on the well-being and progress of the persons concerned."

Now, this would seem also, with respect, Mr. President, to call for some elaboration or specification, some reasonable particularity, as to what is intended to be established for paragraph (b) as formulated.

This confusion, finally, is compounded by the deletion from the points of sub-paragraph (c) which, in accordance with the letter received by the Applicants on 16 October<sup>1</sup>, seems to be the culminating point to which the testimony was to have been directed, the issue with regard to South West Africa. Now this has, by letter received 16 October, been deleted. In the Applicants' submission the deletion of sub-paragraph (c) further obscures the intent of paragraph (b).

Therefore, for these reasons, Mr. President, and reserving the right to object, it would be the Applicants' respectful submission that the Court might well see fit to request from the Respondent a statement of reasonable particularity with regard to the actual point or points to which the evidence is directed, other than—unless the Court pleases to have it otherwise—the sources of international custom in the sense of Article 38 (1) (b) of the Statute of the Court, if that is regarded by the honourable Court as a fit and appropriate subject for testimony, rather than for argument. I apologize for the length of this but I did want to make my problems clear, with respect, Mr. President.

The PRESIDENT: Mr. Gross, are you making an application that the Court should adjourn until you obtain further particulars of the evidence to be given?

Mr. GROSS: Sir, I would not venture to do that, nor, with respect, do I think it necessary. If, however, it would be possible for counsel to indicate with more particularity than is done in this formulation of the remaining two paragraphs of the letter which has been read into the record, it would, at the very least, Sir, aid the Applicants to the better understanding of the evidence as it is led, and in preparing for cross-examination or comment, or other appropriate action thereafter.

The PRESIDENT: The procedure which the Court indicated was that before a witness was called Respondent would state with reasonable particularity the point or points to which the evidence of each witness would be directed and the issues concerned. The issues have been made quite clear; they are directed to the issues which are involved in your Submissions 3 and 4. As to whether the Respondent has indicated with reasonable particularity the point or points to which the evidence of this witness is directed, depends upon a reading of paragraphs (a) and (b) of the letter to which you refer.

The Applicants' case is that there is a norm or standard which has been

<sup>1</sup> See XII, Part IV.

defined in its Reply. It is stated in the oral argument by the Applicants that the norm or standards are in content the same. In its legal effect, however, the distinction was made by the Applicants that the standard did not have the same effect as the norm, but it would nonetheless have the same content as the norm.

The Respondent seeks to establish that there is no such norm, and part of its case is to show what the practice is in respect of non-discrimination and non-separation in different countries throughout the world. At the same time it seeks to establish that since the Mandate demands of the Mandatory that it shall promote to the utmost the well-being and social welfare and development of the people, that any alleged norm which is inconsistent with the discharge of that duty can have no application, or, alternatively, that such evidence would go to establish that there is no such norm at all. It seems that paragraphs (a) and (b) do, in generality, indicate that that is the general course which the evidence is to follow and the purpose for which it is to be adduced.

If, at any time, you fear that you are prejudiced by the nature of the evidence which is led then, Mr. Gross, you may rest assured that the Court will listen to any application that you have to make and, of course, as the evidence is led you will be entitled to make whatever objections you think to any particular question or the response to any question which is put. I do not think that the Court can do more than indicate that, at the moment. More than once the Court has said that if evidence is led, and if there is any substantive question of relevance in respect of the same, that relevance will be determined by the Court itself when it proceeds to its deliberations. I think that in a case such as this that is the wisest course to pursue and not to seek to make any rulings upon evidence when it is of such a substantive character as is involved in the objection or in the application which you are making.

I shall ask Mr. Muller whether he is able to indicate with more particularity the general scheme of the evidence of the witness in order to enable Mr. Gross both to prepare for cross-examination and, at the same time, to determine what objections he should make to any particular part of the evidence as it is led. Mr. Muller.

Mr. MULLER: As the Court pleases. Mr. President, the evidence will indicate, as very broadly stated in the letters to the Applicants, that there is no practice or usage in the world observing a norm of non-discrimination or non-separation as contended for by the Applicants. For that purpose the witness will deal with positions in various countries in the world. He will indicate to the Court certain situations where one has different population groups that have to be treated differently. He will indicate what measures are operated in such countries for differential treatment of different population groups. That evidence, Mr. President, we contend, will show that there is no usage in the world observing the norm of non-discrimination or non-separation as contended for by the Applicants.

The PRESIDENT: Mr. Gross.

Mr. GROSS: Mr. President. In deference to the comments made by the honourable President, I had started my comments with the reservation of the right to object, but I did not object, Sir.

With regard, however, to the statement just made and without prolonging the colloquy, which I am sure the Court will appreciate my not doing, the response of Mr. Muller, if I may say, highlights the diffi-

culty. His reference was solely to the matter of the international legal norm which, of course, is, as the Court is well aware, an alternative and, in effect, a subsidiary argument—an alternative and cumulative argument. No reference has been made to the question of whether or not anything in this witness's testimony is intended to relate to the Applicants' main argument with regard to the conceded existence of international conventions and so forth, which are contended by the Applicants to result in standards which should be applied in the interpretation of the Mandate. No reference has been made to the major branch of the Applicants' case in respect of anything to which this witness is now said to be directing his testimony. This, I think, illustrates the difficulty which the Applicants perceive in this formulation, Mr. President.

I will not, however, press the objection and will attempt to take advantage of the President's indication that the objection can be made in respect of any particular questions.

The PRESIDENT: I only have to add, Mr. Gross, that the sources on which you rely to establish the norm are the same sources on which you rely to establish the standard. That is clear from IV, pages 493 of the Reply onwards, and if evidence is led to the norm it may well have a relevance to the existence or the content, if not the existence then the content of any standard. I think the proper course is to allow the evidence to proceed and to take your objections as you think fit as the evidence is led.

Mr. GROSS: Mr. President, may I then, respectfully reserve the right also to make appropriate comment at a suitable occasion with regard to the relevance . . .

The PRESIDENT: Certainly, Mr. Gross. That right has been reserved to you—to make comments upon the evidence. Obviously, comment as to relevance of evidence falls within the permission which has already been accorded.

Mr. GROSS: Thank you, Mr. President.

The PRESIDENT: Mr. Muller, will you proceed?

Mr. MULLER: As the Court pleases. Professor Possony, your full names are Stefan Thomas Possony?

Mr. POSSONY: Yes, Sir.

Mr. MULLER: You are a citizen of the United States of America?

Mr. POSSONY: Yes.

Mr. MULLER: What are your academic qualifications?

Mr. POSSONY: I am a Doctor of Philosophy of the University of Vienna and I hold an honorary degree of Doctor of Law.

Mr. MULLER: What are your fields of study?

Mr. POSSONY: I studied anthropology and ethnology as minors at the University of Vienna, psychology and philosophy as majors, and I wrote my doctor's dissertation in sociology.

Mr. MULLER: Are there any special fields in which you have done research and teaching?

Mr. POSSONY: I have done research and teaching in the fields of international relations, sociology, modern history and comparative constitutions. I have done research in economics.

The PRESIDENT: I wonder whether the witness could speak a little louder.

Mr. MULLER: I am sorry, Mr. President. Mr. Possony, would you please speak a little louder?

Have you, in the course of your studies, research and teaching, made a particular study of management provisions of different population groups in the world?

Mr. POSSONY: For many years I have worked on the subject of ethnic problems and the relevant constitutional and legal provisions for the management of ethnic groups in multi-national societies.

Mr. MULLER: What is your present position?

Mr. POSSONY: I am Director of the International Political Studies Programme at the Hoover Institution for War, Revolution and Peace at Stanford University, California.

Mr. MULLER: What previous positions have you held?

Mr. POSSONY: I was Special Adviser to the United States Air Force, consultant to other United States Government Agencies, including the White House, for many years on political sciences, including handling of natural science data for the purpose of policy formulation. I was also a member of a research group, many years ago, working for President Roosevelt on migration and population problems. I held the position of Carnegie Fellow at the Institute for Advanced Study in Princeton, New Jersey. I was Professor of International Politics at the Graduate School of Georgetown University. I was, and still am, an associate of the Foreign Policy Research Institute at the University of Pennsylvania. I was also Visiting Professor at the University of Cologne, Germany.

Mr. MULLER: Have you made a study of the importance, or otherwise, of ethnic group differences?

Mr. POSSONY: Yes, I have studied this problem rather extensively for many years.

Mr. MULLER: Do you consider it important to recognize ethnic group differences in pluralistic societies?

Mr. POSSONY: The diversity of mankind rests upon ethnic differences. The great progress which mankind has been able to make in the last five to ten thousand years in many ways was conditioned by this diversity. The great ideal is to preserve that diversity as one of mankind's greatest assets and no group or nation aims to abandon its distinct identity. At the same time, diversity and ethnic differences have been the cause of much internal and international conflict. Most struggles which have arisen have ostensibly or really been related to ethnic factors. Within States that comprise different ethnic groups, ethnic conflicts or, as they are also called, national struggles are a foremost and frequent experience. Unless such struggles can be prevented or kept under control, multi-ethnic political structures tend to break up.

Multi-ethnic societies presuppose the explicit recognition of ethnic difference. Such societies require institutions that are based upon and manage the ethnic diversity. In addition, an effective organization to ensure the collaboration of different ethnic groups is needed to bring about mutually beneficial economic progress and to provide for each individual an intact social community of his own. If such communities are disrupted, or if the relationship between the individual and his community is disorganized, man becomes psychologically alienated, that is, he no longer belongs to his group.

In summary, ethnic differences demand recognition. If multi-ethnic societies are to function well such differences must be handled through institutional arrangements.

Mr. MULLER: From your studies and experience, can you say whether



different population groups generally tend to merge or to develop separately?

Mr. POSSONY: In most instances population groups differ from each other in one or more characteristic. Some of these traits are natural in the sense that they do not evoke a particular attitude, like language when its usage is not threatened. Others may be meaningful and evoke value attachments, like religion. The urge to a separate life is strong if differences are conceived more sharply. On the other hand, if there are close contacts differences, which so far were ignored, may be identified. Ethnic groups tend to have their own territories, their own economic systems and interests, their own political structures and their own history. Even if there were no distinct psychological make-up or a cultural distinction, and even if there were religious unity, many factors would militate for separateness and have always done so in the past, except in those periods when continuity was broken.

However, catastrophes may also lead to the strengthening of ethnic self-consciousness.

A great deal of the inter-ethnic political struggle, including war, is derived from fear about ethnic extinction or from a desire to preserve an independent set-up. The struggle itself strengthens ethnic consciousness. The struggles within the group often are concerned with the problem of separating the group from another.

Mr. MULLER: Now, is separation, as mentioned by you, striven for as between groups only, or are there examples of separation also within a larger group?

Mr. POSSONY: In one way or another, sometimes formally, sometimes not, even highly uniform groups tend to have internal separation. Separations are almost routine if, in a group that is not uniform, that has kept together because of geographical or political conditions, there occur strong differences, for example, of a religious or racial type.

The most durable of such systems has been the Indian caste system which was referred to for the first time in the year 1500 B.C. This system, it seems, was more or less fully developed along the basic principles of professional separateness and strict endogamy more than 2,000 years ago. The origins of the system are still obscure. Whether or not the original castes were distinct racial or ethnic groups is a moot point because, under the existing system, castes did become breeding isolates. Through serological analysis it has been determined that, on the whole, endogamy, or matrimonial separateness, was preserved rather strictly and effectively. The caste system exists above all in India, but also in Pakistan, Ceylon and Burma. Between 350 million and 400 million people are involved.

The Constitution of Pakistan, in Article 29—which is printed in the *Inter-Parliamentary Union, Constitutional and Parliamentary Information*, 1956, pages 137 ff.—which deals with the promotion of social and economic well-being of the people, stipulates that such well-being be secured “irrespective of caste, creed or race”. Moreover, the “basic necessities of life” are to be provided to all citizens “irrespective of caste, creed or race”. Castes are recognized also by Article 204 of the Pakistan Constitution. This is quoted in *Human Rights Yearbook*, 1956, on page 181.

The Indian Constitution makes far more substantial references to castes, and this will be discussed later.

Mr. MULLER: Yes. Now, has the caste system not been abolished?

Mr. POSSONY: Mr. President, there is a misconception that the caste system has been abolished. The caste system, in fact, is deeply embedded in the social reality. It may or may not disappear in the process of long evolution, but it cannot be "dis-established" because it is, if nothing else, a frame of mind and a pattern of behaviour.

However, untouchability, which is one of the manifestations of the caste system, and is based largely on the notion of cleanliness and purity, has been abolished. For example, Article 20 of the Pakistan Constitution says that the practice of untouchability "in any form is forbidden and shall be declared by law to be an offence".

What this means is clarified in the Indian Untouchability Offences Act, of 8 May 1955, which is quoted in *Inter-Parliamentary Union, Constitutional and Parliamentary Information, 1955*, pages 119-124. This Act, in essence, forbids that the caste system be practised by preventing members of the so-called untouchable castes, *inter alia*, to enter and pray in places of worship of their own religion, to enter shops, restaurants, hotels and places of public entertainment, and to stop those other practices which, in previous legal language, for example, in an Act of 1950 in Travancore and Cochin, are referred to as "social disabilities".

This Act on untouchability is only 10 years old, hence the condition which it outlaws must have existed until 1955. But even if the practice had disappeared within the last 10 years, it was stark reality for hundreds and possibly thousands of years in one of the most populous and pluralistic societies in the world. India's internal developments have generally been very peaceful, however.

The system, in my view, has been one of effective internal separation, but it was not successful in terms of development. Both the Indian and Pakistani Constitutions now envisage support to the scheduled castes in order to promote the socio-economic development of their members.

The PRESIDENT: It is difficult, I know, when a person has a habit of speaking quickly, Professor, to alter the habit, but you do speak rather rapidly and it is not always easy to catch both the words and the sentence which you are addressing.

Mr. POSSONY: I apologise, Mr. President, and will speak very slowly.

The PRESIDENT: Not at all, but if you could speak more slowly, it would be appreciated.

Mr. MULLER: Professor Possony, does one find separation in the world along religious lines?

Mr. POSSONY: There has been in Europe a long and highly relevant history of separation along religious lines. The problem that arose after the Reformation was to separate the Catholics from the Protestants. The edict of Nantes, in 1598, combined features of separation with features of non-discrimination. In 1648, the right to emigrate was confirmed, together with the equality of Catholic and Protestant States within the Roman Empire. During the 19th century, religious separation was gradually implemented in the Ottoman Empire. Due to the drying up of religious beliefs, the issue lost significance in Europe, but remained potent in Asia—for example, the separation of India from Pakistan was largely upon a religious basis. Conflicts like that between the Negro and Arabic provinces of the Sudan may or may not have a racial foundation, they certainly have very strong religious overtones.

Mr. MULLER: Has there been any significant separation along ethnic lines?

Mr. POSSONY: Yes, there certainly has been such separation. Of all the causes of separation, the ethnic factor is the most important; for example, the problem can be studied in the history of such peoples as the Armenians and the Basques who, in the face of a turbulent history, have maintained their identity for several thousands of years.

To save time, I shall discuss the problem through the history of the Jews: Jewish history can be traced back for almost 3,000 years. Separate identity was preserved in the face of three major *diasporas* and a considerable number of subsequent exodus cases. Time and again the Jews lost part of their population due to mass conversion, and there has been a steady stream of individual conversions. Group conversion to Judaism added new ethnic components. There are, therefore, differences in what may loosely be called the "purity" between the Jewish groups living in different geographic locations.

Adherence to the Jewish faith during periods of persecution created many difficulties and dangers, and may have meant death. In those periods, when assimilation to surrounding ethnic groups was easy and sometimes encouraged, Jews had a chance to eliminate themselves, through painless methods, as a distinct group. In view of the long duration of Jewish history, it is therefore remarkable that investigations, carried out with the most modern means—this means the analysis of blood groups and fingerprint patterns, both of which are strictly hereditary—have proved that the Jews managed to a considerable extent to preserve their ethnic identity.

At one time, Mr. President, the ghettos reflected a Jewish desire for separate development, at other times, of course, this was a result of the similar desire on the part of the non-Jews. Time and again the Jews either obtained autonomy or practised autonomous self-government of their own.

In the modern period, the desire of the Jews for separate development was most strongly manifested in their wish for their own territory. This wish resulted in the establishment of Israel as the framework in which the separate development of a Jewish nation could be pursued. The establishment of Israel was accompanied by the separating out of Jews from other ethnic groups, and the division of Palestine into an Arab and a Jewish part—all this was done under United Nations aegis.

The desire for territory also was manifested within the Soviet Union, where the autonomous province of Birobidzhan was established some 30 years ago. Jewish history proves that the will for separate development and separate existence has been extremely strong and persistent, despite the fact that there was no common territory, and that even common language was lost, except in ritual. The Jewish historian, Simon Dubnov, who was killed by the Nazis in Riga during 1941, was correct when he spoke about a "natural instinct of national preservation".

Mr. MULLER: Now, in the light of these examples mentioned by you, can you say whether in history there has been a general trend towards separation of population groups?

Mr. POSSONY: Mr. President, all world history is tied together with the desire of peoples to be by themselves, not to be subject to foreign domination, and not to be dispersed by conquerors. I do not argue that the urge for ethnic separateness was the only important factor. But the desire for self-rule was constant in most populations.

In the 16th century, during the Reformation, which in some ways was

religious separatism, the religious movement and ethnic consciousness merged, and a new age of nationalism was born.

Using the term "nationalism", it is important to differentiate it from political and aggressive nationalism, which is an ideology of expansion; in its sociological meaning the term merely signifies that there are nations and that they want to run their own affairs. In this sense, nationalism is the opposite to imperialism, it is self-limiting and not expanding.

The modern European nations, as we know them, had arisen by the turn of the 16th century, and resulted in the gradual political unification of ethnically and linguistically closely related political groups; nation soon became a democratic concept.

Nationalism—and I mean this as distinguished from imperialism—adopted the idea of non-separation, inasmuch as it aimed at the merging of related ethnic groups into one nation. In some cases, like Switzerland, merging was restricted to political institutions, within a clearly delineated geographical area, and to the subjective factors of nationhood, notably the will to live together, so that we observe the unique phenomenon of a multi-ethnic nation.

Early in the 16th century, the concepts of nationhood and national uniformity were formulated more or less explicitly; throughout this period, and into the 17th century, there were the first national wars, in the proper meaning of the word.

In 1776, the principle of independence was asserted by the United States—or, more accurately, by the American revolutionaries—and it was affirmed that the laws of nature and of "nature's God" entitle people to a separate and equal station. The term separation was used to describe the act of becoming independent.

During the French Revolution, and in the Napoleonic period, in elaboration of the concept of popular sovereignty, the concept of the nation state was born; during the Congress of Vienna, the nationality principle was invoked for the benefit of France and Poland.

Mr. MULLER: Will you, very briefly, tell the Court how the nationality principle developed further?

Mr. POSSONY: The early part of the 19th century saw the independence movements of Greece and Poland—of course, I am mentioning only illustrative examples. Democratic revolutionaries, like Mazzini, and not so democratic rulers like Napoleon III, placed increasing emphasis on *the principle of nationality. The concept that each nation is entitled to its own State, and that each State ought to have its own nation, was formulated in the mid-19th century by the Swiss international jurist, Bluntschli. Mancini, an Italian international jurist, argued that international law be based on the reality of nationhood. Liberalism was a national movement; and the democratic movement which aimed at the rule by the people, conceived of people both in social and ethnic terms. This also was the period of the rising nations, and an increasing awareness of the distinctiveness of ethnic traits.*

During the Danish crisis of the 1860s, the principle was formulated that populations should themselves make decisions about frontiers; they, and not the governments, should decide with what population they wanted to stay together, and from what population they wanted to separate—this was the principle of self-determination. The term "self-determination" was fully in use during 1864, and it may have been used before. Self-determination was speedily embraced by nationalities which did not

have their own State, and for the benefit of Poland was insisted upon by the First International, which was founded by the socialist world movement.

At the Congress of Berlin, in 1878, the principle of nationality achieved a breakthrough, yet consent of the populations concerned was merely presumed.

In 1896, the Second International, again for the benefit of Poland, adopted the principle of self-determination as an important operational concept. The nationalists of the time more often than not opposed the principle.

I have gone into this history somewhat extensively, Mr. President, because there is a misconception that the doctrine of self-determination was formulated for the first time by the end of World War I. It is important to recognize that representatives from quite different ideological orientations did embrace this principle much earlier, and that, essentially, self-determination is what I would call a meta-ideological concept.

Mr. MULLER: Now, with regard to the principle of self-determination, can you say whether this principle was applied for the purpose of ensuring the integrity and independence of various nations, or was it applied for other purposes?

Mr. POSSONY: Mr. President, the principle of self-determination was applied within the context of the international powers struggle. Whenever emphasis on this principle suited the power interests of a particular government, the principle was emphasized; whenever there was contradiction between the principle and the power interests, the principle was ignored; at times the principle was simultaneously asserted in one region and denied in another.

If we look at events without analysing their causes, it can be seen that by the end of World War I, self-determination had replaced such principles as that of royal legitimacy and historic statehood in the areas of the Habsburg Empire, and that it was partially applied within the area of the former Czarist Empire; the old Ottoman Empire gave way to States established according to the nationality principle, or some replica of it. Furthermore, there had been some changes within the British Empire, such as the establishment, dating much earlier, of Dominions; Norway had separated from Sweden. Self-determination was not always applied through plebiscites, but in some instances it was. Application of the principle did not result, in every instance, in the creation of a pure nation-State; multi-national structures did persist in Eastern Europe, for example.

World War II also was fought, in large measure, about self-determination, though, of course, many additional factors entered. Subsequent to that conflict, further application took place, notably through liquidations of colonial empires.

Some of the more recent applications of the principle of ethnic self-determination against earlier attempts to achieve integrated societies include the independence of Algeria, in 1962, and the independence of Singapore, in 1965. Some very current conflicts, such as Kashmir and Cyprus, show that controversy about the right to self-determination continues to be a potent factor.

Mr. MULLER: Are there limitations to the right of self-determination?

Mr. POSSONY: There are a number of problems for the solution of which it would be unwise to consider factors of ethnic settlement in

separateness alone. For example, there may be a requirement for access to the sea. This matter came up in connection with the Polish corridor and, more recently, in the case of Fiume (Susak) in Yugoslavia. In other instances, a nation may invoke its right of self-defence and insist on a defensible frontier as was the case of Czechoslovakia. Often, economic reasons may be validly adduced in favour of keeping a large multi-ethnic state together. It is feasible, however, to separate the various national groups and preserve their economic cohesion by common market arrangements.

Mr. MULLER: What methods are there of giving effect to this principle?

Mr. POSSONY: Mr. President, self-determination may be implemented in different ways, for example, through separation, partition, population exchange, population removal and protective measures, such as minority treaties and autonomy arrangements. In this context, I am using the term "self-determination" as denoting the idea of national distinctiveness in the sense of Bluntschli, one nation-one State or one State-one nation. I am not discussing how and whether the will of the populations concerned is being determined.

The notion of self-determination applies, loosely speaking, not just to nations, as was the early usage, or to peoples, as is present United Nations usage—denoted by the phrase "nations and peoples"—but generally to distinct communities.

The concept of community was defined in 1930 by the Permanent Court of International Justice—this is my own translation from the French, which is a little clumsy—as involving a collective—

"of persons living in a country or in a certain locality, having a race, a religion, a language and traditions of their own and which [is] united by the identity of that race, that religion, that language and that tradition in a sentiment of solidarity, having the effect of conserving their tradition, maintaining their cult, assuring the instruction and education of their children in conformity with the genius of their race, and of mutually assisting one another".

This is quoted from the *Résumé mensuel des Travaux de la Société des Nations*, Volume X, No. 7, July 1930, page 219.

Mr. MULLER: You have said that one of the methods of giving effect to the principle is separation. Can you mention a few examples where separation has been applied?

Mr. POSSONY: Separation, Mr. President, has been practised quite often, for example, the separation of Holland from Germany, in the early period of the Modern Time, and of the German-speaking parts of Switzerland, at an even earlier period, and the separation of the United Colonies in America from Britain, and subsequently, inside the United States, the separation of West Virginia from Virginia. In 1830, Belgium and Holland separated. Austria, which is a unit of German sub-culture, did not join Germany after 1918 and it separated after having been seized from Germany in 1945, with United Nations approval. By contrast, British Togoland, following the national rationale, sought incorporation into Ghana.

Mr. MULLER: What examples are there of partition—one of the other methods mentioned by you?

Mr. POSSONY: Partition was practised in the case of Ireland and for convenience's sake I will refer, with respect to this case, to the documen-

tation laid down in the Counter-Memorial, II, page 487. This partition was essentially along religious lines. India and Pakistan resolved on partition also and I refer to the Rejoinder, V, page 194, again for convenience's sake. Other partitions include Ruanda-Urundi, which was separated out into Rwanda and Burundi, and the British Cameroons, the Northern part of which joined Nigeria while the Southern part associated with the Republic of Cameroon (reference: Counter-Memorial, II, pp. 451 ff.). The Federation of Rhodesia partitioned into its original components, as did the federation between Iraq and Jordan in 1958, and in a somewhat less clear pattern, the United Arab Republic in 1961. Mali and Senegal dissolved their federation in 1960. In 1964, inside the Federation of Nigeria, Western Nigeria was split into two parts.

Mr. MULLER: Now, you have also mentioned population exchanges being one method. Would you briefly deal with that by quoting examples?

Mr. POSSONY: As to the technique of population exchange, Mr. President, such exchanges in some instances were facilitated by the international community. The classic exchange was that of Greek and Turkish populations some 40 years ago. This operation was painful to those who were compelled to leave. Many of the criteria for selecting the individuals who were allowed to stay were based on the fact of membership or non-membership in any particular ethnic or religious group. Difficulties arose with respect to those persons who were affiliated through religion, ancestry, marriage or offspring with more than one group. In many cases, adjudication was accomplished by an international group.

Another exchange took place between India and Pakistan on a far larger scale and it was accompanied by much violence. In the case of Israel, too, partition entailed population movements. Arabs moved out and Jews moved in, though there was no reciprocal exchange.

As to the population removal, the expelled group may be happy to go or it may be chased away. The population of Eastern Carelia was evacuated in 1940. Tamils are presently repatriated from Southern India to Ceylon, where there already is a struggle between the majority Singhalese and the minority Tamils. By contrast, the expulsions of ethnic Germans from Czechoslovakia, Poland and other Eastern countries were more or less involuntary. It remains, in most of these cases, an open question whether different methods might have been applied and whether better solutions might have been found that would have respected the desire of those who did not want to move.

Mr. MULLER: The fourth method mentioned by you was protective measures. Can you tell the Court what you mean by that description?

Mr. POSSONY: Yes, Mr. President, I will discuss this under the two headings of minority treaties and autonomy, first dealing with minority treaties.

After World War I, minority treaties were instituted, practically for the first time in history. Altogether 17 States or self-governing territories were obligated concerning the treatment of minorities, including one great power, namely Germany, one Asiatic State, Iraq, the free city of Danzig, and Finland, for the Aaland Islands. This is laid down in detail in the Economic and Social Council publication E/CN4/Sub 2/6 of 7 November 1947, page 3.

The system instituted by these treaties was one of indefinite duration but it allowed for modification. Supervision of the protection accorded to the minorities was entrusted to the League of Nations. However, the

protecting State, whenever it was charged with violations of the Treaty, had a seat on the Council, and since decisions were by unanimity, the resolutions could be passed only with consent of the State concerned. Accordingly, to quote a United Nations document of 1947, namely the same document I just quoted, on page 8:

"In exercising the supervision it assumed, the League Council used no methods other than persuasion or pressure of a purely moral or political nature, to the exclusion of compulsory measures."

The term "minority" was not specifically defined but the treaty language usually contained a general formula, viz., "racial, religious and linguistic minorities". In many, if not most, instances, these categories coincided.

One of the difficulties that arose, however, was that none of those protected minorities had a high degree of what might be called, "visibility". Consequently, there were arguments as to whether a particular person or family was entitled to claim minority status.

The minority treaties guaranteed protection of life and liberty, the free exercise of creed, religion and belief, the use of the minority's own language and the right to establish at their own expense charitable, religious and social institutions as well as schools and educational establishments, together with the right to teach their own language.

In the treaties and declarations relating to Moslems, e.g., the case of Albania, Greece and Yugoslavia, it was provided that "all necessary arrangements for regulating family law and personal status in accordance with Moslem usage would be made". This quote is again from the same publication, page 19.

The Declaration of 2 October 1921, Article II, paragraph 3, with respect to Albania, states as follows: "Suitable provision will be made in the case of Moslems for regulating family law and personal status in accordance with Moslem usage." A somewhat similar wording, incidentally, was included in the treaty with Greece of 27 November 1919, and Yugoslavia of 10 September 1919.

The minority treaties provided to each member of the minority the right to the nationality of the State exercising sovereignty. The treaties recognized the principles of strict equality between individuals belonging to the minority element and those belonging to the majority, notably equality of all persons before the law and equal treatment *de facto* and *de jure*.

Some minority treaties, Mr. President, worked better than others and many populations needing protection did not enjoy minority status. The solution proved applicable to a certain class of cases characterized by long cohabitation, geographic dispersion, explicit recognition of mutual interest, and undesirability of alternate solutions. A mere minority treaty, however, cannot provide the ethnic group requiring the protection with political power or with the capability of participating as a more or less equal partner in decisions affecting its existence.

Mr. MULLER: You also mentioned autonomy as a protective measure, would you kindly tell the Court what you mean by that?

Mr. POSSONY: Mr. President, I think I can best deal with this by first discussing the principle of autonomy by reference to the case of Austria-Hungary.

It may sometimes be relatively easy to establish nation-States but in



many areas and at many times this is almost impossible. If borders were drawn to conform with precise ethnic settlements the map would be cluttered by exclaves and enclaves, by dwarf States and by giants, and many of the tasks of statecraft could not be accomplished.

Assuming that a near-perfect "fit" between State territory and ethnic territory has been achieved, the arrangement soon might be invalidated by migration.

This whole problem stood at the centre of attention during the last 50 years of the Habsburg Empire. The question was how to ensure to all ethnic groups their constitutional rights in terms, *inter alia*, of language, culture, religion and representation, and to do so without disrupting the State and without giving to some of the ethnic groups, due to their larger numbers and more advanced economic development, an overly dominant position. The problem was complicated by the fact that while many of the ethnic groups inhabiting the empire were living in a clearly delineated territory, some had traditional territorial settlements, but also large numbers of their nationals had dispersed to other areas.

In 1867, the so-called "dual system" was established separating in effect Austria from Hungary. Inside Hungary, with some exaggeration, a policy of integration, that is of Magyarization was pursued, while inside Austria the trend was towards separate development. However, Hungary too, did not insist upon the integration solution for all cases but bestowed autonomy on such countries like Croatia and Slavonia, and allowed *de facto* autonomy in other areas. Inside Austria, the separate development solution ran into troubles.

In 1899, the Social Democratic Party of Austria came up with a constructive solution suggesting that Austria be changed into a democratic federation of nationalities wherein each ethnically uniform body should have self-government. Each district was to form an administration essentially of the group that dominated in the district and all the ethnically like districts, whether they were contiguous or not, were to be joined into a national unit.

This solution was master-minded by Karl Renner who, after World War II, served as the President of the Republic of Austria.

President Renner subsequently elaborated the concept in one key aspect. Since an individual of any nationality may live anywhere, the right of autonomous representation was to be attached to the person. The individual was to be listed on an ethnic register and he was to vote within his national group, irrespective of the place of his domicile. Thus, the Renner concept solved the vexatious problem of ethnic dispersal. Each ethnic group was to have self-government and was to develop on its own, jointly with the other groups.

In modified forms, the proposals of the Austrian Social Democratic Party were adopted in four electoral reforms in Moravia, Bucovina, Tyrol and Galicia. There was an attempt to set up a similar reform in Bohemia but the national struggle had reached such an intensity in that area that compromise was not feasible. On the whole these reforms were considered to be successful.

Mr. MULLER: Are there other examples, in addition to the ones you have just mentioned, regarding the application of the concept of autonomy?

Mr. POSSONY: I will deal briefly with the following examples: the Ottoman Empire, Eastern Europe, Czechoslovakia, Poland, Lithuania,

Rumania, Greece, Eritrea, the Soviet Union, the Vietnamese Republic, Yugoslavia, the Peoples' Republic of China, Belgium and Puerto Rico.

The PRESIDENT: Is it necessary, Mr. Muller, to have all these details in relation to all these countries on the subject of autonomy?

Mr. MULLER: Mr. President, in this sense, yes. In these countries provisions were made for certain particular groups. It will be very brief, I can tell the Court.

Mr. POSSONY: In the Ottoman Empire, Bulgaria and Wallachia were given autonomy, but the arrangement turned out to be transitory and the independent States of Bulgaria and Rumania emerged. Autonomy arrangements on islands in the Eastern Mediterranean also turned out to be transitory.

In Eastern Europe, the model of Switzerland was recommended in 1919 to the Eastern Europeans, but at Versailles, President Wilson was opposed to autonomy because he feared that it might disrupt newly created States. The President of the United States was probably unaware of the solution worked out by the Austrian Social Democrats.

*Czechoslovakia*: In the negotiations preceding the establishment of Czechoslovakia, there was an original promise to provide Slovakia with full autonomy. The promise was embodied in a treaty of 1919 but was disregarded in practice. In 1938, after the Munich *Diktat*, Slovakia, for a short while, enjoyed genuinely autonomous status and promptly obtained independence. Carpatho Russia was given a semi-autonomous status from the start; its autonomy became strong after 1938 but the arrangement also proved unstable. The Sudetenland was denied autonomy and an integrative solution was tried but did not work.

*Poland*: the autonomy solution was not practised by Poland. By contrast the solution of a free State was applied to Danzig, that is, full independence *en miniature* under the League.

*Lithuania*: There was a successful application of the concept in Lithuania where Memel enjoyed autonomous status. In all these cases however, the notion of personal autonomy was not applied.

*Rumania*: Autonomy had been promised to Bessarabia but the promise was not kept. It could have been applied to various cases throughout Eastern Europe. In several countries, for example, there was potential applicability in favour of the Jews. However, Rumania gave limited autonomy in scholastic and religious matters to the Szeklers and the Saxons.

*Greece* gave religious, charitable, and scholastic autonomy to the Valachs of Pindus and reconfirmed "the traditional rights and liberties enjoyed by the non-Greek monastic communities of Mount Athos" under Article 62 of the Treaty of Berlin of 13 July 1878.

The United Nations General Assembly resolution 289 (NA), 1949, set up a commission to determine "the views of the various racial, religious and political groups" inhabiting Eritrea. Subsequently, Eritrea became an autonomous federated part of Ethiopia (1950). In 1962 the National Assembly of Eritrea voted for union with Ethiopia, another case of short-lived autonomy.

*Soviet Union*: One of the most interesting applications of thinking about ethnic representation has taken place in the Soviet Union. Both Lenin and Stalin studied the Austrian nationality problem before World War I. They fully embraced the principle of national self-determination. Parts of the Czarist Empire like Poland and the Baltic States, temporarily

the Ukraine and the Caucasian States, as well as Finland, which had enjoyed autonomous status under the Czars were allowed to go their own way.

The Soviet Constitution of 1922 reflects considerable theoretical work and a sophisticated understanding of ethnic factors.

The present Soviet Constitution, according to the count I made, acknowledges altogether 43 ethnic groups. The nations and peoples within the U.S.S.R. are organized on four different levels: those which are most advanced and largest, and which also have a border coinciding with the border of the Soviet Union, that is the *over-all federation*, those form the so-called Union Republics. Those, essentially, are the 15 members of the Soviet federation. There are furthermore Autonomous Soviet Socialist Republics, Autonomous Provinces and National Districts. Some of the Union Republics themselves are federally structured.

The various ethnic groups, therefore, have each their own territory and they run their own affairs through organs of self-government. They have their own cultural institutions and they enjoy the full use of their own language. The fundamental principle of autonomous development in a homeland is being applied.

Russian serves as *lingua franca* and is used in institutions of higher learning.

In the course of the economic development plans which the Soviet Government has been executing, populations were moved in large numbers. As a result, many persons moved into areas where they do not belong ethnically. Undoubtedly economic development was accelerated in this fashion, but the local ethnic group may have lost control in its own territory. While 43 ethnic groups are acknowledged, there are in the Soviet Union more than a hundred. The principle of personal autonomy could have been applied but it was not. The Soviet Constitution certainly does recognize the right of all ethnic groups to preserve their own identity.

According to the 1959 Constitution of the Vietnamese Republic—this is quoted from *Interparliamentary Union, Constitutional and Parliamentary Information*, October 1963, pages 173-174, and following:

"All nationalities shall have the right to preserve or to exchange their own customs and habits, to use their spoken and written languages, and to develop their own national cultures. [Leaving out a few words] The State shall endeavour to help the national minority to advance rapidly."

After World War II, Yugoslavia was re-established according to a broader comprehension of the nationality problem than was noticeable in 1919. Presently there are six federated states within Yugoslavia instead of three as there were before, and there is moreover an autonomous province and an autonomous district within Serbia. According to Article 43 of the Yugoslav Constitution, every nationality and national minority "shall have the right to use its language freely, to develop its culture and to found organizations to this end". This article also stipulates that instruction shall be in the language of the nationalities.

The *Peoples' Republic of China*, according to its Constitution of 1954, describes itself as a "unified, multinational State", wherein "regional autonomy applies in areas entirely or largely inhabited by national minorities" (this is in Article 3). Autonomy is provided for on several levels. According to Article 60, the authorities running autonomous areas

are entitled "to take specific measures appropriate to the characteristics of the nationalities concerned". This is quoted, Mr. President, from *Interparliamentary Union, Constitutional and Parliamentary Information*, 1 November 1954, pages 141, 151 and following, and 154. The Chinese Constitution in Article 3 gives to all the nationalities "freedom to use and foster the growth of their spoken and written languages, and to preserve or reform their own customs or ways". It prohibits "discrimination against or oppression of any nationality", and ties discrimination and oppression together with "acts which undermine the unity of nationalities".

The Belgian Constitution of 1831, which is now one of the oldest in the world, ignored the national problem, though it proclaimed full language rights. Despite a Flemish majority, French was adopted as the official language. Gradually, when it became apparent that French was gaining rapidly, the Flemish people became alarmed and insisted on their linguistic rights. A Flemish desire to maintain a distinct community became ever more pronounced, and in 1932 a statute was promulgated making Flemish the official language in the Flemish areas. French was preserved as the official language in the Walloon areas. In mixed districts and in the Congo both languages were official.

After World War II a new dispute arose from the fact that the Walloons, who are smaller in numbers than the Flemish, found themselves in the position of a constant minority. Consequently, a constitutional reform is under debate which is based on the principle of qualified majorities. The fundamental purpose is that each of the two communities can exercise veto rights, irrespective of its numerical size and the size of its vote. According to this prospective constitutional reform, universal suffrage would be retained, but the value of each vote would be different according to the community of the voter.

The Constitution of Puerto Rico, Article III/7A, is based on the notion that a two-party system must be preserved, and it has provisions to ensure that the second party, whatever its record at the polls, possesses a minimum strength in the Legislature; this is quoted from *Interparliamentary Union, Constitutional and Parliamentary Information*, 1954, page 117. Thus there is positive discrimination, if I may use the word in this context, in favour of the weaker party.

All this, Mr. President, can be summarized by saying that whenever it is a matter of organizing the cohabitation of different groups, arrangements must be made and routinely *are* being made to protect each group. The preservation of ethnic integrity is commanding highest priority, irrespective of any other advantages that may accrue from the close relationships between different ethnic groups.

Mr. MULLER: Professor Possony, are there in the world today broadly gauged systems of group differentiation by law?

Mr. POSSONY: Four types of basic systems may be distinguished; with your permission, I will discuss them under four headings.

The PRESIDENT: May I just interrupt for a moment? Mr. Muller, I can understand the general direction of the evidence that you are presenting having regard to the case which the Respondent is presenting in its turn against that of the Applicants, but in your letter you state that the evidence is to be directed to the absence of a general practice of a suggested norm and/or standard of non-discrimination and non-separation as relied upon by the Applicants. During the course of the examination of

the previous witness—you may not have been in Court—I drew the attention of Mr. Rabie to what seems to me to be the proper procedure in terms of presenting expert evidence upon an issue; this is to draw attention to the particular issue, to ask the opinion in general terms or specific terms of the expert upon that issue and then to ask his reasons. So far you have not indicated at all whether the evidence of the witness is to be directed to the norm of non-discrimination and non-separation as defined by the Applicants; it is not a norm of non-discrimination or non-separation as anybody wants to interpret it, but as defined by the Applicants. Is your evidence going to be connected up with the norm and/or standards as defined by the Applicants at IV, page 493 of the Reply?

Mr. MULLER: Yes, Mr. President, with respect. The norm of the Applicants as there defined is one of non-separation or non-discrimination on the basis of membership in a group, class or race. The evidence thus far, Mr. President, partly being history upon which the witness will later base certain opinions, but otherwise also of differentiation that has been made in the past with regard to particular population groups finding themselves either as minorities or as separate sections of the population in the world. With respect, Mr. President, that evidence goes to show that in the past there have been acts of separation between these groups, or differential treatment upon that basis.

The PRESIDENT: Yes, Mr. Muller. But I think that the definition which is given at IV, page 493, perhaps might be read between now and when we return from our recess, and if you assure the Court that you propose to connect it up with that definition, then I will have nothing more to say.

Mr. MULLER: With respect, Mr. President, all the evidence will be directed towards the norm as described on page 493; it will be difficult for me to put the norm every time that the witness is dealing with a particular country.

The PRESIDENT: Of course it is, Mr. Muller, but you have not put it to him once yet, you know.

Mr. MULLER: But Mr. President, he is describing what is being done in various countries in the world, and I will then finally, if the Court permits, ask him to indicate whether, on the evidence that he has given, such a norm is observed or not.

The PRESIDENT: It is still my view, Mr. Muller, that the proper course always in presentation of the view of an expert is to bring him to the issue immediately and ask for his opinion before you ask for his reasons. At the present moment the witness has not been even asked whether he has read that definition, whether he understands it and whether his evidence is directed to it.

Mr. MULLER: Mr. President, may I, before the witness starts again, say, with reference to the remarks made by you, Mr. President, before the adjournment, that the position of this witness is one of witness on fact as well as an expert. The intention was that he would first of all deal with factual situations in the world and then at the end express an opinion. However, if the Court prefers that he should express an opinion before he deals with the facts, I am quite prepared to put to him the question which I intended to put at the end. So, with your permission, Mr. President, I shall now put to him a question which was intended to come at the end of his testimony on facts.

The PRESIDENT: I think that is the better course to pursue.

Mr. MULLER: As the Court pleases. Professor Possony, it is contended by the Applicants in this case that there is in existence an international norm of non-discrimination or non-separation which they say prohibits the allotment by governmental policies or actions of status, rights, duties, privileges or burdens on the basis of membership in a group, class or race. Can you from your experience and study say . . .

Mr. GROSS: Mr. President, I must just . . .

The PRESIDENT: Just a moment, Mr. Gross. I think Mr. Muller, you should continue the quotation "rather than on the basis of individual merit, capacity or potential".

Mr. MULLER: Yes, Sir. I am giving you my interpretation, with respect, Mr. President, of the norm of non-discrimination or non-separation as I understand it. If the Court wants I can read what the Applicants say at the page to which they refer—that is 493—and where they say they do define the norm.

The PRESIDENT: Do you want to address the Court, Mr. Gross?

Mr. GROSS: Oh no, Mr. President, thank you Sir.

The PRESIDENT: I think it is better Mr. Muller, because then there cannot be any suggestion that the norm and/or standard as defined is not that which is stated by the Applicants.

Mr. MULLER: As the Court pleases. I shall read to you, Professor Possony, at IV, page 492, at the bottom of the page, over to 493 of the Applicants' Reply. This is what they say on the pages indicated.

"Applicants, on the other hand, insist that the allotment by governmental policy and action, of rights and burdens on the basis of membership in a 'group', irrespective of individual quality or capacity, is impermissible discrimination outlawed by legal norms well-established in the international community.

In the following analysis of the relevant legal norms the terms 'non-discrimination' or 'non-separation' are used in their prevalent and customary sense: stated negatively, the terms refer to the absence of governmental policies or actions which allot status, rights, duties, *privileges or burdens on the basis of membership in a group*, class or race rather than on the basis of individual merit, capacity or potential: stated affirmatively, the terms refer to governmental policies and actions the objective of which is to protect equality of opportunity and equal protection of the laws to individual persons as such."

Now, can you from your experience and study say whether as a matter of usage and practice in the world there has been observance of such a norm?

Mr. GROSS: Mr. President, objection on the grounds generally stated previously. May the objection be noted and reserved?

The PRESIDENT: The objection may be noted but the witness may reply.

Mr. POSSONY: Mr. President, I can state that in my judgment on reading the evidence in history and social development there is no such norm. My testimony up to this point has dealt with aspects of the norm as stated on pages 492 and 493, notably the question of differentiation in general, allotment, separation and equality of opportunity. As I go on I will be able, I think, to add additional evidential points on other parts of the norm, or alleged norm.

Mr. GROSS: Mr. President, to the general objections already made, in the light of the question and response, may the Applicants also note the objection that the opinion just rendered is, with respect, a legal conclusion regarding the existence or not of a rule of international law, presumably, in this sense, according to Article 38 (1), paragraph (b).

The PRESIDENT: Well, opinions upon that may not agree with your conclusions, Mr. Gross. The witness is being asked as an expert in respect of practice throughout the world, and he can give his answer to that having regard to the provision of Article 38 of the Statute of the Court, and then the value to be placed upon his answer will be determined by the Court.

Mr. GROSS: Mr. President, may I with respect, refer—very briefly—because of the confusion engendered on the Applicants' part with respect to the distinction sought to be drawn by Respondent between the evidence, expert or otherwise, with regard to fact, and legal conclusions which might be drawn therefrom, which would be appropriate for the Court, to refer to the statement by Mr. de Villiers which was made in the verbatim record of 22 June 1965, in which, at X, page 136, Mr. de Villiers summarized the position on this very point of the purpose for which witnesses would be called, and stated as follows, referring to a letter he had written:

"I made perfectly plain our position as to the manner in which we would set about answering the Applicants' case as we understood it; and we made it perfectly plain that in so far as the Applicants rely upon a suggested practice of States so as to establish a rule of customary law, in terms of Article 38 (1) (b) of the Statute, we considered that to be a matter of fact to which evidence could be directed."

That, Sir, has since been the Applicants' understanding of what the point is to which the evidence is sought to be directed, as evidence with regard to fact rather than the conclusions or opinions with respect to the legal status to be derived from the practice testified to as a fact.

The PRESIDENT: Whatever counsel said at that particular point does not bear, with respect, Mr. Gross, upon the presentation of this witness. This witness is presented in accordance with procedure laid down by the Court, and if that procedure has been followed sufficiently and the Court allows the evidence, that determines whether the witness may be called to give evidence, and it will subsequently be for the Court to determine the relevance of his evidence either on fact or on law and the weight to be attributed to it as I have already made clear.

Mr. MULLER: Mr. President, may I please be permitted to answer to what my learned friend has stated relative to the case which Mr. de Villiers indicated could be made by evidence?

The PRESIDENT: Well, if you so desire, Mr. Muller.

Mr. MULLER: Mr. President, I did not ask the witness to state whether there was a norm in existence. I asked the witness to state whether in practice such a norm is observed. Now, on the very day and in the very verbatim record my learned friend refers to, you, Mr. President, asked this question of my learned friend to elucidate his position to the Court. May I read, with respect, the question asked and the answer given?

The PRESIDENT: Please do.

Mr. MULLER: The question, Mr. President, put by yourself was:

"Mr. Gross, before you resume your seat, could you make clear to the Court the reasons that you advance why no evidence can be given in relation to practice, in terms of establishing, or refuting, the existence of the customary rule of law evidenced by practice in terms of Article 38 (b) of the Statute. Do I understand you to say that no evidence whatever can be adduced before the Court in terms of the practice existing in other countries?"

And the reply of my learned friend, Mr. President, was to the following effect:

"Mr. President, the Applicants answer to the President's question is that the Applicants have not taken such a position, but the Applicants have not understood from the proffered evidence by the counsel that the questions to be addressed to this witness, or indeed any other witness, relate to questions of practice or other facts that are, if I may again quote as part of the response to the honourable President's question, 'whether a norm and/or standards such as contended for by Applicants exist'."

Mr. GROSS: Mr. President, the Applicants were well aware of that colloquy and reaffirm it and nothing that was just now said is intended or is indeed inconsistent with it. Sir, the distinction as sought to be drawn can be stated in one sentence: that the Applicants have had no objection and perceive no objection if the Court so wishes that testimony be addressed to the Court with respect to the practice of States. The question, and sole question, which the President has already expressed to be one, and I do not press, is of course the separate and distinct issue whether or not it is admissible for the witness to express a legal judgment or to be asked by counsel to express a legal judgment concerning the existence, or otherwise, of a rule of international law, as distinguished from the practice of States, from which such a legal conclusion could be inferred by a Court. And, Sir, I did want to say that this is not in any way inconsistent, in our judgment, with the statement which has been read by Mr. Muller.

The PRESIDENT: Mr. Gross, I think there is some misunderstanding. The witness is asked a question which relates to general practice. It might be said to be a question which is partly of fact and partly of law. It might be a question which he answers partly in his capacity as a witness on fact, on his enquiry into fact, and partly by the interpretation he places as an expert in various disciplines upon certain legal instruments. But whether it is a mixed question of law and fact, or of fact only it is the view given by a witness who testifies upon both as an expert and as a witness. It is not a conclusion of law to state that in his view as a matter of general practice, having regard to the reasons which he gives, there is or is not a norm or standard such as the Applicants contend for.

Continue, Mr. Muller.

Mr. MULLER: As the Court pleases. Professor Possony, are there in the world broadly gauged systems of group differentiation by law?

Mr. POSSONY: Mr. President, there are four systems of broadly gauged basic systems that can be distinguished. With your permission I will discuss them under four headings. First, the Asiatic system of pluralistic societies, second, certain systems in the Eastern Mediterranean, third, the pluralistic system in the Islamic countries and fourth, the systems in various countries dividing advanced from aboriginal groups or providing



differentiation between tribal groups. In addition, of course, there are specific provisions of differentiation in many countries.

Mr. MULLER: Now, would you discuss what you have referred to as the Asian systems and tell the Court which countries you have in mind?

Mr. POSSONY: I will discuss the Asian systems of Burma and India. The Constitution of Burma of 1947, which is in Peaslee, *Constitutions of Nations*, Volume I, pages 279 and following, faces up to the problem of multi-ethnic composition. It recognizes, in Article 21, the special position of Buddhism as the faith professed by the great majority, but also recognizes other religions, including Islam, Christianity, Hinduism and Animism. The legislature is broken down into a Chamber of Deputies and a Chamber of Nationalities which are, with the exception of financial matters, co-equal in rank. The Shan State, which represents an ethnic group, constitutes a State council of the Shan representatives in Parliament and its representatives in the Chamber of Nationalities are especially elected by a Shan body. The Minister for the Shan State, who is also its temporary head, is appointed by the President of Burma in consultation with the Shan State Council.

A similar arrangement exists for the Kachin State, except that minorities within that state have reserved representation within the Kachin quota in the Chamber of Nationalities. (*Ibid.*, p. 307.)

Similar provisions are envisaged, and may be in force, for the Karen State, upon self-determination by the Karen people of their status. This was laid down in 1947.

The position of the Chins, another ethnic group, is regulated by analogy, though on a somewhat lower level.

The fundamental concept is that of self-government and preservation of ethnic identity.

Mr. MULLER: What is the position in India, Professor Possony?

Mr. POSSONY: In India there is a strong distinction between the 14 States which make up the Indian Federation and the six territories. The States were reorganized in 1956 to conform, by and large, with linguistic regions. This is laid down in Peaslee, *Constitutions of Nations*, Volume II, pages 223 ff., which has the early version, and the reform is explained in the *Human Rights Yearbook*, 1956, pages 116 and following.

The territories now include outlying islands and are managed by the President through administrators. In addition, there are the Scheduled and Tribal Areas which are handled by arrangements which resemble a "national mandate". There are further differences between the Scheduled Tribes and the Scheduled Tribes in the Tribal Areas of Assam, and the Scheduled Tribes in the autonomous districts of Assam. This is a complicated set-up going down several steps. In addition there are the Scheduled Castes.

For all these territorial groups 20 seats are reserved in the House of the People. The central authorities have considerable freedom to make changes in the administration.

Article 335 prescribes that the "claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration in the making of appointments". (*Ibid.*, p. 312.) According to the Indian Constitution's Fifth Schedule—this is actually an appendix to the Constitution—tribes are administered directly by Tribal Advisory Councils. The authorities on the level of the Governor may decide how to

apply or not to apply national legislation in a given Scheduled Area. (*Ibid.*, pp. 344 ff.)

Scheduled Areas may be established, abolished or changed by the President of India.

According to Article 388, which is in Peaslee (*ibid.*, pp. 332 ff.): "All the Scheduled Castes in any Province or State shall be deemed to be a single community."

Those who think that the caste system is being abolished will be surprised to learn that according to the *Manual of Election Law*, published by the Government of India in 1951, and which apparently continues in force, no less than 804 castes are listed for the ABC States—this was the old division of States which was abolished in 1956. The number of Scheduled Tribes is smaller but is still considerable.

According to Article 338, in Peaslee, *Constitutions of Nations*, Volume II, page 313, the Indian President appoints a special officer for Scheduled Castes and Scheduled Tribes, who is to investigate all matters relating to safeguards provided for the Scheduled Castes and Scheduled Tribes and to report to the President. According to Article 340, the President may appoint commissions to investigate conditions of socially and educationally backward classes and the difficulties under which they labour in order to make recommendations for the removal of such difficulties and the improvement of their conditions.

Section 46 of the Indian Constitution provides as follows:

"The State shall promote, with special care, the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation." (*Ibid.*, p. 233.)

Furthermore, Article 29 (*ibid.*, p. 230) gives to:

"Any section of the citizens, having a distinct language, script or culture of its own . . . the right to conserve the same."

Article 30 (*ibid.*, p. 230) states that:

"All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

Now, in 1956, two new Articles were added, numbers 350 (a) and 350 (b), which provide for mother-tongue instruction at the primary level and establish a special officer for linguistic minorities, reporting to the President.

In regard to land, it is specifically provided that the Governor may make regulations—Fifth Schedule, Section 5 (*ibid.*, p. 345):

"(a) To prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area."

The Sixth Schedule, which applies to the tribal areas in Assam provides, *inter alia*, that (*ibid.*, p. 347):

"If there are different Scheduled Tribes in an autonomous district the Governor may, by public notification, divide the area or areas into autonomous regions." (Art. 1 (2).)

Within an autonomous region, regulations may be made with respect, *inter alia*, to:

"The allotment, occupation or use, or the setting apart of land, other than any land which is reserved forest, for the purpose of agricultural or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town."

This is Article 3 (1) (a) (*ibid.*, p. 348).

Article 4 (1) deals with the institution of courts (*ibid.*, p. 349): "For the trial of suits and cases between the parties all of whom belong to Scheduled Tribes." Such courts operate in some areas "to the exclusion of any court in the State".

A further example of representation on a group basis in India is that of the so-called "Anglo-Indian community", found in section 366 (2) of the Constitution. (*Ibid.*, p. 322.)

Section 333 of the Constitution provides that, notwithstanding section 170 (which provides for the composition of the Legislative Assembly or of a state on a territorial basis) the Governor of a state may:

"... if he is of the opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate". (*Ibid.*, p. 312.)

In addition, it may be mentioned that an Act of 1956, a separate Act that is, confirmed that Hindus, Moslems, Christians, Parsees and Jews have each their specific succession laws. This is laid down in *Human Rights Yearbook*, 1956, page 121.

There are also standard budgetary provisions to raise the level of administration of the Tribal Areas.

It is therefore apparent that the Indians have been facing up to the problem of diversity in a realistic manner.

The PRESIDENT: Now, what are the conclusions drawn by you from all you have said apart from what is apparent, in relation to the practice of the norm of non-discrimination or non-differentiation?

Mr. POSSONY: Mr. President, the Constitution here makes a number of allotments . . .

The PRESIDENT: I am asking your conclusions. What are your own conclusions?

Mr. POSSONY: My conclusion is that the Constitution of India is actually responsive to the problem of ethnic diversity and has made various arrangements through which the identity of the various ethnic groups is protected and the progress of these groups ensured, in essence. It is not a Constitution that is based on the notion that groups can be disregarded. It is specifically based on the notion that groups are a reality and that the constitutional arrangements are most effective if the group diversity is fully taken into account.

The PRESIDENT: Thank you.

Mr. MULLER: Now, you have mentioned certain systems in the Eastern Mediterranean. Which particular systems have you in mind to deal with?

Mr. POSSONY: I would like, if I may, Mr. President, to discuss Cyprus first and then turn to Lebanon.

The notion that a multi-ethnic population can be administered through a unitary State is in contradiction with the Constitution of Cyprus of 1960, according to which various positions in the Government are allocated on

a group basis and each group is authorized to run its own cultural institutions. The Cyprus Constitution was sponsored by the United Nations, but it has proved unsatisfactory to the Turks because it assigns ministerial chairs and legislative votes according to a fixed seven to three ratio, with the result that the Turks always must remain *minoritaire*. The Greeks, on their part, are unhappy about the guarantees that were given to the Turks.

Specifically, the Constitution of Cyprus has the following provisions:

Article 1 provides for a presidential regime, the President to be a Greek and the Vice-President to be a Turk. The President is to be elected by the Greek community and the Vice-President by the Turkish community.

Article 2 defines the method by which the inhabitants are divided into two groups, namely the Greeks and the Turks. Obligatory allocation depends on origin, language, cultural traditions and religious beliefs. Citizens not falling within the obligatory classification are obliged to choose to which community they shall belong. In terms of Article 2 (5) individuals who fall within the obligatory classification are not free to join the other community as a matter of choice. They may do so only if they comply with certain formalities, and are approved and accepted by the communal chamber of the community they wish to join. This was, Mr. President, Article 2.

Article 63 provides that there shall be separate electoral lists for the Greek and the Turkish communities, members of the Greek community being precluded from the Turkish electoral list and vice versa.

Article 46 prescribes that the Council of Ministers shall consist of seven Greeks and three Turks.

Article 62 prescribes that 70 per cent. of the Legislative House of Representatives shall be elected by the Greek community.

Article 72 prescribes that the President of the House of Representatives shall be a Greek, elected by the Greek representatives, and the Vice-President a Turk elected by the Turkish representatives. Their functions, even during a temporary vacancy, can be performed only by a member of the same community. This is in Article 72, sub-paragraphs 2 and 3.

Articles 86 and 87 provide for communal chambers for each of the communities. These chambers have certain legislative powers, for example in regard to education (Art. 87 (b)). Each community has its own schools, devises its own curricula and appoints its own teachers. It is implicit in these Articles that no provision is made for children of one community to attend the schools of the other community.

Articles 123, 129 and 130 prescribe the percentage of each community which is to man the public service, the armed forces and the police force respectively.

Article 173 provides that in the five largest towns separate municipalities for each community shall be created, with councillors belonging only to the respective community elected only by such community. Such municipality can levy taxes, rates, etc., but only on members of its own community (Art. 174), and that with certain exceptions. This is all laid down, Mr. President, in *Interparliamentary Union, Constitutional and Parliamentary Information*, 1960, pages 141 and following, and 1961, pages 1-44.

There was last week a news story in the New York *Herald Tribune* (European Edition) of 13 October (p. 2), according to which new negotia-

tions are being conducted under United Nations auspices between the Cypriot Turks and Greeks, and new proposals have been made by the Greek community. I will read one paragraph, with your permission, from the *Herald Tribune* story:

"The Government declaration includes a code of fundamental rights and freedoms in accordance with the UN Declaration of Human Rights, and autonomy for all minority communities in education, culture, religion, personal status and related subjects."

Mr. MULLER: Professor Possony, you mentioned that another country in that area which you wished to deal with is Lebanon. What is the position with regard to Lebanon?

Mr. POSSONY: The Republic of Lebanon, which was a Mandate once of the League of Nations, administered by France, is a State which, in its entirety, is organized along the principle of differentiation. The Lebanese State arose from a Christian community that existed within the Ottoman Empire where it enjoyed protected status in line with Islamic law according such protection to religions based on the Bible.

During the first half of the 19th century, an attempt was made to impose large portions of Moslem law on the Christian community. This attempt failed. By 1864, the Christian groups in the Lebanon occupying an area about one-third of the present State territory achieved autonomy. The territory was then administered by a Christian governor inside the Ottoman Empire. The Islamic groups were explicitly recognized as having their own status, and the Christians too were subjected to the law of their own communities.

In 1914, in connection with the outbreak of World War I, the Ottoman Empire abolished the autonomy of Lebanon. In 1917 religious-communal jurisdiction was also abolished.

In 1920 France assumed her Mandate over the present area of Lebanon, and religious-communal jurisdictions were re-established. Several attempts were made by French authorities during the 1920s to introduce a uniform system based on modern civil law, but these attempts failed. The Mandate for Syria and Lebanon of 24 July 1922 contains this language: "Respect for the personal status of the various peoples and for their religious interests shall be fully guaranteed." This is in the *Official Journal of the League of Nations*, August 1922, pages 1013-1017.

In 1938 there were again attempts by the Mandatory Power to achieve legal civil uniformity, and again these attempts failed. On 2 April 1951 the Independent Republic of Lebanon promulgated a law on personal statute which redefined the competence of the Christian and Jewish communities. In 1953 the Lebanese Parliament proposed that a uniform jurisdiction be worked out for the Republic. The resolution was adopted, but it was never acted upon.

Mr. MULLER: What is the basic difficulty of achieving uniformity in Lebanon?

Mr. POSSONY: There are in Lebanon 11 Christian communities, including the Armenians, who are recent immigrants and constitute about one-fifth of the population in the Lebanese capital. There also is a Jewish community which is settled almost exclusively in the Jewish quarters of Beirut and Tripolis. The Moslems in turn are divided into three groups, among them the Shiites, who achieved their status only under the French Mandate. In addition there are Palestinian refugees, who account for

approximately 7 per cent. of the total population, but who have not been incorporated in the Lebanon, among other reasons because their naturalization would upset the present delicate equilibrium between the various communities. And a still further complication arises because Lebanon is a country of emigration. Exact figures on Lebanese emigration are not available, but according to the best estimates it seems that about one-third of the Lebanese populations are living abroad. There is an argument between the Christian and the Islamic communities whether the Lebanese who have emigrated but retained their nationality should be counted, or whether they should be ignored, in the allocation of political representation to the various communities.

This system, in terms of numbers of recognized communities, has been growing in complexity. There are now more communities than there were before. In the Islamic tradition, religious affiliation dominates over ethnic affiliation. In fact, one could speak of ethnic groups differentiated by religion. Thus, a religious community is at the same time an ethnic group or a sub-group. Each community tends to be living on its own within the towns; and villages tend to be inhabited by one community, or are neatly divided between several communities. Moreover, some of the communities handle their own social security arrangements. There are very few conversions, and each Lebanese *necessarily* belongs to a community. He is able to quit his community *only* by inscribing in another.

Mr. MULLER: What is the present political arrangement in Lebanon?

Mr. POSSONY: The political system is firmly based upon the notion of proportionate representation, which is recognized in Article 95 of the Constitution. This article can be found in Peaslee, *Constitutions of Nations*, Volume II, page 582. But beyond the Constitution there is the so-called *Pacte Nationale*, which is not in writing, but we know about it from a former President of Lebanon and it is also referred to in the book by Professor Khalil, *The Arab States and the Arab League*, Volume I, page 124. In addition there is the Electoral Law of 10 March 1922 which defined the general electoral arrangement and which is confirmed in Article 24 of the Constitution. The seats in Parliament are allocated to the various communities. The Moslems and Christians are divided according to the ratio of five-elevenths to six-elevenths. Each electoral district has its predetermined confessional complexion; for example, the city of Tripolis with five seats has four Sunnite and one Greek Orthodox representatives. Incidentally, this whole breakdown of the electoral arrangement is reprinted in *Human Rights Yearbook of the United Nations*, 1950, page 186. Within the electoral district, the voters must choose from among candidates belonging to the community which is entitled to the seat as such. It does not matter whether the voter belongs or does not belong to the particular community, whose representative will represent him in Parliament.

The main Offices of State also are divided according to a pre-established key: each particular high position will be occupied by a member of one rather than another community.

In so far as bureaucratic positions are concerned, the Lebanese Constitution, Article 12, states that all Offices are attributable on the basis of merit and competence, but there is also the idea of proportionate representation of the communities laid down in Article 95.

A Lebanese parliamentary commission, reporting in 1927 on the problem of proportionate representation, stated that the Lebanese people

is composed of a number of communities each having religious convictions, its own mentality, customs and traditions. If the system of proportionate representation were abolished, one of those communities would achieve preponderance to the detriment of others. The result would be jealousy, resentment and perhaps continuous trouble. The moment had not yet come, the commission stated, to abandon a system dating back for several centuries. The system is still in force, and what is perhaps more important, the system corresponds, or seems to correspond, to the wishes of the population.

Mr. MULLER: Professor Possony, as other measures of differentiation you mentioned pluralistic systems in the Islamic States. Will you deal with that, and first tell the Court what you mean by pluralistic systems?

Mr. POSSONY: Islam has been a religious, social and partially ethnic system practising differentiation in varying degrees, in many important aspects of life. Differentiation is effected in three basic respects: first, the separation of multiple groups within societies dominated by Moslems and within societies in which large numbers of Moslems are living; second, the differentiation on many personal and legal grounds between Moslems and non-Moslems; and third, the differentiation between men and women. There are of course inter-connections between those systems of differentiation; also, the intensity of the differentiation varies with time, and it varies country by country.

Mr. MULLER: How many Islamic countries are there and why are they referred to as Islamic countries?

Mr. POSSONY: Not counting several Arab principalities of uncertain status, there are 16 Islamic countries—in alphabetical order: Afghanistan, Algeria, Egypt, Iran, Iraq, Jordan, Libya, Malaya, Mauretania, Morocco, Pakistan, Saudi Arabia, Somalia, Syria, Tunisia and Yemen. These countries have a population of more than 230 million, almost half of whom are living in Pakistan and Afghanistan.

They are described as Islamic because they, themselves, in their Constitutions, describe Islam as their State religion. Since, in addition to being a religion, Islam also is a way of life and a social system, this constitutional provision has more meaning than symbolic references to State religion in some western constitutions. The legal systems of these countries are squarely based on Islamic law, frequently by explicit constitutional provision.

Mr. MULLER: Now, when you say that the legal systems of these countries are squarely based on Islamic law, what do you mean?

Mr. POSSONY: Islamic law is usually described as the Sharia law. This law consists of the following parts:

(1) Moslem canonic and customary law, which in theory is considered immutable and whose basic concepts date back hundreds of years.

(2) The so-called personal statute of Moslems that has evolved through tradition and statutory law.

(3) In some Islamic countries, codified and modernized personal statutes defining a portion of the Moslem law.

(4) Modern constitutions.

In addition, there is local customary law and more or less modern legislation dealing with the rest of the *corpus juris*.

Mr. MULLER: Can you give the Court a few examples where the statutory law provides for utilization of non-statutory law in Islamic countries?

Mr. POSSONY: Mr. President, according to Article 82 of the Moroccan Code (translated by André Colomer, *Le Code du Statut personnel marocain*, Algiers, p. 50), matters which are not explicitly handled in the Code should be decided in line with "the best supported opinion or the best known opinion" of the Islamic jurists or "by customary laws". According to other stipulations, doubts are to be resolved by reference to "good usage".

The most recent example is that of the Afghanistan Constitution of 1 October 1964, whose Article 102 states as follows:

"The Courts . . . shall apply the provisions of this Constitution and the laws of the State. Whenever no provision exists in the Constitution of the laws . . . the Courts shall, by following the basic principles . . . of the Shariat of Islam and within the limitations set forth within this Constitution, render a decision that, in their opinion secures justice in the best possible way." (*Interparliamentary Union, Constitutional and Parliamentary Information*, 1965, p. 23.)

So you have in this Constitution, which is barely one year old, a specific reference to the Sharia.

Mr. MULLER: In the Islamic States, what differential treatment by law is there between, on the one hand, Moslems and, on the other hand, non-Moslems?

Mr. POSSONY: To demonstrate in this regard the continuing attachment to the Islamic tradition, even in a modern socialist State, I will read from the preamble of the Algerian Constitution, the Constitution, more precisely, of the Democratic and Popular Republic of Algeria. The Constitution is dated 8 September 1963 and in the preamble it is stated as follows:

"Islam and the Arab tongue have everywhere been effective in resisting the attempt by the colonial regime to depersonalize the Algerian people." (*Ibid.*, 1964, p. 3.)

The Constitution of Syria of 1953 prescribes that the President must be a Moslem (*ibid.*, 1954, p. 23).

The Somalia Constitution of July 1960, Article 71, says under the heading of "Qualifications for Eligibility" as follows:

"(1) Every Moslem citizen who, being the son of a father and a mother, who are both original citizens, has the right to vote . . . and shall be eligible to become President of the Republic.

(2) During his term of office, the President of the Republic shall not be married to nor marry any woman who is not an original citizen." (*Ibid.*, 1964, p. 101.)

The former kingdom of Hedjaz, now known as Saudi Arabia, had in its old Constitution, Article 56, the proviso that all members of Council and all government employees should possess, *inter alia*, the qualification that they "should not have forfeited their legal Sharia rights". This is in Khalil, *The Arab States and the Arab League*, Volume I, page 239. This rule still describes the present Saudi Arabian practice.

Most outspoken is the Constitution of Malaya of 1957, notably Article 153. This is in *Inter-Parliamentary Union, Constitutional and Parliamentary Information*, 1958, pages 176 and following. This article enjoins upon the head of the Federation "to safeguard the special position of the



Malays and the legitimate interest of other communities". Article 153/2 calls upon the head of the Federation—

"To ensure the reservation for Malays of such proportion as he may deem reasonable of position in the public service (other than the public service of a State), and of scholarships, exhibitions and other similar educational or training privileges or special facilities . . . and when any permit or licence for the operation of any trade or business is required by federal law."

Article 153/8 says that whenever—

"by any federal law any permit or licence is required for the operation of any trade or business, that law may provide for the reservation of a proportion of such permits or licences for Malays".

Article 159/9 says that business or trade shall not be restricted "solely for the purpose of reservations for Malays".

According to Article 11/4 (still in Malaya): "The propagation of any religious doctrine or belief among persons professing the Moslem religion" may be controlled or restricted (*ibid.*, p. 133). Now, this task, together with all matters of Moslem law, Moslem courts and Malay customs, is assigned to the several States forming the Malay Federation. Note that most of these provisions seem to be directed against the Chinese.

Mr. MULLER: Is there any differentiation by law between Moslems and non-Moslems in Islamic countries in respect of personal status?

Mr. POSSONY: Yes, Mr. President. Moslems and non-Moslems live under different personal statutes. For example, Article 308 of the Syrian Code indicates where the Code is applicable to the Christian and Jewish communities. It is not spelt out in what particulars the Code is *not* applicable to the non-Moslem communities. The point is that each group has its own personal status and though there is much overlap, the system is one of group differentiation. Similar provisions have recently been made in the Pakistan Constitution, Article 198/4; this is reprinted in *Human Rights Yearbook 1956*, page 181.

The evidence of a non-Moslem does not bear the same weight as that of a Moslem. This rule has been weakened in practice and may be ignored in countries of strongly mixed populations but the rule still exists. The authority for that is Professor Schacht, who is a leading expert on Moslem law, and his two books. One is called *An Introduction to Moslem Law* and the other *Origins of Mohammedan Jurisprudence*. References are to page 132 in the first book and page 210 in the second.

This fundamental approach has all kinds of ramifications, for example, a non-Moslem may not be the guardian of a Moslem, even if he or she is the non-Moslem's own child; reference to this is again Professor Schacht's *An Introduction to Moslem Law*, page 132.

An all-Islamic strict rule is that a non-Moslem does not inherit from a Moslem; Moslems however, may inherit from non-Moslem relatives. This is laid down, for example, in Article 264 (*b*) of the Syrian Code and in Article 228 of the Moroccan Code. Between nationals of one State, there may be no inheritance between a Moslem testator and a non-Moslem heir, while there may be inheritance between individuals of different nationality but of identical religion. This arrangement is usually tied to a reciprocity provision, for example in Article 215/2 of the Syrian Code.

However, a testament can be drawn in favour of persons of different religions and rites, for example, according to Syrian Article 215/1. This

particular Article appears to be in contradiction with Article 264 (b), which states that inheritance is precluded by virtue of difference in religion between Moslems and non-Moslems. The apparent contradiction is easily resolved: according to the Sharia, a Moslem can dispose by will of no more than one-third of his property, the remaining two-thirds must go to his heirs by succession. This "rule of one-third" is stated with precision in the Moroccan Code, Article 173.

The Iraqi Code, Article 77, severely restricts the established rights of non-Moslem beneficiaries to *mobilia* and therefore excludes land and houses.

The Moslem male is allowed to marry a Christian or a Jewish female, for example, this is laid down in Article 17 of the Iraqi Code. Females who profess a religion which is not based on the Bible are excluded.

However, a marriage between a Moslem female and a non-Moslem is absolutely and totally void and non-existent, in contrast to all other impediments to marriage which are considered to be less exclusive. One French author in this connection talks about the "nullité radicale" of such a marriage, which is confirmed by Article 17 of the Iraqi Code and Article 29/5 of the Moroccan Code. The Tunisian Code handles the matter by means of a commentary to Article 5. The recent Family Organization Law promulgated for the Turks on Cyprus which abandoned virtually all major tenets of Islamic law, still preserves the inhibition of a marriage between a Moslem female and a non-Moslem male.

Mr. MULLER: Now, how does Islamic law, in the countries to which you have referred, differentiate as between men and women?

Mr. POSSONY: There are many aspects in which Islamic law differentiates between men and women; the more important ones, which I would like to cover, with your permission, Mr. President, are marriage, succession and inheritance, value of testimony, and divorce.

Mr. MULLER: First then, deal with the question of marriage.

Mr. POSSONY: A man may marry four women; a woman only one man. Now, reforms have admittedly taken place; thus, the Syrian Law of Personal Status, of 1953, provides that "... the Court may withhold permission for a man, who is already married, to marry a second wife, where it is established that he is not in a position to support them both". The Moroccan Code of Personal Status, of 1958, provides that "... if any injustice is to be feared between co-wives, polygamy is not permitted". The Tunisian Law of Personal Status, 1957, has gone even further by prohibiting polygamy. In Egypt, a bill which aims at restricting polygamy and the right of the husband unilaterally to repudiate his wife has been in preparation since 1956. Despite these reforms, however, the present position in Islamic countries, save to some extent Tunisia, still is that a Moslem man is, basically, entitled to marry four women, while a Moslem woman is restricted to one husband.

Mr. MULLER: What is the position with regard to succession?

Mr. POSSONY: In the law of succession, a woman's portion corresponds to half of the man's, thus the share of a daughter of a testator will be half the share of her brothers—this is a simplified description of the fundamental rule. In this regard I refer to the Moroccan Code, Articles 237-244, and 256; and the Syrian Code 277/2.

The Lebanon Law of Inheritance, of 1959—Lebanon is not an Islamic State, but, as I pointed out, a mixed Islamic-Christian State—provides in Article 128, that the previous system of inheritance, which was ap-

licable to the Moslems, still is applicable to them—that is, that “the rule of the double share” is still in force.

Mr. MULLER: Now, you mentioned the value of testimony—can you very briefly state what the position is in that respect?

Mr. POSSONY: The evidence of a woman is never accepted in any criminal charge, except for matters bearing on gynaecology. In civil matters, the evidence of two women corresponds to that of one man. The authorities are Professor Anderson and Professor Schacht.

Mr. MULLER: Professor Possony, I think the final matter with which you intend dealing is divorce—now, kindly mention briefly what differences exist in that respect.

Mr. POSSONY: Mr. President, a Moslem man may divorce his wife by unilaterally repudiating her—I may add that in reporting about these things, I do not necessarily agree with what I am reporting on. A Moslem woman has no such right. Reforms have taken place in this area too. In strict Islamic law a wife has extremely limited grounds on which she could divorce her husband. A wife in Egypt, for example, may now claim a divorce on any of four grounds—failure to support her; affliction of the husband with some disease, which makes married life dangerous; desertion for at least a year; and treatment of the wife in a way which makes married life intolerable to one of her social standing. The source of that is Professor Anderson’s book, *Islamic Law in the Modern World*, at page 54.

The Syrian Code, Second Book, devotes title I to divorce—that is, repudiation; title II to divorce by mutual agreement—that is, divorce in the western sense; and title III to separation, for various reasons, admitted under the Sharia as modernized. Article 85 authorizes repudiation, and Article 117 says—and this is a reform provision—that if the repudiation was quite arbitrary, *compte tenu de la gravité de l'arbitraire*, the judge can order the husband to pay alimony for one year—that is all, that is the maximum.

The Moroccan Code distinguishes between repudiation, which in the Arabic version is called *talaq*, and divorce—each of which is treated in a separate chapter. Articles 44-52 are devoted to *talaq*. The main reform provision is that the repudiation must be legally registered.

The Pakistani Moslem Family Laws Ordinance of 1961 confirms the basis rules of *talaq*—this is in *Human Rights Yearbook* 1961, page 275. All this is strict Sharia, with just a few modifications.

The codified statutes show a tendency to provide more security for wives, and to describe the system in terms suggesting somewhat more equality between men and women than actually exists, but the fundamental rule of the Sharia has been and still is: “A wife has no absolute right to obtain a divorce; she has that right only under certain specific contingencies and conditions.” This is quoted from a textbook by Mr. Jhalivala, *Mohammedan Law*—an Indian textbook on Shariat law, page 25. A husband can terminate the marriage by unilateral repudiation for any reason whatever.

In this connection, I would also like to mention the matter of apostasy. If a wife of Moslem religion converts to Christianity or Judaism, the marriage must be broken immediately, and no judicial registration of repudiation is necessary. This is required because of a very strict taboo, which is still directed against apostasy, despite the abolition of criminal sanctions against such a deed. The reference is a book by Professor Brug-

man, which has a Dutch title which, in English, means *The Significance of Islam Law in Modern Egypt*, pages 185 and 215.

The following civil consequences are still commonly applied to an apostate from Islam: (1) the apostate may not marry anybody, whether a Moslem, a Christian, or another apostate; (2) his or her estate goes to the Government; (3) his or her marriage is dissolved; (4) the apostate is not recognized as a Christian; (5) even his Christian relatives, nor any other apostates, may not inherit from the apostate. Reference is again to Professor Brugman's book, same pages.

If a wife converts to Islam, while her husband remains a non-Moslem, the marriage must necessarily and immediately be dissolved. If the husband of a Christian or Jewish wife converts to Islam, he may repudiate her immediately.

**THE PRESIDENT:** Mr. Muller, the evidence which Professor Possony has been giving us for the last hour is for the purpose of establishing that in the different countries which he has indicated, there has been the allotment of rights or status, etc., on the basis of belonging to a religion or a sex or a race—is that the purpose of the evidence?

**MR. MULLER:** That is the purpose, Mr. President.

Now, you have dealt with the position in the Islamic States; are there other States with concentrations of large Moslem groups?

**MR. POSSONY:** In general, yes, there are—there are at least 15 countries where substantial numbers of Moslems are domiciled; this list includes Cyprus, Ethiopia, India, Indonesia, Israel, Kenya, Lebanon, Mali, Nigeria, the Philippines, Sudan and Tanganyika. A safe estimate would be that there are a minimum of 100 million Moslems in those States. There are small Moslem communities in most of the tropical parts of the former British Empire and in South Eastern Europe. Finally, there are a large number of Moslems—about 24 million—in the Soviet Union, including Union Republics like Uzbekistan, which may well be described as Islamic, in terms of population; some of the centres of Moslem traditions, like Bukhara and Samarkand, are located in Uzbekistan. There are, furthermore, Moslem communities and nationalities within the area of Mainland China.

All in all, the Moslems account for some 12 per cent. of the world population.

**MR. MULLER:** What is the position of Moslems in the countries that you have just mentioned?

**THE PRESIDENT:** Are you going through each one of those now, Mr. Muller?

**MR. POSSONY:** No.

**MR. MULLER:** I beg your . . .

**THE PRESIDENT:** You propose now to go through each one of those countries, do you, Mr. Muller?

**MR. MULLER:** No, Mr. President, it is going to be very much shorter than that.

**THE PRESIDENT:** Proceed then.

**MR. MULLER:** Generally, what is the position of the Moslems in the countries that you have just mentioned?

**MR. POSSONY:** In general, and discounting exceptions like the U.S.S.R., the Moslems live under their own personal statute, which is often guaranteed constitutionally. In Africa, south of the Islamic belt, Islamic and Native legal systems appear in various mixes. There is far reaching legal

differentiation. But everywhere this rule holds; the stronger the attachment to Islam, the more neatly the various groups, including the Moslem groups inside the Islamic religion, are separated from each other.

Mr. MULLER: Well, can you just give the Court a few examples of the reasons allowing the Moslems their own status in such countries?

[Public hearing of 19 October 1965]

Mr. MULLER: Mr. President, may I just explain at which particular point of the evidence we are now, relative to the scheme that I had indicated? The Court will recall that Professor Possony had indicated he would deal with differential laws by referring first of all to certain Asiatic systems, thereafter to certain systems in the Eastern Mediterranean, then pluralistic systems in Islamic countries, and fourthly the systems in various countries dividing advanced from aboriginal groups. Now we are busy at the moment with the Islamic countries; he had dealt yesterday with the Islamic countries proper, and just before the adjournment he indicated that there were certain countries, not being Islamic countries proper, in which there are groups of Moslems, and he was busy dealing with that. I shall just ask him a final question on that.

The PRESIDENT: Proceed, Mr. Muller.

Mr. MULLER: Thank you, Sir. Professor Possony, can you give any examples of provisions in the countries you referred to yesterday—those are the non-Islamic countries, where there are Moslems—allowing Moslems their own status in such countries?

Mr. POSSONY: Yes, Mr. President. The Sudan Constitution of 1956, Article 93, divides the judiciary into the Civil and the Sharia division—this is referred to in Mr. Khalil's book *The Arab States and the Arab League* on page 352. The Sudanese courts apply English law in civil matters, and are using a penal code derived from the Indian model. In dealing with Moslems, customary law may be applied when the Sharia is silent, according to the Islamic rule. This was explained in a conference which was held in London between 28 December and 1 January 1959-1960 under the title of *The Future of Law in Africa*.

With respect to Indonesia, the Constitution of Indonesia, Article 25/2 reads: "Differences in social and legal needs of the various groups of the population shall be taken into consideration." (Peaslee, *Constitution of Nations*, Vol. II, p. 374.) This is the provision which allows the Moslems to operate under their own personal statute.

There are many areas where Islamic law is regarded as a variety of Native law and custom. In those areas, the various legal spheres may be split between jurisdictions; the Moslem courts may be separate, or they may be joined by another system; or competence may be attributed differently from area to area. For example, the Northern Nigerian Penal Code, Articles 387-388, made clear provisions for applying laws to subjects only if and when the deed is recognized as a criminal offence by Native law or custom to which they belong. For example, Article 403 makes the drinking of alcohol an offence for Moslems only—this is in the Northern Nigerian Penal Code, Cap. 89.

Mr. MULLER: Other than the Islamic countries, are there countries where differential measures are applied relative to religion?

Mr. POSSONY: For example, the Mexican Constitution, to give one

example, discriminates against persons of ecclesiastic status; for example, under Article 82/4, and several provisions under Article 130. Article 130, incidentally, was amended in 1950. The Constitution of Mexico was written in 1917, and I am using an edition published in Washington, D.C., in 1964, pages 35 and 60. According to the Mexican Constitution, no person with ecclesiastic status can be elected President, and only a person born in Mexico may practise what is described as "the ministry of any denomination". Furthermore, no ministers may—

"criticize the fundamental laws of the country or the authorities of the Government, specifically or generally. They shall not have an active or passive vote, nor the right to form associations for religious purposes."

There are other stipulations, but I can skip those.

There are various differential provisions for ecclesiastic persons in terms of incompatibility with the parliamentary mandate in such countries as Belgium, Israel, Luxembourg, Turkey, India, Italy, Egypt, Netherlands and Great Britain. This particular type of problem was worked up, and I am quoting from him, by Mr. Francis Humblet in a "Report on Parliamentary Incompatibility", published in *Inter-Parliamentary Union, Constitutional and Parliamentary Information*, 1952, page 230.

Mr. MULLER: Professor Possony, your fourth group that you intended dealing with were those cases where less advanced societies are separated from more advanced societies; will you deal with that group, please?

Mr. POSSONY: I shall try to elucidate the more or less universal approach in such countries by referring to the example of Liberia. It will be convenient to deal with this matter under the following headings: first, political organization; second, administrative and judicial system; and third, land rights.

The Republic of Liberia is divided into the country area, a 40-mile wide strip of territory along the sea-coast divided into counties, and the hinterland. In the county area, the Anglo-American system of jurisprudence is applied, while the legal system in the hinterland is tribal and customary. Each tribe has its own political organization—this is, for example, laid down in paragraph 70 of the Aborigines Law which is to be found in *Liberian Code of Laws of 1956*, Volume I, page 34; I am not going to read the provisions of this law.

Mr. MULLER: You mentioned the administrative and judicial systems; kindly deal with that, in so far as Liberia is concerned.

Mr. POSSONY: Paragraph 350 of the Aborigines Law in *Liberian Code of Laws of 1956*, Volume I, provides:

"It is the policy of the Government to administer tribal affairs through tribal chiefs, who shall govern freely according to tribal customs and traditions in so far as they are not contrary to statute or administrative regulations."

Thus one finds the dual judicial system under which one person may be subject to the jurisdiction of a particular court, while another person is not so subject. Similarly, one person may be subject to certain laws while another is not—for example, in relation to marriage. The following provisions of the Liberian Aborigines Law are relevant; paragraph 123 defines the competence of the court of District Commissioner:

"The Court of the District Commissioner shall have jurisdiction in the following cases: (a) in equitable or civil suits arising in the Hinterland between persons not Aborigines . . ." (*Ibid.*, p. 44.)

Paragraph 125 deals with the Joint Court of the District Commissioner and the Paramount Chief:

"All suits arising in the Hinterland between an Aborigine and a person not an Aborigine shall be heard in the Joint Court of the District Commissioner and the Paramount Chief." (*Ibid.*, p. 45.)

The following provisos I will not read; they just simply bring the system down step by step so that for each level of tribal affairs connected with the members of the tribe and members of different tribes, and Aborigines and non-Aborigines, different courts are competent.

Thus, broadly speaking, each tribe has its own courts which operate under the tribe's legal system. There are provisions for cases involving more than one tribe, and for cases involving Aborigines and non-Aborigines. The system is logical and allows to each tribe its own identity; it has been described as a transitory system. President Tubman of Liberia expressed hope to the effect that tribal law might be replaced by civil law in about 50 years. This is quoted from Mr. E. S. Munger's book *African Field Reports, 1952-1961*, page 119:

President Tubman is reported to have—

"... stressed the uneven cultural development of the Liberian people. He pointed to the necessity of having two sets of law—civil law (taken from the West) and tribal law . . . and cited arguments heard elsewhere in Africa (including South African reserves) concerning the benefit to all of this dual code. But he agreed that tribalism was a temporary phenomenon and said he planned that the Western civil law be gradually extended from the 40-mile belt along the coast into the interior until it covered the whole country . . . President Tubman said he thought tribal law and administration would be replaced throughout Liberia in about 50 years."

Mr. MULLER: What is the position with regard to land rights in Liberia?

Mr. POSSONY: As to land, within the hinterland, it is to be made available to tribes *qua* tribes. The Liberian Aborigines Law, paragraph 270, reads that—

"Each tribe is entitled to the use of as much of the public land in the area inhabited by it as required for farming and other enterprises essential to tribal necessities." (*Liberian Code of Laws of 1956*, Vol. I, p. 60.)

The wording is restrictive, but possession of such land is protected "against any person". The Constitution of Liberia in section 14, which is quoted in Volume I of the *Code (ibid.*, p. 19), makes it clear that the Aborigines are to be protected in the possession of their land; it reads as follows:

"The purchase of any land by any citizen or citizens from the Aborigines of this country for his or their own use, or for the benefit of others, or estates, or estates in fee simple, shall be considered null and void to all intents and purposes."

Public Land Laws, section 30 (*ibid.*, Vol. III, pp. 1188-1189) provides that tribal authority must consent to purchases of ground in the hinter-

land. This law also provides that the "parcel of land in question" must not be "a portion of the Tribal Reserve" and is not otherwise owned or occupied.

Tribal land possession is protected with respect to Aborigines from different tribes. Thus paragraph 273 of the Aborigines Law stipulates:

"A person who enters the territory of a tribe of which he is not a member for the purpose of farming, shall observe the following procedure: (a) obtain permission of the Tribal Authority prior to commencing his activities; (b) agree to pay some token . . . ; (c) pay taxes . . .

*In case of his failure to comply with any of the foregoing requirements, the Tribal Authority may cancel the permission granted and confiscate the crops." (Ibid., Vol. I, p. 61.)*

Liberian policy with respect to the several tribes is guided by principles designed to protect and promote advancement on a tribal basis. I quote, to support this, paragraph 290 of the Aborigines Law, Volume I, page 61, in the Code, and section 15 of the Constitution, page 19 in the Code (Vol. I).

Mr. MULLER: While you are dealing with Liberia, can you state whether there are differential methods applied relative to other matters, such as citizenship, land ownership and trade?

Mr. POSSONY: The Liberian law is very strict with respect to citizenship. Article V, section 13, of the Constitution says this:

"The great object of forming these Colonies [this is Liberia] being to provide a home for the dispersed and oppressed children of Africa, and to regenerate and enlighten this benighted continent, none but Negroes or persons of Negro descent shall be eligible to citizenship in this Republic." (*Ibid.*, p. 18.)

This citizenship provision is supplemented by paragraph 81 of the Aliens and Nationality Law which is quoted on page 110. (*Ibid.*)

Mr. GROSS: Mr. President?

The PRESIDENT: Yes, Mr. Gross.

Mr. GROSS: Just for the sake of following with greater clarity—if the President permits—would the President see fit to ask the witness to identify and cite the document from which the quote was apparently taken with respect . . .

The PRESIDENT: The immediately preceding quotation? Certainly, Mr. Gross. Would you please do that, Professor?

Mr. POSSONY: It is the *Liberian Code of Laws of 1956*, published on the authority of the Legislature of Liberia and President William V. S. Tubman, Constitution and Titles published by Cornell University Press, Ithaca, New York. The codification was prepared, it says here on the inside page, for the Republic of Liberia by the Liberian Codification Project, Cornell University, under the direction of Milton R. Konvitz.

Mr. GROSS: Mr. President, could the page be cited? I am familiar with the work.

The PRESIDENT: Certainly. Would you do so, Professor?

Mr. POSSONY: I cited the page—page 110, the one I was just going to read.

Mr. GROSS: Thank you, Sir.

The PRESIDENT: Will you continue?

Mr. POSSONY: The subject I am discussing is the supplementation of



the constitutional citizenship provision in paragraph 81 of the Aliens and Nationality Law on page 110 of the book I just demonstrated.

"Eligibility for naturalisation. Any alien Negro of the age of 21 years and upward or any alien person of Negro descent of the age of 21 years and upward may become a citizen of the Republic of Liberia . . ."

Only Negroes are allowed to hold real estate in Liberia. This is implied in Article V, section 12, of the Constitution, which is printed on page 18:

"No person shall be entitled to hold real estate in this Republic, unless he be a citizen of the same. Nevertheless, this Article shall not be construed to apply to Colonization, Missionary, Educational or other benevolent institutions, so long as the property or estate is applied to its legitimate purposes."

Mr. MULLER: Professor Possony, can you deal with other countries where there is a division on the same basis, that is of advanced societies and less advanced societies and laws made accordingly?

Mr. POSSONY: One such country is, for example, Sierra Leone. Sierra Leone, according to the provisions of the *Law on Protectorate Land*, Chapter 122 of the Code of Sierra Leone, page 1266 (*f*), is divided into the so-called Western Areas and the Provinces, which previously were called the Protectorate. In the Provinces, according to the preamble of the law of 1 August 1927:

"All land is vested in the tribal authorities, who hold such land for and on behalf of the native communities concerned."

Article 3 provides:

"(1) No land in the Protectorate shall be occupied by a non-Native unless he has first obtained the consent of the tribal authority to his occupation of such land."

Different laws also apply to the two different areas, according to an Interpretation Act, number 7, published in 1965. On page 21 of that Act, Article 7/1 reads:

"No act passed before the 1st day of July 1953, shall apply to the Provinces unless it is provided by the Act itself or is extended thereto by an Act";

and Article 7/2:

"Every act passed on or after the 1st day of July 1953, shall apply throughout Sierra Leone unless it is otherwise stated therein or in any other Act."

Then Article 7/3:

"When any part of the Western Area is, under the provisions of the Provinces Act, 1965, included with any Province or District, such part shall become subject to the enactments for the time being in force in the Provinces and shall, for judicial and administrative purposes, be deemed to be part of the Provinces, and, save as where otherwise provided, no enactment in force in the Western Area only shall be applicable to such part."

In Northern Nigeria the Land Tenure Law of 1962, which is in the Northern Nigerian Code, page A110, part II, No. 4 (2), deals with Native Reserves and tribes:

"Such Native reserves and lands required to be set aside for Native reserves or purposes connected therewith shall be deemed to be Native lands."

It is added under No. 5:

"All Native lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Minister and shall be held and administered for the use and common benefit of the Natives, and no title to the occupation and use of any such lands by a non-Native shall be valid without the consent of the Minister."

Furthermore, it is provided, in Article 27 on page A118:

"It shall not be lawful for any Native holding a customary right of occupancy to alienate his right of occupancy or any part thereof to a non-Native by sale, assignment, mortgage, transfer of possession, sub-lease, bequest or otherwise howsoever without the consent of the Minister first had and obtained."

Land reservations have been made in Basutoland, Bechuanaland, Swaziland, Northern and Southern Rhodesia and Kenya and, for convenience sake, I refer to the Counter-Memorial data, III, pages 258-262.

The old Eritrea Constitution of 1952, which is of course no longer applicable, in Article 83/1, recognized: "the existence of local communities." It added that the rights of these communities shall "not be impaired by any law of a discriminatory nature". This is laid down in the *Inter-Parliamentary Union, Constitutional and Parliamentary Information*, 1953, pages 163 and 152.

Article 165 of the Bolivian Constitution, this is in Peaslee, *Constitution of Nations*, Volume I, page 201: "Recognizes and guarantees the existence of the Native communities".

According to the Peruvian Constitution, Article 211, in Peaslee, *Constitution of Nations*, Volume III, page 155, Native communities which do not possess land in sufficient quantity, should be provided with such "by preference" if necessary through expropriation of privately owned land upon compensation. Article 208 guarantees "the integrity of the property of the communities". Article 209 says that "the property of the communities . . . is inalienable".

Land reservations have also been made, *inter alia*, in Panama, according to Article 95 of the Constitution; in Brazil, Article 216 of the Constitution; in Canada and in the United States. References on Brazil are in Peaslee, Volume I, p. 250; references to Canada and the United States are in the Counter-Memorial, III, pages 263-265.

In Sweden, according to a law dating back to 1928: "Certain areas—those above the cultivation line—are reserved for the exclusive use of the Lapps". The same law secures for the Lapps the "sole rights of reindeer breeding". This is quoted from a publication by the Swedish Institute for Cultural Relations with Foreign Countries, written by a man called Israel Ruong, entitled *Lapps in Sweden*, 1962, pages 6 and 7. I understand that similar provisions exist in Norway. More recently, provisions have been strengthened in this regard in Finland.

So, in general, all over the world the aboriginal areas are separated from the advanced areas.

Mr. MULLER: Having dealt with land, can you refer to examples where

particular tribes are, by law, granted their own institutions, governmental and judicial?

The PRESIDENT: Particular what? I am sorry I did not hear.

Mr. MULLER: Institutions—governmental and judicial institutions granted to particular tribes.

Mr. POSSONY: With regard to governmental institutions, I would like to refer briefly to the case of Ghana. In the Declaration of Fundamental Principles, which the President of Ghana, according to Article 13 of the Constitution, has to make upon assumption of office: "Chieftaincy in Ghana should be guaranteed and preserved."

Article 49 of the Constitution stipulates: "There shall be a House of Chiefs for each Region of Ghana." Sources for this line of information are Rubin and Murray, *The Constitution and Government of Ghana*, pages 253 and 264.

With respect to legal systems, the position is, briefly, that customary law applies in most African countries. But it should be appreciated that the use of the term "customary law" does not indicate that there is a single uniform set of customs prevailing throughout a given country. This term is used rather as a blanket description, covering very many different systems. These systems are largely tribal in origin and usually operate only within the area occupied by the tribe. Moreover, there may be local variations within such an area.

Tribal laws are not the only systems covered by the term "customary law". For example, throughout the Federation of Nigeria this term includes Islamic law also. This is made explicit in the North by section 2 of the Native Courts Law of 1956, which provides: "Native law and custom includes Moslem law." Since Islamic law originates from outside Nigeria, it is not grounded in any particular locality and can apply in appropriate cases throughout the entire country. In large parts of the North, Islamic law has supplanted the local systems almost entirely, and occupies the same position in relation to those areas as does Ibo law—the law of the Ibo people—to most of the East and Yoruba law to most of the West. Islamic law is not always uniform throughout Nigeria and it may be subject to local variations.

In Ethiopia, the Civil Code of 1960 attempted to put an end to the diversity of customary laws. I quote from a professor of law at the Haile Selassie I University, Mr. Krzczunowicz, and his article entitled *The Ethiopian Civil Code—Its Usefulness, Relation to Custom, and Applicability*:

"The Ethiopian Civil Code expresses a trend for unification that makes little allowance for local variations in customary practices (e.g., those concerning intestate succession or matrimonial property). This, coupled with the unfamiliarity of the Code's technical terminology, will create inevitable difficulties in its application. . . . Somewhat more fundamental obstacles are likely to be encountered in the shape of the local customs which diverge in substance from the Code's precepts. It is the prevalence of such divergencies that made it impossible even to envisage our codification in terms of a mere 'consolidation' of customary laws. But where disregard of local custom is carried too far, the likely consequence is disregard of the law by its recipients."

The same author also stated:

"As things now stand, difficulties in the Code's application are common knowledge . . . The Code's patchy application in the Empire's peripheral areas [was attributed] partly to the fact that the Code was drafted for the more developed populations, those which inhabit the plateau of Ethiopia . . .

We can indeed observe that even in the more developed areas the Code's solutions are often in advance of the people's thinking."

This, Mr. President, I think, illustrates that it is not really feasible to disregard the laws that prevail in tribal societies, and the many different legal systems that characterize pluralistic societies.

As to legislation, the Pakistani Constitution, in Article 19, which is laid down in the *Inter-Parliamentary Union, Constitutional and Parliamentary Information*, 1956, page 135, says: "Any section of citizens having a distinct language, script or culture shall have the right to preserve the same."

This same Constitution, in Article 27, also provides for the protection of "minorities". (*Ibid.*, p. 137.)

The Constitution of the Commonwealth of Australia, Article 51, XXVI, stipulates that Parliament has the power ". . . to make laws for the peace, order, and good government . . ." with respect to ". . . the people of any race, other than the Aboriginal race in any State, for whom it deemed necessary to make special laws . . .". This is in Peaslee, Volume I, page 86 (*f*).

The Constitution of Venezuela gives to the Federal Dependencies, which are almost exclusively inhabited by Indians, the right to establish their own system of government, administration, juridical systems—this is laid down in Articles 14 and 15 of the Venezuelan Constitution, which can be found in *Inter-Parliamentary Union, Constitutional and Parliamentary Information*, 1961, at page 125 (*f*).

Finally, the New Zealand Electoral Law of 1956, provides for Maori representation on a group basis. This can be found in *Reprint of the Statutes of New Zealand, 1908-1957*, pages 341 ff. Briefly, a European cannot be registered as a voter in a Maori district, and vice versa. One of the purposes of this New Zealand legislation was, of course, and still is, to facilitate the ethnic recovery of the Maoris.

Mr. MULLER: Now, you have dealt with the position of tribal groups; can you deal briefly with the position of less advanced groups in certain developed societies?

Mr. POSSONY: Mr. President, in the southern lands of South America, the Indian, for all practical purposes, has been eliminated. I am reporting on the facts . . .

The PRESIDENT: I did not hear your phrase, Professor.

Mr. POSSONY: The Indians in the southern lands of South America have, for all practical purposes, been eliminated.

In the central parts of America, he was pushed away from the east coast, but still survives in the interior. In the northern part of South America, notably in the north west, where the Indian originally had a relatively strong political base, the result was less catastrophic, but the Inca culture was destroyed as a growing concern.

In some parts of Central America, and in Mexico, the Indians fared best, but were not spared calamity: in Mexico, gradually over the centuries, the Indian population was dispossessed from its land; it is only since about 50 years that systematic efforts have been made, and have

been quite successful, in re-establishing the Indian on the land as a communal landholder. Brazil, I believe, was the first American State which established a service for the protection of the Indians; that was in 1910. Similar offices or agencies now exist in Peru, Ecuador, Bolivia, Mexico, Panama, Canada and the United States. Problems for these agencies, however, can become very difficult whenever the Indian population is mixed with the Whites.

During the last generation, there has developed a movement throughout the whole of Latin America, called *Indigenismo*, which is based on the recognition that it is necessary to protect the indigenous communities in order—and I am paraphrasing here the Mexican specialist, Alfredo Caso—to help the Indians reach a level of equality, in comparison with the level reached by the Mestizo community.

The movement aims at integrating the indigenous community into the economic life, and pursues a programme of "planned acculturation", to preserve among the Indians those cultural elements which are of positive value, and to find, within the Indian tradition, substitutes for those elements which are negative.

The objective is to preserve the Native communities indefinitely.

Special schools, run by the Mexican National Institute for Indigenous Matters, aim at what the Spanish term calls *capacitación*. This is hard to translate. I translate it somewhat freely as "enablement" or the creation of capacity.

Mr. MULLER: Can you tell the Court whether, in America, special provision is made for the case of Indians?

Mr. POSSONY: The history of the American Indians is quite well documented. It involved the reduction of about 1 million Indians, at the beginning of the White occupation, to about 400,000 in 1945. By now the United States Indian population stands at 550,000, two-thirds of whom live on Reservations. Much of the human loss was due to war; disease and alcohol, to the destruction of the buffalo, and to ecological changes.

During the 19th century, in connection with the Indian wars, deliberate attempts were made to destroy tribal cohesion. In addition, the free market economy entailed deleterious practices, the most important result of which was that the Indians lost much of their land.

American Indian policies were more or less destructive until the presidency of Herbert Hoover. Under President Roosevelt, the Indian was given his New Deal. The new programme was that Indian societies must be protected, regenerated, or set into being *de novo*—this is a paraphrase of a book written by Mr. Collier who, for the entire presidency of Mr. Franklin Roosevelt, was the Indian Commissioner; the Indians must be given status, responsibility, power and land; they must have freedom, including the right to organize cultural and religious activities, and to maintain unimpeded contact with their children—note the adumbration in this phrasing of the genocide treaty.

The tribes were allowed what was called self-governing self-determination, without any limit beyond the need to advance by stages to the goal.

According to Mr. Collier, since 1933 more than 100 tribal democracies have been reborn, but I am afraid that this may be a little optimistic. A few tribes are prosperous, and the Government has pursued a reasonably enlightened policy with respect to the Reservations on which the Indians

live, but in some instances large portions of the land are leased to White farmers who are needed to create revenue for Indian subsistence. There are many other factors of the Indian crisis, which I will not go into, but the most important factor, I think, is that the culture of the Indians has lost its vitality, and that the Indians, in a descriptive phrase, do not want to jump into the melting pot.

In view of these continuing difficulties, American authorities are still arguing about the best policy. The present Commissioner of the Bureau of Indian Affairs wants to pave the way for the Indian "to enter the main stream of American life, either on or off the Reservation" and, still quoting, "... to educate the Indian so that he can leave, if he chooses, and to make the Reservation economically viable if he does not ...". This was reprinted in the Paris edition of *New York Herald Tribune*, 29 September 1965, page 4.

The question is also whether the Indian should be pushed like by a strict parent, and whether they can ultimately take over, themselves, industrial activities, schooling, law enforcement, and administration. As far as the Indians themselves are concerned, their spokesmen, according to recent publications I have seen, do not think that the Indians have as yet been given a really fair deal.

The significant lesson, Mr. President, is that, for the last 30 years, a policy has been in force in the United States which guarantees to the Indians their homeland. The American policy, perhaps for unavoidable reasons, falls short of one of development, but it does deal with the Indians as a group.

Mr. MULLER: Now you . . .

The PRESIDENT: Mr. Gross?

Mr. GROSS: Just in order to clarify the record as to this line of testimony just completed, the Applicants, with the Court's permission, wish to note their objection for the general reasons stated. This testimony has, in the Applicants' submission, nothing whatever to do with any contention made by the Applicants. This evidence, unless by implication or innuendo, as to which no comment is made by the Applicants, sought to be adduced at this time, would seem to have nothing whatever to do with the Applicants' contention that there are international standards pursuant to which, among other things, equality of opportunity should be protected and equal protection of the laws to individual persons, as such, should not be denied; so far as close attention to the witness's testimony is concerned, there is nothing which we heard, Sir, which could fairly be regarded as relevant to that aspect of the Applicants' case.

The PRESIDENT: Mr. Gross, the sources on which the Applicants rely, which are set out in 493 of your Reply, IV, and pages following, are, of course, designed to establish that there exists a norm or standard upon which the Applicants are basing their case.

Mr. GROSS: Yes, Sir.

The PRESIDENT: And you quote in those sources certain measures such as the Charter of the United Nations and also you quote, if I recall correctly, the European Declaration of Human Rights?

Mr. GROSS: Yes, Sir.

The PRESIDENT: You rely upon the latter as evidence of practice in Europe, to establish that the norm or standard upon which you rely is consistent with and is evidenced by the practice?

Mr. GROSS: That is right, Sir.

The PRESIDENT: The witness is dealing with a large number of countries, the whole purpose of the evidence being to establish that there can be no norm or standard such as you rely upon, having regard to the practice detailed by him in relation to different States throughout the world. That is a matter which the Court will need to deliberate upon. It is not possible for the Applicants, in any case, to limit the evidence, in relation to practice, to only those particular matters that they rely upon.

Mr. GROSS: Mr. President, subject to the procedure, as it is understood by the Applicants, it is understood, Sir, that there will be the opportunity which has been mentioned to discuss the relevance of this testimony in commentary?

The PRESIDENT: Mr. Gross, as I have told you before, under the provisions of the procedure to be followed, it is competent for you to comment upon the evidence. That does not mean, of course, as we all understand, and I know that the Applicants and Respondent so understand, in respect of their final addresses to the Court, two additional general addresses. It means addresses limited to comment on the evidence, but, necessarily, when you take objection as you have, it permits you to refer to the relevance of the testimony of any particular witness to whose evidence you have objected.

Mr. GROSS: Then, to spare the Court, I will not make specific objections for the rest of this testimony, Sir.

Mr. MULLER: Professor Possony, you have, up to now, dealt with cases where, by law, there is differentiation applied between population groups. Can you deal with a few cases where the opposite approach has been applied?

Mr. POSSONY: Mr. President, among sedentary groups, Switzerland, and the Corsicans and the Basques in France, are examples of successful integration, provided the term "integration" is understood in a broad political sense. After centuries of cohabitation, the component ethnic groups have preserved their ethnic identity.

Against these exceptions, the examples of Austria-Hungary, and its highly democratic successor, Czechoslovakia, illustrate the contention that, despite a framework which facilitates and hopes for integration, conflict may persist and result in separation.

In immigration countries, assimilation can occur and can be effective, given a culture of high integrational value and power. This is the case of the United States, and more precisely the case of the European populations within the United States; thus there are exceptions. I think the most illustrative exception to the rule that integration does not work is Hawaii, where there is an exceptionally effective cohabitation between the Chinese, Japanese, European and Polynesian, on a small scale, each group preserving its identity, and none being involved in a power struggle.

Against these exceptions, we have, for example, the very recent experience of 1964, when the religious, linguistic and cultural integration which had been under way for centuries between Arabs and Africans in Zanzibar, ended in a blood bath.

With respect to Asians in Africa, and of course this is only one of many illustrative examples—by Asians I mean mostly the Indians in Africa—there are about 360,000 settled in Kenya, Uganda and Tanzania alone. The position of these people can be analysed by referring to a recent

publication by two Indian brothers, Dr. Dharam and Dr. Yash P. Ghai. This is in the *Journal of Modern African Studies* 1965, Vol. III, No. 1, pages 35-51. The article is entitled "Asians in East Africa, Problems and Prospects".

The authors are lecturers, respectively, at Makerere University College, Kampala, and at the University College of Dar-es-Salaam, Tanzania. The authors think that Tanganyika—they still wrote under this heading—"has already ended legal discrimination in the public service". As reference they quote President Nyerere, who ordered the end of discrimination in January 1964, saying this:

"We cannot allow the growth of first and second class citizenship . . . Discrimination against certain Tanganyika citizens on grounds of origin must go. There can be no more prevarication." (*Ibid.*, p. 51.)

This is quoted by the two authors from the *Tanganyika Standard* of 8 January 1964.

The philosophy of the two writers, which I am quoting, is pro-integrationist. To prove this, I will read, briefly, their conclusion:

"The philosophy of the State has changed in favour of integration; and one must continue to hope that this great experiment in social engineering will succeed and that Asians will be accepted, and will play a positive role, in the new societies of East Africa." (*Ibid.*)

That is essentially the conclusion, but these authors also state this:

"One thing is certain; if Asians desire to play a vital and progressive role in the new societies of East Africa, they will have to accept radical, at times painful, changes in their present positions, attitudes and behaviour. Not much meaningful discussion has taken place as to what precise changes are called for." (*Ibid.*, p. 37.)

Now, disregarding the future, as to the present, according to these authors, the two most salient facts seem to be that many of the Asians are leaving, or are trying to leave, and that preparatory to their departure, they are exporting capital.

Historically, the most important contribution of the Asians to East Africa has been the extension of the monetary economy into the subsistence areas. Asian traders and artisans introduced attractive consumer goods to the rural population and also acted as the main outlets for produce from the indigenous communities. Today, a major economic contribution by the Asians is the supply of high and middle level manpower and of capital. According to one estimate, in mid-1961, Asians provided a little less than 40 per cent. of professional men of graduate or equivalent level, senior administrators and senior managers in commerce and industry, and about 50 per cent. in the next layer of skilled manpower, including technicians, sub-professional grades, executive grades in the Civil Service, middle management in industry and commerce, and teachers with secondary education. Asians also have made very large contributions in East African medicine, law, engineering, pharmacy and so on.

Furthermore, they have made an important contribution in the form of savings and capital investment. A high proportion of this capital was originally generated in commerce and now much of it has been invested in manufacturing and construction. The two authors write this:



"It is difficult to think of any significant sector in the East African economy where Asian capital, entrepreneurial ability and skills have not made an appreciable contribution.

The economic success of the Asian community in East Africa has been due to their possession of certain qualities essential for economic development . . . A substantial number of young Asian business-men possess in abundance many of the qualities that enabled their forefathers to amass large fortunes. The[se] qualities . . . vitally important for economic development—are not likely to endear their possessors to other communities." (*Ibid.*, p. 39.)

For the 60 per cent. or 70 per cent. of the Asian labour force who derive their livelihood from commerce or from employment in the public sector the prospects appear rather gloomy. Africanization in the Civil Services is likely to be pursued vigorously for years to come and this despite the acute shortage of skilled and educated manpower. As a result of this trend educated Asians are leaving for Canada, the United Kingdom, India and Pakistan.

With respect to the possibility of acquiring land by Asians, the same authors state this:

"Agriculture might therefore be thought of as the possible solution to the 'Asian problem'; however, for a variety of reasons this seems most unlikely . . . The question of land arouses the deepest emotions among Africans and any suggestion of alienating land for Asian settlement would run into bitter opposition." (*Ibid.*, p. 44.)

The PRESIDENT: Professor, may I ask you a question? You referred to the Asian problem in Africa in your evidence which generally is directed to the practice, being followed in different parts of the world, and which is intended to indicate that, in practice, the norm or standards to which we have referred either do not exist or have not the content which they are alleged to have, as stated by the Applicants. Would you be good enough to indicate to the Court how you think the testimony which you have just given in relation to the Asian problem in Africa bears upon the question as to whether, in practice, there does exist a compliance with the alleged norm or standards? Is my question clear to you?

Mr. POSSONY: Mr. President, I think in this particular case the evidence shows that if there were such a norm being practised in East Africa today it would not be to the benefit of the particular group, in this case the Indians in East Africa, which I have been discussing. In other words, the group representation which existed before and the protection which the Indians enjoyed in East Africa have been essentially eliminated, and the result of this has been that the Indians, as these quotes show, are now confronted by the difficulty of finding employment and are leaving. In other words, we have here, in addition to the question of the norm, the historic development of separation. At least, it would seem to many of those Indians to be the case that they have no future in the area and therefore a separation is carried out by means of emigration.

The PRESIDENT: Mr. Gross.

Mr. GROSS: If the Applicants understood the response just made by the witness to the honourable President's question, it would perhaps help to clarify the points to which his evidence is directed, as understood

by the Applicants. The witness seems to be saying that his testimony, just concluded on this point, is designed to show that the application of a standard or a norm, if such a norm exists as a matter of law, which would protect equality of opportunity and equal protection of law to the persons to whom he refers, would not be to their benefit, Sir. That is what the Applicants understand by the witness's answer.

The PRESIDENT: The witness said "in addition to the question of the norm".

Mr. GROSS: Yes, Sir. The standards or the norm, if it exists as a matter of international law, but referring to either branch of the argument, that the application of of the standards for which we contend for interpretation of the Mandate or the international legal rule which we insist alternatively exists as a matter of law, that the application of those standards or that norm, if either exist, would mean that the granting of equality of opportunity or equal protection of the laws to the persons or groups to whom he refers would be detrimental to their welfare or against their benefit. This is our understanding of the response to the honourable President's question, Sir.

The PRESIDENT: What is the point that you are taking, Mr. Gross? You are objecting to the evidence or what?

Mr. GROSS: My point, Sir, is that on the basis of this understanding, it would support the basis of the objection made to the relevance of the testimony.

The PRESIDENT: One question, Mr. Gross, which is involved basically in this case, is the meaning to be accorded to Article 2, paragraph 2, of the Mandate, the words of which I need not repeat. Is it your contention that if it is established that to apply the norm which you allege exists, would be contrary to the welfare, social progress and development of the people of South West Africa, that is wholly irrelevant to the Court?

Mr. GROSS: No, Sir.

The PRESIDENT: Then I think the evidence had better be permitted. The question will be determined by the Court when it proceeds with its deliberations.

Mr. GROSS: Mr. President, in order to preserve the position of the Applicants and to do justice to the full to the point made by the President—my affirmative response is based upon my understanding of the question as addressed and its intention—I should like, Sir, to consider it further when I have had an opportunity of reading the question in the verbatim record to see whether it justifies a further response, because I am not certain that I understood the President.

The PRESIDENT: This is not the time for responses. I sought to clarify and perhaps the fault is mine. The Court, however, must have clarified, as it goes along, the direction which evidence has taken and I sought by asking the question to have the witness's own summary of the direction of his evidence and the conclusion which might be drawn from it. The question which I put to you is, and I put it again so that you can reconsider it, do you say that evidence which is designed to establish that the standard which you claim to exist—I leave out the norm at the moment—if it were applied would be contrary to the social progress, the welfare and the development of the people of South West Africa, that such evidence would be irrelevant? You need not answer it now if you want to think about it.

Mr. GROSS: I would for the sake of the record, if the President will

indulge, attempt to indicate the Applicants' approach toward the problem posed by the President.

The PRESIDENT: Do you or do you not say that it is relevant, Mr. Gross? First give me the answer to that question.

Mr. GROSS: Well, Sir, I do not think I can answer yes or no.

The PRESIDENT: I think we will leave all this to comment later on, Mr. Gross. Will you proceed, Mr. Muller?

Mr. MULLER: Mr. President, as this question may arise also with regard to what follows, may I just explain . . . ?

The PRESIDENT: No, Mr. Muller, please continue putting your questions and if we have anything we need to consider, we will do so.

Mr. MULLER: If the Court pleases.

Mr. POSSONY: Mr. President, may I just mention . . . ?

The PRESIDENT: No, Professor, I think it is better to follow the procedure of having the questions asked and receiving the answer.

Mr. MULLER: Now, Professor Possony, does there appear to be any solution to the problem which you have just described?

Mr. POSSONY: The same authors whom I have been quoting, Mr. President, state that if the Asians can integrate effectively at the political level, the economic problems could be dealt with more successfully, but what then is the political situation? Since the vote of the Asian population can only be very small, the Asians cannot have any real influence under a system of proportionate representation. With the disappearance of communal representation, few Asians can hope to win an election on the strength of the Asian vote alone. This would, I think, make it very difficult to find a solution on the political level. With respect to the social level, it is also stated that social contacts between Asians and Africans are neither extensive nor intimate:

"The residential areas of townships are still segregated (no longer by law, however); but the African elite is leaving the African locations and moving into European or upper class Asian areas."

There is no longer segregation in hospitals and community centres but there is no social mixing.

"This is hardly surprising when one considers the profound differences in culture and ways of life. In addition, there are economic barriers; manual workers and industrialists do not mix socially as a rule, even if they are of the same colour." (*Ibid.*, pp. 47-48.)

The author suggests that two paths can be chosen—either pluralism or assimilation. They deal with both suggestions and, as I indicated, they favour integration—that is assimilation. However, they acknowledge that there will be a "substantial net emigration of Asians from East Africa". In this regard, they state:

"Most Asians think that they have no future in East Africa, where, they feel, race is too fundamental a factor, and that no measure of integration will help them." (*Ibid.*, p. 50.)

Mr. MULLER: You said earlier on that you would deal with the experiences of the position of Africans in America. Can you do so briefly?

Mr. POSSONY: The Afro-American experience has lasted about twice as long as the Asian-Afro experience. The numbers of Afro-Americans are relatively and absolutely far larger and therefore the situation might, under some considerations, allow for a more successful solution. In

addition the prevailing ideology has favoured integration even though it is self-evident that there are graduations in the enthusiasm for this solution.

There have been recent attempts in the United States to advance integration energetically. This energetic application of the integrationist approach appears to be a reaction to the fact that spontaneous forces of integration are weak. I will deal with this subject briefly under the headings of segregation in housing, schooling and employment.

Mr. MULLER: The Professor will deal with housing.

Mr. POSSONY: Statistics show that the Negro and European groups are, to a very large extent, still segregated in their own residential areas. There are comparisons made in the time sequence between 1944 and 1950 and 1960. It is quite clear that there has been very little change.

Recently a so-called segregation index has been constructed. This is published in the August issue of the *Scientific American*, pages 12 ff., and again I may stress, that the author, by implication, even though this is a straightforward argument, is very much opposed to segregation. Now, the segregation index is based on the numbers of households in an urban area. I should also add that the statistics were worked out with the benefit of computers so that there has been a very broad coverage of the United States. An index of one hundred would indicate that the particular area is completely segregated, that is it is either fully Black or fully White. The results are that for more than 200 American cities the indices range from 60 per cent. to 98 per cent. The 60 per cent. index applies to San José, California, and the 98 per cent. index to Fort Lauderdale, Florida. Now the median value, that is half of the cities are on one side, below the other half on the other side, above, is 87.8 per cent. (roughly 88 per cent.).

In New York the index measuring segregation between Negroes and Whites stands at 80 per cent., that measuring between Negroes and Puerto Ricans is over 60 per cent. In Los Angeles the separation between Negroes and persons with Spanish surnames and other ethnic groups varies between 65 per cent. and 75 per cent. The segregation between those with Spanish surnames and other races is around 50 per cent. in Los Angeles.

Mr. MULLER: What, very briefly, is the position with regard to the schools?

Mr. POSSONY: Educational desegregation is linked to the segregation pattern in housing, of course. Children inevitably must attend schools that are in their neighbourhood. There is also the trend that as Negro children appear in large numbers in White schools, the White families move to suburbs or, if they can afford it, pay for private schools, and White children are taken out. There has been a steady increase in the number of school districts which have been desegregated. By 1963 about one-third of the school districts were reported to have been desegregated, and presumably the present figure is higher. By 1963 about 1 per cent. of the Negro children in the 11 former Confederate States were in desegregated schools. In 17 southern states and in the district of Columbia the figure was about 8 per cent. In the border states 58 per cent. of the Negro school population reportedly attended bi-racial classes during 1963 and 1964. Outside the southern areas, some areas undoubtedly have full desegregation. However, it must be remembered that desegregation also may be a merely formal gesture. It may mean no more, and fre-

quently does not mean more, than that a small number of Negro children are attending White schools, or conversely that a few White children have been assigned to Black schools.

I think I can best summarize this by quoting a survey which was published in the *San Francisco Examiner* of 5 August. I have the article here for inspection, about the school segregation problem in San Francisco, which says this:

"San Francisco has 95 elementary schools. Fifteen [of those schools] have 90 per cent. or more Caucasian pupils, eight are 90 per cent. or more Negro, and Orientals make up 90 per cent. or more of the student body in four."

The success of desegregation can be measured by this sentence: "Seven of the schools have an almost 50 to 50 White and non-White ratio."

Mr. MULLER: Can you tell the Court very briefly what the position is with regard to employment opportunities?

Mr. POSSONY: The Negroes have about twice the unemployment rate of the Whites, partly because they are concentrated in unskilled and temporary jobs.

The PRESIDENT: I am sorry to interrupt again. Mr. Muller, would you indicate why it is necessary to have all this detail in respect of the problem of desegregation in the U.S.A., and what bearings it has upon the issues the Court has to decide?

Mr. MULLER: As I intended just now, Mr. President, to indicate the position, we have called this witness to show, first of all, that having regard to practice and usage in the world a norm such as suggested by the Applicants is not observed, and secondly, Mr. President, to express an opinion as to the application of such a norm in all circumstances. He will at the end indicate to the Court that there are difficulties in applying the norm in particular circumstances. This evidence deals with the second part of his testimony.

The PRESIDENT: Very well, proceed.

Mr. GROSS: Mr. President, just to be absolutely certain as to the significance of counsel's response, the norm and/or standards relate to official government action and policy, and the testimony to which the Court is now addressing its attention relates to social, political, economic phenomena which is conceded by the Applicants to exist in the United States and in various parts of the world, but, as understood by the Applicants, the testimony has not addressed itself to the fundamental proposition which underlies the norm and the standards, and both, and that is official action by governments, Sir. And on this basis it would seem that the testimony is similarly irrelevant to the Applicants' contention.

The PRESIDENT: Mr. Gross, a great deal of the evidence of the witness refers to laws of different countries which I assume can be put into the category of official action by States, and much of it also refers to specific legislation. It is the last point made by you with which we are now concerned. In what way, Mr. Muller, are the social habits of the people of the U.S.A. relevant to the issue we have to deal with? This witness is not called for the purpose of establishing that the social habits of any particular country show that in a society which consists of more than one racial group one racial group is antagonistic to the other—or is not

prepared to mix with it, or things of that description. It seems rather on the periphery of things, does it not, to be seeking to persuade the Court that this type of evidence will really bear upon the issues the Court has to decide.

Mr. MULLER: Mr. President, as I have indicated, the witness will eventually state his opinion as to whether the norm can be applied in all countries under all circumstances at all times. I am referring to an allegation made by my learned friend during the course of argument. The witness will use some of these examples in expressing his opinion at the end, Mr. President.

The PRESIDENT: The evidence with which the witness is presently concerned with, or has been dealing with, could be expressed in more summary form, because after all it does not deal with what a State does, it simply establishes that certain groups of people because they spring from this or that race have certain social attitudes one to the other, and that does not seem to assist the Court very much.

Mr. MULLER: With respect, Mr. President, in this particular case there is government policy applied which enforces integration.

The PRESIDENT: Yes, I am aware of that.

Mr. MULLER: And in that respect, Mr. President, this is a case where apparently a norm of the nature contended for by my learned friend is attempted to be applied.

The PRESIDENT: Did you say: "Is attempted to be applied"?

Mr. MULLER: Yes, Mr. President, and the witness will then state what lesson he learns from the attempts in applying it in this particular sector.

The PRESIDENT: In short what you say is that even although the official attitude and legislation and law of the United States of America is determined to put an end to segregation, or is directed to that end, that the social attitudes of its people can assist the Court in determining whether integration in South West Africa would be for the social advancement and welfare of the people of South West Africa. Is that your contention?

Mr. MULLER: Yes, it will assist the witness, Mr. President, in stating an opinion in the end as to whether he considers that the norm can be applied under each and every circumstance.

Mr. President, I have, on reconsideration, decided to cut this part of the matter short just by asking Professor Possony one question which will be a general one.

The PRESIDENT: Thank you, Mr. Muller.

Mr. MULLER: Professor Possony, can you tell the Court whether any view has recently been expressed that the situation in America can best be handled by having differential treatment for the Negroes?

Mr. POSSONY: President Johnson, last summer, made a speech at Howard University; which was based on a report by the Department of Labor. I am reading from a comment in *The Economist* of 28 August 1965. The report on which Mr. Johnson based himself is entitled *The Negro Family—The Case for National Action* and it is accepted as generally applicable to lower class Negro urban life, and it has this description in it: "Massive deterioration of the fabric of [Negro] society and its institutions." It adds the condition of the American Negro in recent years has "probably been getting worse, not better".

The *Economist* writes:

"Negroes as a group are not equal to the competition of American life and instead of beginning to draw level are falling further behind."

Then this comment follows:

"If the logic of the report is followed, American policy towards the Negroes must presumably move out of the phase of striving for the goal of non-discrimination and engage in a deliberate and novel effort to discriminate in the Negro's favour until real, not legalistic, equality is within his reach."

Mr. MULLER: Professor Possony, moving to another field now, can you say whether in America there are still laws in existence differentiating between people on the basis of membership in a group?

Mr. POSSONY: There are still 17 states in the United States, or one-third of the members of the American Federation, which outlaw marriage between Whites and Negroes. The number of states, as of ten years ago, was 30—then it was two-thirds. I will not read all the definitions of "Negro", but these include "descendant of a Negro" or "no ascertainable trace" of Negro descent, "to the fourth generation", "to the third generation", "one-eighth or more of Negro blood", etc.

In Florida, under Article 74I.II, offspring of a mixed marriage are incapable of receiving inheritance.

There are also prohibitions to marriage between Negroes and Indians.

Mr. MULLER: I wish to proceed now to the third part of Professor Possony's evidence. It is that part which, at the opening of the evidence, I indicated would deal with attempts in the international sphere to formulate uniform objectives with regard to the treatment of individuals and ethnic groups.

Professor Possony, are there any international conventions for the protection of ethnic groups?

Mr. POSSONY: Yes, there is the Genocide Convention of 1948, which came into force in 1951. The Convention has been ratified by 57 States. The United States did not ratify it for technical reasons—there were some objections to some of the articles.

The Convention could be interpreted to mean that it provides to each ethnic group the fundamental right of survival. I may add that there is an Act in Israel of 1950 implementing the Convention through statutory law.

In connection with the Human Rights Declaration and the attempt to draft the Covenant of Human Rights, the distinction between the rights of the individuals and the rights of groups was frequently debated and it was decided to work out a statement on self-determination. In 1952 a so-called article on self-determination was inserted between the preamble and the regular articles of the Draft Covenant on Economic, Social and Cultural Rights and the Draft Covenant on Civil and Political Rights.

There are many sources in this connection but I have used the United Nations *Bulletin*, Volume XIII, No. 5, 1 September 1952, page 253.

This article accords to all peoples and all nations the right of self-determination. Thus, self-determination is defined as a right instead of a principle and it applies to peoples as well as nations. It is furthermore defined by General Assembly resolution 545 VI, February 1952, as: "The right freely to determine their political, economic, social and cultural status."

Mr. Malik of Lebanon, who presided over the committee meetings

which drafted this text, summarized his experiences in the drafting sessions as follows: "The problem is genuinely and objectively complex." This is from the same source which I quoted before—the *Bulletin*. He continues: "The mind does not at first suspect the formidable complexity concealed under this idea" of self-determination.

Many of the questions that were debated had not been dealt with in the article that was adopted. For example, the dependence of other rights upon the prior realization of self-determination, the inter-relationships between self-determination on the one hand and freedom, independence and self-government on the other; the definition of people and nation, the methods by which it is determined when and how the right can be invoked, and the problem of what Mr. Malik called "cultural determination".

Finally, in the words of Mr. Malik: "Is the right of self-determination, according to the Charter, unqualified? Is it subject to over-arching considerations of international security and peace?"

In 1955, the General Assembly was given a draft resolution for the purposes of establishing an *ad hoc* Commission on self-determination to examine, *inter alia*, the concepts of peoples and nations; the applicability of "principles of equal rights and self-determination, including the rights and duties of States"; the relationship between the principle of self-determination and other Charter principles; and finally, to examine also, the conditions under which the application of the principle is facilitated. The proposal was based on the consideration that "there is a wide difference of views regarding the meaning and applicability of the principles of equal rights and of self-determination of peoples, as mentioned in Article 1 of the Charter"—this is quoted from the *United Nations Yearbook 1955*, page 353. According to this text therefore, self-determination was reduced again to the status of a principle, which is in conformance, of course, with Article 1 (1) of the Charter.

In the discussion within the Third Committee on principle *versus* right, the statement was made that as a principle self-determination has a *strong moral force* but it is "too complex to translate into legal terms in an instrument which was to be legally enforced"—*United Nations Yearbook 1955*, page 161.

In 1957, the General Assembly took up the matter again and discussed self-determination as a right, but no precise wording was proposed. In the Declaration on the Granting of Independence to Colonial Countries and Peoples, resolution 1514 (XV) of 14 December 1960, the General Assembly referred, in the preamble, to "the principles of equal rights . . . of all peoples", but in Article 2 it declared that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"—this is from the *United Nations Yearbook 1960*, page 49.

Mr. MULLER: Are there international agreements on the rights of individuals?

Mr. POSSONY: No, there are not. There is the Human Rights Declaration of 1948. This declaration was issued by the General Assembly as a statement defining human rights in general terms so that on the basis of this declaration and of the ideas expounded in the declaration an international convention could be elaborated. In a formulation which recurred frequently at that time, for example, it was used by Mrs.



Roosevelt, the Universal Declaration of Human Rights is of a moral rather than a legal nature; it indicates goals rather than imposes obligations upon States.

Although the declaration was praised it was also criticized in the United Nations as not being complete; for example, there was criticism that the minority question was not taken up effectively. The General Assembly, in its resolution 217 (III) C of 10 December 1949, admitted: "It is difficult to adopt a uniform solution of this complex and delicate question which has special aspects in each State in which it arises"—*United Nations Yearbook 1948-1949*, page 544; additional references are *United Nations Yearbook 1947-1948*, pages 573-577 and the *Yearbook on Human Rights 1948*, page 461.

This very criticism was taken up in the first session which the Commission on Human Rights devoted to the drafting of a convention. The discussions dealt with the rights of ethnic, linguistic or religious minorities to establish and maintain schools, cultural and religious institutions, and to use their own language in the press, public assembly and before the courts. In this connection, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities referred to minorities as: "well-defined ethnic linguistic or religious groups, which are clearly distinguished from the rest of the population and which want to be accorded differential treatment." The quote is from the *Yearbook on Human Rights 1948*, page 461.

The drafting of the Human Rights Convention has been continuing ever since, though an initial draft for such a convention has been in existence since 1950. In addition considerable work has been done in dealing with specific rights such as minorities, women, information, education and many other issues arising under the heading of human rights. However, no international convention has resulted from this labour and no convention has been ratified, or is legally in force.

Mr. MULLER: From your study of the subject, can you say what are the difficulties holding up a convention?

Mr. POSSONY: Mr. President, I believe that the difficulties fall into two broad categories: those of an intellectual nature and those of a political nature. Among the intellectual difficulties, there is the realization that however binding and persuasive a particular right may be, many exceptions are legitimate and unavoidable. The practical difficulty, therefore, is to draft the relevant article in such a way that the right is formulated in a binding fashion and the legitimate exceptions allowed in such a manner that the fundamental right is not invalidated or that the exceptions do not take precedence and lend themselves to justifying non-compliance. It has proved difficult to link the rights of individuals with the rights of groups especially since the rights of groups, including the rights of States, have not yet been properly formulated; for rights of States there is not even an initial United Nations formulation. There is also the question of the balance between the various rights and the priority of certain rights. Finally, the whole complex of implementation in different social realities, the timing of a programme of realization, and the measurement of accomplishment—all these are wide-open questions.

Mr. MULLER: You also mentioned that some of the difficulties are of a political nature, will you state what you mean by that?

Mr. POSSONY: Politically, there is the problem of mutuality of control, supervision, and the very significant question of how a Member of the

United Nations who does not want to move in one or the other direction may be brought in line.

But perhaps the most important stumbling-block is the problem of sovereignty. If the whole effort is to be under United Nations supervision, and this seems to be the implication, then *ipso facto* the United Nations must gain direct and decisive influence upon the internal affairs of member nations. This would raise problems under Article 2 (1) of the Charter, not to mention the enormous complications which would arise in the political reality, such as the possible requirement of constitutional and statutory change.

In the interpretation of Charles Malik, the work on the International Bill of Rights was begun in what he calls "an initial impulse of our in-experience". This is again in Volume XIII of the United Nations *Bulletin*. There were to be three steps, as Mr. Malik explains it: a declaration defining the rights and freedoms theoretically; a series of covenants binding "adhering States" to the observance of the rights and freedoms elaborated in the declaration; and measures of implementation (I am quoting Mr. Malik again)—

"whereby the international community can be sure that human rights and fundamental freedoms, whether on the level of the Charter or of the Declaration or of the Covenants, are in fact being promoted and observed".

After the first step was completed in 1948 it was thought (and this is again Mr. Malik's evaluation) that the other two steps "would be forthcoming in speedy succession". Mr. Malik added in 1952:

"We have been grappling with them now for four years, and while much, indeed, has been accomplished during this time, the end is not yet in sight. We have all been sobered by the realization of the truly formidable task assigned to us."

Mr. Malik in this context referred to the—

"radical differences that obtain in the interpretation of Man among the effective cultures of the world, some stressing this, some stressing that side of his nature".

Mr. Malik's conclusion is as follows:

"We now know that the nobility and importance of our task is matched only by its inherent difficulty, and by the long time we must in all fairness allow for its unfolding."

Mr. MULLER: What are some of the exceptions to the rights which make drafting of a covenant difficult?

Mr. POSSONY: I can deal with this, Mr. President, by mentioning just certain examples. Thus Article 9 of the Draft Covenant on Civil and Political Rights formulating freedom of movement does not state all the exceptions that were identified, but carries a general exemption clause which reads as follows:

"Subject to any general law of the State concerned which provides for such reasonable restriction as may be necessary to protect national security, public safety, health or morals, or the rights and freedoms of others consistent with the other rights recognized in this Covenant."

Similarly the right to freedom of expression (Article 15) is said to carry with it "special duties and responsibilities" and it may be—

"subject to certain restrictions, but these shall be such only as provided by law and are necessary, first, for the rights or reputations of others; second, for the protection of national security or public order or of public health or morals".

Article 16, dealing with peaceful assembly, has the standard exception of the—

"interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others", restrictions which are "in conformity with the law and which are necessary in a democratic society".

In the Draft Convention on Freedom of Information elaborated in 1960, Article 2 enlarges the standard exception to include *ordre public*, this term is used in French because, according to the discussion, there is no proper English equivalent. The exceptions to freedom of information include:

"systematic dissemination of false reports harmful to friendly relations among nations, and of expressions inciting to war, or to national, racial or religious hatred . . . incitement to violence and crime, public health and morals, the right, honour and reputation of others and the fair administration of justice".

These difficulties are reflected in some of the Constitutions that have been drafted to comply with the principles of the Human Rights Declaration. Thus, for example, in the Constitution of Nigeria there recurs a standard exception clause which is worded as follows: "Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society." This phrase recurs very often, but I will not quote the various articles . . .

Mr. MULLER: How do the draft covenants attempt to deal with the problems of complying with the Human Rights Declaration relative, for instance, to the time factor?

Mr. POSSONY: The covenants include what might be called a principle of progressive realization. For example, an article of the Covenant on Economic, Social and Cultural Rights states that each party—

"undertakes to take steps, individually and through international co-operation, to the maximum of its available resources, with a view toward achieving progressively the full realization of the rights recognized in this Covenant by legislative as well as by other means".

This is quoted from the *Yearbook of the United Nations*, 1962, page 312. This wording, I may add, admits implicitly that even with maximum utilization of available resources, realization can only be gradual. It is notable that the article does not refer to difficulties other than limitations of resources. However, in the discussions of 1962—this is from the same source, and the reference is to page 313—the general inadequacy of resources was stressed.

In this regard it may also be mentioned that with respect to Article 22 of the Draft Convention on Human Rights, dealing with inequalities between husband and wife, it was argued that the particular paragraph "should be drafted for the future" so as "not to offend unnecessarily

those who accept long-established traditions and customs". This is in the *Yearbook*, 1961, at page 297.

Mr. MULLER: How do the draft covenants attempt to deal with the matter of minorities?

Mr. POSSONY: The Sub-Commission on Prevention of Discrimination and Protection of Minorities, after defining what it meant by the term "minorities", said that among these—

"are groups that need to be protected by special measures, national or international, so that they can preserve and develop the traditions or characteristics in question".

This is in *Yearbook on Human Rights 1950*, page 490. The Sub-Commission recognized the—

"undesirability of interfering with the spontaneous developments which take place when impact such as that of a new environment, or that of modern means of communication, produce a state of rapid racial, social, cultural or linguistic evolution".

This is again at the same place.

According to this Sub-Commission, the term "minority" includes only those groups which possess—

"stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population",

and—this is a paraphrase—who wish to preserve those differences.

Mr. MULLER: You have dealt with the attempts to draft a human rights covenant or covenants—how is the question of racial discrimination being dealt with in the United Nations?

Mr. POSSONY: I think this matter can best be discussed by referring first to certain developments which preceded the 1963 Declaration on Racial Discrimination, and then to discuss the Declaration itself.

Shortly after the founding of the United Nations a Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was created within the Economic and Social Council, and the meaning of "prevention of discrimination and the protection of minorities" was discussed. One good source for this is the publication by the Economic and Social Council E/CN.4/Sub. 2/40 of 7 June 1949, page 3. The Sub-Commission defined prevention of discrimination as the "prevention of any action which denies to individuals or groups of people equality of treatment which they may wish", this is on page 4. The protection of minorities who wish "for equality of treatment with the majority" may involve—

"a measure of differential treatment in order to preserve basic characteristics which they possess, and which distinguish them from the majority".

Protection applies equally to all, and differential treatment is justified "when it is exercised in the interest of their contentment and the welfare of the community as a whole". It is added that "the characteristics meriting such protection are race, religion and language".

The Sub-Commission argued (*ibid.*, p. 5) that the prevention of discrimination requires the "elimination of any distinctions imposed", while the protection of minorities would require "safeguards to preserve certain distinctions voluntarily maintained".

The Sub-Commission used the word "discrimination" in its pejorative

sense; by this it was meant that the term does not refer to all differentiations, but only to those "distinctions which have been established to the detriment of individuals belonging to a particular group".

In 1962 the Third Committee of the General Assembly was discussing Article 2 of the Draft Covenant on Economic, Social and Cultural Rights, whose paragraph 2 states that the parties undertake to guarantee that the rights—

"will be exercised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

This quote is from the *Yearbook of the United Nations 1962*, page 313. This wording concerning distinction was amended to read "without discrimination of any kind".

In deliberating about this change, the Committee unanimously held:

"that the protective measures taken by various States for the benefit of certain socially and educationally backward groups of the population were aimed at re-establishing equality and could not, therefore, be violations of Article 2".

Thus, protective differential treatment, which aims at establishing equality appears to be legitimate.

In grappling with the same problem, Unesco, in a Draft Convention against Discrimination in Education, dated 14 December 1960, defined discrimination as any distinction, exclusion, limitation or preference, which is based on race, colour, sex, language, religion, etc., and "has the purpose or effect of nullifying or impairing the quality of treatment in education" and, in particular, of depriving persons or groups of access to education or limiting such persons to a level of inferior standards. The full text is found in *Yearbook on Human Rights 1961*, page 437.

The Draft Convention specifically allowed separate educational systems for the two sexes and for religious and linguistic groups, provided the schools are equal (*ibid.*, pp. 437 ff.).

Article 5 of this draft specifically recognizes the rights of national minorities to carry on their own educational activities, including teaching in their own language, provided they are not prevented from understanding the culture and language of the community as a whole, and provided also that the standard of education is not lower than the general standard prevailing in the country. This is again at the same place, page 438.

According to Article 4, national policies on education should involve: "methods appropriate to the circumstances and to national usage", so that they will tend: "to promote equality of opportunity and of treatment in the matter of education."

This convention, Mr. President, is applicable only to the States adhering to it and can be denounced. (*Ibid.*, p. 439.)

Mr. MULLER: You have referred to the Declaration on Racial Discrimination of 1963. Would you briefly deal with that declaration?

Mr. POSSONY: Early in 1963, the Commission on Human Rights drafted the United Nations Declaration on all forms of Racial Discrimination. This draft was to serve as a draft convention. The *Yearbook of the United Nations 1963*, page 330, gives the details.

. In the draft preamble, the words "distinction" and "discrimination" are used but the differences between the two are blurred. The draft

preamble expresses concern about the manifestation of racial discrimination, which is imposed by certain governments in the form:

*"inter alia*, of apartheid, segregation and separation, as well as by the promotion and dissemination of doctrines of racial superiority and expansion in certain areas".

A preambular paragraph asserted that:

"any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous; and that there is no justification for racial discrimination, either in theory or in practice".

Furthermore, in another preambular paragraph, all forms of racial discrimination are linked: "with governmental policies based on the prejudice of racial superiority or on racial hatred."

The Declaration affirmed the "necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations, and of securing understanding of, and respect for, the dignity of the human person".

It called for "national and international measures" including teaching, education and information.

Article 2 (1) states that:

"no State, institution or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the grounds of race, colour or ethnic origin".

But Article 2 (3) states this:

"Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups, with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedom."

It is added to this: "These measures shall, in no circumstances, have as a consequence the maintenance of unequal or separate rights for different racial groups." This text is from the same source, page 345.

Article 5 calls for the abolition of what they call policies of apartheid. A definition might have been given to clarify when special concrete measures, taken to secure adequate development or protection of certain groups to ensure their full enjoyment of human rights and fundamental freedom, do or do not fall under the *rubrique* of objectional policies. This might have been useful, particularly because the draft International Convention on Racial non-Discrimination, which was issued subsequently, lumped together discrimination with "the evil racial doctrine and practices of Nazism in the past" and it also linked apartheid separation or segregation with racial discrimination. This is laid down in United Nations Economic and Social Council E/CN.4/873 and E/CN.4/Sub.2/241 of 11 February 1964, page 20, as well as the annex to the same issue of the Economic and Social Council.

The draft convention defines discrimination as: "any distinction, exclusion, restriction or preference" having the effect of "nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedom." It states, specifically, in Article 1 (2) that:

“measures giving preference to certain racial groups for the sole purpose of securing adequate development . . . shall not be deemed racial discrimination”,

provided they do not lead to the “maintenance of unequal or separate rights for different racial groups”.

The indiscriminate use of the terms racial discrimination, segregation, separation, apartheid, Nazism and the linkage of all these to racial superiority doctrines and doctrines of expansionism and racial hatred has no rational basis and leaves the whole subject in utter confusion.

The declaration has not resulted in a covenant.

Mr. MULLER: Have there, to your knowledge, been any recent developments under United Nations auspices relative to multi-ethnic societies?

Mr. POSSONY: Mr. President, apart from the fact that drafting work is continuing on the declarations and covenants covering numerous aspects of the human rights problem, there has taken place, between 8 and 21 June 1965, a seminar organized by the United Nations, in co-operation with Yugoslavia, at Ljubljana, Yugoslavia. This seminar dealt with the multi-national society.

Mr. MULLER: Can you tell the Court who participated in this seminar?

Mr. POSSONY: The seminar was described by the representative of the Secretary-General as the “first human rights seminar ever to be organized on a global basis”. However, the Secretary-General, after consulting the President of the Council and the Government of Yugoslavia, extended invitations to 27 governments, not including the Union of South Africa. The following countries participated: Argentina, Austria, Canada, Czechoslovakia, Ghana, India, Israel, Italy, Jamaica, Japan, Madagascar, Malaysia, Mali, Norway, the Soviet Union, the United Kingdom, the United States of America, Venezuela and Yugoslavia.

Mr. MULLER: What, in particular, was this seminar concerned with?

Mr. POSSONY: The representative of the Secretary-General, who is the Director of the Division of Human Rights, delivered an opening address, in which he said as follows:

“There are many minorities which want nothing better than assimilation and integration. There are, however, other minorities which want neither of these things but only to continue in the enjoyment, as minorities, of their traditional, cultural, social, political and economic rights and characteristics. It is with these latter minorities that we will be more particularly concerned at the seminar.”

If I may, at this point, give the source: United Nations publication, ST/TAO/HR/23, entitled *Seminar on the Multi-National Society*, and I was just quoting from page 40.

Mr. MULLER: What was the agenda of the seminar?

Mr. POSSONY: The agenda I will read from the text on page 6:

- “1. Measures which should be taken to ensure the realization of human rights and fundamental freedoms to all without discrimination.
2. Measures which should be taken to ensure the realization by ethnic, religious, linguistic or national groups, of the special rights necessary to enable them to preserve their traditions, characteristics, or national consciousness.”

Mr. MULLER: Was any consensus reached at the seminar relative to the matters on the agenda?

Mr. POSSONY: The main conclusion, Mr. President, is worded as follows, and it appears in paragraph 144a, page 35.

"There was general agreement that all Governments should promote and protect the rights of ethnic, religious, linguistic or national groups, not only through the adoption of constitutional and legislative provisions, but also through the promotion of all forms of activities consistent with the political, economic and social conditions of the State or country concerned."

The second conclusion, which I will skip, essentially deals with international agreements, exchanges, and contacts.

Then it says, in paragraph 145:

"The seminar expressed the view that the Secretary-General should organize other seminars, on a regional or global basis, to consider aspects of the problem of the multi-national society."

And paragraph 146:

"There was general consensus that the United Nations, as well as Government and institutions, should undertake measures and stimulate more intensive research on ethnic, religious, linguistic, and national problems."

Mr. MULLER: Can you mention particular matters which were under discussions at the seminar?

Mr. POSSONY: Yes, I can do this briefly under the following headings: (1) the nature of the minority problem; (2) language rights; (3) individual group rights; (4) the rights of ethnic groups; (5) assimilation; (6) types of solutions; (7) major findings of operational significance.

Mr. MULLER: First of all, with regard to the problem of minorities, what view was expressed?

Mr. POSSONY: Some speakers, Mr. President, stated that minority problems are not merely an issue of liberty, in the abstract, but of equality of opportunity; the problem is complicated by differences in cultural levels and living standards—this appears in paragraphs 30 and 53.

One participant commented that lack of cadres results in a strong tendency to centralization, and he recommended local self-government to encourage decentralization—this appears in paragraph 134.

Some participants noted that "... the unity and the cultural development of the country would be enhanced, rather than impaired, if all groups were assured their full rights for development"—this appears at paragraph 56.

Mr. MULLER: You said that certain views were also expressed with regard to language systems; kindly deal with that shortly.

Mr. POSSONY: There was general agreement that if a group wished to maintain its ethnic characteristics, it must be able to use its own language. In amplification of this point, the following was stated in paragraph 47:

"Discrimination by a State against a group which wished to use its own language in everyday life, was considered to be reprehensible. Noting the importance of the use of its language to the continued existence of a group, one participant pointed out that deliberate destruction of a group language was tantamount to 'cultural genocide'."



In further amplification, it was stated that—

“... it would be meaningless to safeguard the right of the present generation to speak its own language, if provisions were not made to ensure that future generations would learn that language from instruction given in autonomous schools”.

This appears in paragraph 52.

There was agreement that “. . . there were different ways in which to achieve the ends desired by the community”. (*Ibid.*, para. 53.)

Mr. MULLER: What views were expressed with regard to the inter-relationship between the groups and the individual?

Mr. POSSONY: Mr. President, the point was made repeatedly that group rights and individual rights do not necessarily coincide, and that both types of rights must be protected—in fact, there was understanding that human rights and group rights are interrelated and cannot be considered in isolation from one another. Some speakers thought that—

“... an assurance of equality and the right to integrate, however absolute, could never safeguard the survival of a minority group as a distinct entity. A group often had certain interests which were by no means identical with the individual interests of its members.”

This appears in paragraph 36.

According to paragraph 21, it was widely agreed—

“... that the seminar would have to examine the modes of reconciling the interests of a given group or individual with those of the community as a whole, and the relative advantages of, on the one hand, assimilation and integration, and on the other, the right of minorities to live a substantially autonomous life.”

Mr. MULLER: What views were expressed with regard to the rights of ethnic groups, as such?

Mr. POSSONY: The problem of deculturation was discussed, and it was deplored that many inhabitants of developing countries—

“... had been caught in the cross-current of an officially discouraged traditional way of life or an alien culture, to which they could never fully adjust. Today, therefore, every effort had to be made to awaken the masses to the needs of respect for their national or continental personality, while simultaneously striving for the attainment of modern objectives, and the elimination of anachronisms or stultifying superstition. Some of the participants added that the maintenance of indigenous traditions was greatly assisted in their countries by a policy of strengthening tribal institutions, such as the authority of local chiefs or by an enlightened codification of customary law.”

This, Mr. President, was laid down in paragraph 111.

According to paragraph 107, it was generally agreed that—

“... the right of autonomous action to ensure the preservation and continuity of a group's traditions and characteristics . . . provided the surest means of protecting its collective identity . . .”

The discussants recognized the right of an ethnic religious, linguistic or cultural group to transmit its heritage to its children—this is in paragraph 92.

Now, the size of the group was not considered to have a bearing on its rights: in connection with the discussion on language, the view was expressed:

"... that it would not be appropriate to impose a numerical criterion on the size of a group... the group might be small in number, but might enjoy a rich cultural heritage".

This is in paragraph 48.

Mr. MULLER: Did the discussions elucidate how the solution to these difficult problems is to be achieved?

Mr. POSSONY: It was agreed first, that the State is obliged to take "... protective action to safeguard the rights of minority groupings"—this is in paragraph 30. It was also agreed that the minority group "... should receive special protection designed to preserve its own traditional characteristics"—this is in paragraph 36. It was agreed second, that while "... it was the duty of every country to provide solutions for the problems of minorities... there were different ways in which to achieve the ends desired by the community"—this, Mr. President, is in paragraph 53. Now, paragraph 25 has this wording:

"Each group... had its own distinguishing characteristics, sometimes national, linguistic or religious, at other times racial or even economic."

Quoting from paragraph 94, participants noted:

"... that the methods and techniques used to provide educational facilities for ethnic, religious, linguistic, and national groups, varied greatly from country to country, and included educational networks of autonomous educational institutions".

I quote now from paragraph 25:

"Having regard to such diversity, no single formula could be devised with a view to seeking a uniform set of applicable principles or measures."

Mr. MULLER: Were any views expressed with regard to integration and assimilation of groups?

Mr. POSSONY: Integration was not praised as a panacea which would be applicable everywhere, and I quote from paragraph 33:

"It was the duty of the majority to recognize that, by encouraging a minority to preserve, if it so wished, its own cultural heritage, the State would, in the final analysis, be the principal beneficiary. Integration, therefore, should never mean the suffocation of the minority concerned."

Special attention was drawn to the fact that—

"... a policy of assimilation could lead to later difficulties and, in any event, had in several instances shown that the requirements of a group, even though scattered, had proved more compelling than a policy of assimilation" (para. 95).

A summary conclusion—appearing in the middle of the text, as a summary to a sub-seminar—was phrased as follows, in paragraph 120:

"Most participants believed that incentives should be offered by the State, even though there was no obligation in this respect, for the autonomous development of group characteristics and traditions."

Paragraph 107 says:

"Any attempt to impose a uniform cultural pattern led to monotony and blandness, while encouragement of variety helped the

assurance of harmonious coexistence between a country's varying ethnic, religious, linguistic, and national groups . . ."

Some speakers recalled—

" . . . how past attempts to attribute to one single group a monopoly of virtue, by reason of its alleged racial or historic superiority, had revealed the dangers inherent in a misdirected, centrally inspired, unity of purpose".

Mr. MULLER: Now, my final question relative to the seminar, were there any major findings of operational significance?

Mr. POSSONY: One major operational conclusion was that much more research is needed on ethnic, religious, linguistic, international problems—this is laid down and specifically stressed in paragraphs 58 and 87, and re-occurs in the general conclusions.

Another finding, which emerged, is best stated in the words of the report itself, in paragraphs 39 and 40:

"As regards international measures, some participants suggested the possibility of creating a United Nations High Commissioner, or Ombudsman, on Human Rights. Others were more inclined to favour the establishment of a small tribunal to consider complaints in human rights matters. It was pointed out, however, that in either cases there remained a number of serious obstacles: first, many States would consider any act of investigation or any declaration regarding them made by a commissioner or tribunal to be an intrusion into their domestic affairs, and an attempted infringement of their sovereignty; secondly, some States, particularly among those which had only recently, or relatively recently, attained independence tended to suspect the objectivity of such international organs; and thirdly, some of the biggest powers were often tempted by the propaganda possibilities of international bodies, and might introduce a political flavour into the judicial or quasi-judicial process."

And then I leave out a few words and come to this:

"For the time, therefore, several speakers urged more easily attainable objectives, in particular, the early adoption of the Draft International Covenants on Human Rights and a draft Convention on the Elimination of Racial Discrimination and Religious Intolerance, the ratification of which by a government would involve a binding commitment to carry the provisions into effect."

This, Mr. President, was in paragraph 40.

Mr. MULLER: Now, Professor Possony, I come back to a question which I intended to put to you here, but it was anticipated and put earlier in the examination, and that is that the Applicants contend that there is in existence an international norm of non-discrimination or non-separation which prohibits by governmental policies or actions the allotment of status, rights, duties, privileges or burdens on the basis of membership in a group, class or race, but rather on the basis of individual merit, capacity or potential. Now I will ask you the question again. Can you, from your experience and studies which you have made, state whether as usage and practice in the world there is, or has been, observance of such a rule or norm?

Mr. POSSONY: Mr. President, from what I have indicated to the Court with relation to the practice all over the world, there is no general

observance of such a rule or norm. And furthermore, from what I have said relative to attempts at formulation of a concept of effective practice, those attempts have progressed no further than expressions of general abstract ideas.

Mr. MULLER: My final question, Professor Possony is: With your experience of group differences in the world, would it be practicable and just to apply such a norm under all circumstances and at all times?

Mr. POSSONY: Mr. President, my answer to this question is no. Mankind with all its diversities has never accepted a single writ. To impose a single formula would be ideological imperialism.

Given the ideals of humanity—the hopes of advance as well as the promises of human rights—but given also a manifold reality, the best principle, it seems to me, is to tailor methods or responses to specific challenges.

An optimal solution can be optimal only in terms of a concrete situation.

A solution can be viable only if it respects the history of an area and is implemented in the same rhythm as the society living in that area is evolving.

As Hegel taught, reality is always reasonable in its own way. Reality can be changed, and of course it should be improved. But continuity and respect for the historical tradition remain as the unavoidable framework of human betterment.

Mr. MULLER: Thank you, Professor. That is my last question, Mr. President.

---



---

The publications of the INTERNATIONAL COURT OF JUSTICE may be ordered from any bookseller or from A. W. Sijthoff's Publishing Company, 1 Doezastraat, Leyden (Netherlands). For information regarding the sale of the Court's publications please write to the *Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10 (Switzerland)*, or the *Sales Section, United Nations, New York, N.Y. 10017 (U.S.A.)*.

The publications of the PERMANENT COURT OF INTERNATIONAL JUSTICE (1920-1946) are obtainable from Kraus Reprint Ltd., 9491 Nendeln, Liechtenstein, to which all requests should be addressed.

On peut se procurer les publications de la COUR INTERNATIONALE DE JUSTICE auprès des librairies spécialisées du monde entier et auprès de la société d'éditions A. W. Sijthoff, 1 Doezastraat, Leyde (Pays-Bas). Pour tous renseignements, prière de s'adresser à la *Section de la distribution et des ventes, Office des Nations Unies, 1211 Genève 10 (Suisse)* ou à la *Section des ventes, Nations Unies, New York, N.Y. 10017 (Etats-Unis)*.

On peut se procurer les publications de la COUR PERMANENTE DE JUSTICE INTERNATIONALE (1920-1946) auprès de Kraus Reprint Ltd., 9491 Nendeln, Liechtenstein. Pour tous renseignements, prière de s'adresser à cette société.

---