

United Nations GENERAL ASSEMBLY

EIGHTEENTH SESSION

Official Records



FOURTH COMMITTEE, 1479th
MEETING

Wednesday, 13 November 1963,
at 4.5 p.m.

NEW YORK

CONTENTS

	Page
<i>Requests for hearings (continued)</i>	
<i>Requests concerning Territories under Portuguese administration (agenda item 23) (continued)</i>	305

Chairman: Mr. ACHKAR Marof (Guinea).

Requests for hearings (continued)

REQUESTS CONCERNING TERRITORIES UNDER PORTUGUESE ADMINISTRATION (AGENDA ITEM 23) (A/C.4/600/ADD.4 AND 5) (continued)*

1. Mr. EL-SHAFEI (United Arab Republic) said that at the Committee's 1475th meeting his delegation had moved the postponement of the decision with regard to Mr. Galvão's request for a hearing because it had certain reservations concerning the statement made at that meeting by the United States delegation.

2. In his delegation's view the right of petition in relation to Trust and Non-Self-Governing Territories, as provided for in the United Nations Charter and developed by the General Assembly and the Trusteeship Council, must not be impaired in any manner, since that might prevent the General Assembly and the Trusteeship Council from properly discharging their responsibilities.

3. He had no intention of discussing the internal operations of the United States law or the relations between the executive and the judicial branches of the United States Government. He would therefore discuss the matter in relation to the Charter and the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (General Assembly resolution 169 (II)), in connexion with the necessity for providing essential guarantees for the free exercise of the right of petition.

4. In the light of section 11, paragraph 5, and section 27 of the Headquarters Agreement, the position of persons invited by the United Nations on official business could be assimilated to the position of experts on missions for the United Nations who were granted immunity in accordance with the provisions of the Convention on the Privileges and Immunities of the United Nations. The fact that the United States had not acceded to that Convention gave rise to two observations. First, some of the general provisions of the Convention were merely a codification of customary international law, inasmuch as they codified certain rules necessary for the functioning of international organizations which had been developed by the League of Nations and the United Nations. Secondly, Article 105, paragraph 1, of the Charter stated: "The Organization shall enjoy in the territory of each of its

Members such privileges and immunities as are necessary for the fulfilment of its purposes".

5. The relationship between extradition treaties and the problem before the Committee should be determined in the light of Article 103 of the Charter, which provided that: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

6. He did not intend to deal with the substance of the charges against Mr. Galvão but would point out that the political character of his act had been recognized through the granting of political asylum to him and that the United States authorities, in calling off the pursuit of the Santa Maria, had recognized that his acts had been of a political nature and not of the nature of piracy.

7. Mr. MESTIRI (Tunisia) said that the case of Mr. Galvão affected the right to petition the United Nations. The problem was predominantly political, although its political and juridical aspects were closely intermingled. In particular, he was concerned at the fact that the legal argument advanced by the United States representative had been based on two assumptions, both of which had political connotations: namely, who was a Portuguese and what was a crime. In the view of his delegation, a Portuguese was an inhabitant of the land situated between Spain and the Atlantic Ocean. The official Portuguese view, however, was that the Portuguese included Mozambicans, Angolans and even Goans, and he suspected that that view had been accepted in the 1908 Extradition Convention between Portugal and the United States. As to what constituted a crime, the United States representative had told the Committee that an allegation that criminal acts had been committed was sufficient grounds for the institution of extradition proceedings in the United States courts. Portugal's official view was that every nationalist fighter in a Portuguese-administered Territory in Africa was both a Portuguese and a criminal. By contrast, his country regarded a freedom fighter who killed Portuguese soldiers as a hero and not a criminal and was of the opinion that responsibility for the soldiers' deaths was borne by the Portuguese authorities who had sent them to Africa.

8. It was therefore obvious that the question was a political one and that the decision could not be left to the law courts in the United States. A very dangerous precedent likely to affect the right of petition might be created. If every time Portugal invoked the Extradition Convention on the grounds that a particular person was a Portuguese and a criminal, the United States courts had to deal with the matter, the implications for the United Nations would be very far-reaching.

9. His delegation would have voted in favour of granting a hearing to Mr. Galvão in any event, even had the larger issue raised by the United States representative

*Resumed from the 1475th meeting.

not arisen, because it felt that, regardless of his views on Africa and Africans, his experience of Mr. Salazar's régime, prisons and colonial system would be of interest. The circumstances of the case to which he had just referred strengthened his conviction that the Committee should grant a hearing to Mr. Galvão.

10. Mr. AZIMOV (Union of Soviet Socialist Republics) said that the statement by the United States representative at the 1475th meeting raised a question which went beyond the specific case before the Committee and involved an important principle—that of the ability of the United Nations to perform its functions without let or hindrance.

11. Under Article 2, paragraph 2, of the Charter, all Members were required to "fulfil in good faith the obligations assumed by them in accordance with the present Charter" and Article 2, paragraph 5, required them to "give the United Nations every assistance in any action it takes in accordance with the present Charter". The hearing of petitioners was an action taken in accordance with the Charter and was connected with one of the functions of the United Nations. Hence it was incumbent upon each Member State to help the United Nations in fulfilling that purpose. No attempt to impede the application of the provisions of the Charter or to avoid complying with them could be justified in any manner whatsoever, not even by invoking obligations under other international instruments. That was clearly specified in Article 103 of the Charter. In the circumstances, the attempt by the United States to justify the obstacles it raised in the way of the fulfilment of the purposes of the United Nations—in the current case the hearing of a petitioner—by invoking the 1908 Extradition Convention with Portugal was legally unsound and ran counter to the Charter.

12. Stress must be laid on the fact that, in the particular case with which the Committee was concerned, the point at issue was not the petitioner's legal status. The hearing of the petitioner was not an end in itself, but an action taken by the United Nations in promoting the fulfilment of its purposes. In the circumstances, a Member State which prevented a petitioner from appearing before the United Nations or threatened the inviolability of his person in the event of his entering the territory of the State in which the United Nations Headquarters was situated was acting not against an individual but against the United Nations as a whole and the fulfilment of its purposes under the Charter.

13. The question was thus of a general character and went beyond the context of the particular case with which the Committee was concerned. That circumstance was not mentioned in the opinion of the Legal Counsel (Conference Room Paper No. 2) ^{1/} which as a whole was unsubstantiated, legally one-sided and incorrect. The main law in that opinion was that the legal status of an individual was presented as the essence of the question. That was not the case. In view of the fact that the United States had extradition conventions with seventy-eight other States, it was legitimate to ask how the United Nations could fulfil its purposes in the matter of hearing petitioners without let or hindrance, if on each occasion the United States was to invoke an extradition agreement.

14. The obligations of the United States were clearly indicated in the Headquarters Agreement, section 27 of which stated that "its primary purpose" was "to enable the United Nations at its headquarters in the

United States, fully and efficiently, to discharge its responsibilities and fulfil its purposes". Thus the primary purpose of the Agreement was not to define the legal status of individuals. The categorical statement in section 27 that the Agreement was to be "construed in the light of its primary purpose" had been forgotten by the United States. The opinion of the Legal Counsel also failed to follow the interpretation of the Headquarters Agreement clearly stated in section 27.

15. The provisions of the other sections of the Headquarters Agreement were subordinated to its primary purpose, which was to enable the United Nations to discharge its responsibilities and fulfil its purposes. In section 11 it was provided that the United States authorities would not impose any impediments to transit to or from the Headquarters district of certain classes of persons. The crux of that obligation was that an individual proceeding to or from the United Nations Headquarters found himself in United States territory only in so far as the Headquarters was situated in that territory. His presence in United States territory was therefore temporary and contingent upon the main purpose of his journey, that of being present in the Headquarters district for the purposes of the United Nations. Consequently, the obligation on the part of the United States to ensure unimpeded transit to or from the Headquarters district and to afford any necessary protection to the persons concerned flowed from the international responsibilities and purposes of the United Nations. Furthermore, in section 12 the Headquarters Agreement clearly stipulated that the "provisions of section 11 shall be applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States". It followed that in such cases the United States could not be guided either by its own interests or by treaty or other obligations towards third parties.

16. Any attempt by the United States authorities to act otherwise, as in the present case, not only would amount to a violation of the obligations assumed by the United States under the Headquarters Agreement but would impede the fulfilment of the purposes of the United Nations. Thus the assertion by the United States representative that his country would be complying both with its obligations under the Headquarters Agreement and with those under the Extradition Convention was unfounded. Compliance with the latter could only be regarded as repudiation by the United States of the Headquarters Agreement and would create intolerable impediments to the work of the General Assembly and the United Nations.

17. The assertion that legal proceedings against the petitioner could be instituted in United States courts was equally unfounded, since it was an elementary and generally accepted principle of international law that a State could not justify a breach of its obligations under international treaties by invoking domestic legislation or by referring the matter to internal authorities. Furthermore, it was stated in section 25 of the Headquarters Agreement that the ultimate responsibility for the fulfilment of the obligations under the Agreement by the appropriate United States authorities rested with the Government of the United States.

18. The arguments adduced by the United States representative were therefore legally unfounded and had been advanced solely in order to justify an attempt by the United States to cause damage to the purposes of the United Nations. It indicated a dangerous and

^{1/} Subsequently circulated as document A/C.4/621.

harmful tendency to subordinate the purpose of the United Nations to actions of individual Governments.

19. Miss BROOKS (Liberia) regretted that the United States representative, in drawing the Committee's attention to the fact that under the Extradition Convention between the United States and Portugal the latter might institute extradition proceedings against Mr. Galvão, who was charged with having committed certain criminal acts, had not indicated the nature of those acts and had not informed the Committee whether or not the Portuguese Government had in fact notified the United States Government that extradition proceedings would be instituted against Mr. Galvão.

20. She had been interested to note from paragraph 7 of the opinion of the Legal Counsel that the Extradition Convention between the United States and Portugal contained the usual exception for any crime or offence of a political character, or for acts connected with such crimes or offences. Her delegation regarded Mr. Galvão as a political refugee and was of the opinion that it was as a political refugee that he had been granted asylum by a State Member of the United Nations.

21. With reference to the view expressed by the Legal Counsel in paragraph 12 of his opinion that such rights as inured to Mr. Galvão stemmed directly from the Headquarters Agreement and not from any provision of the Charter, she did not interpret section 13 (b) of the Headquarters Agreement as meaning that the United States was entitled to obstruct the functioning of the United Nations in so far as it related to the hearing of a petitioner, since such a hearing clearly implied transit to and from the Headquarters district. She felt that the Committee should uphold its principle of granting hearings to petitioners without distinction, even to petitioners who might support colonialist views. As for the host country, it should not impede the United Nations in the discharge of its responsibilities in relation to the hearing of petitioners and should ensure that such petitioners could come to the Headquarters district for the purpose of being granted a hearing and could leave it after they had been heard.

22. Mr. SAHNOUN (Algeria) said that the United Nations was based on the principle of its legal independence. That principle was enunciated in the Charter and no State was entitled to infringe its institutional sovereignty. Furthermore, it was obvious from section 27 of the Headquarters Agreement that the United States could not impede in any way the discharge by the United Nations of its responsibilities and the fulfilment of its purposes. No State could infringe the principle that a person invited by the United Nations within the context of the fulfilment of its purposes should not be impeded in his transit to or from the Headquarters district.

23. He hoped that the discussion would lead to the final solution of the problem.

24. Mr. DIAZ GONZALEZ (Venezuela) felt that the United States delegation had acted properly in warning the Committee regarding the possible legal consequences if Mr. Galvão was granted a hearing. His delegation was grateful to the Legal Counsel for his opinion on the question, but he felt bound to differ regarding many points in that paper. For one thing, the opinion did not seem to take into account section 27 of the Headquarters Agreement, according to which the Agreement was to be construed in the light of its purpose of enabling the United Nations to discharge its responsibilities. A person invited to its

Headquarters by the United Nations was clearly under the protection of the United Nations while he was there. It was true that such a person did not enjoy the immunities which accompanied diplomatic status, but he had immunity while crossing the territory of the United States on his way to and from the Headquarters district. Under section 11 of the Agreement, the United States could not impose any impediments to the transit to or from the Headquarters district of persons invited by the United Nations on official business. That provision would be meaningless if such persons did not enjoy immunity while in transit. It was obvious that the United Nations could not invite a person to the territory of the United States, but it could invite a person to the Headquarters district, where it had jurisdiction, and such a person was under its jurisdiction while in transit to and from Headquarters. He therefore could not agree with the Legal Counsel's view that the United Nations could not offer assurances to Mr. Galvão regarding his immunity.

25. It was not, of course, for the Committee to decide on the substance of the legal issue. The question for the Committee was whether it wished to invite Mr. Galvão. The legal problems would need to be settled between the Secretary-General and the United States authorities in accordance with the procedures laid down in the Agreement, which included the possibility of a request for an advisory opinion from the International Court of Justice. The Sixth Committee of the General Assembly might also be asked to study the question.

26. Mr. YOMEKPE (Ghana) said that the heart of the matter, in his delegation's view, was that the United States was refusing to carry out its obligations under Articles 104 and 105 of the United Nations Charter. While enjoying all the benefits accruing from the presence of the United Nations Headquarters in its territory, the United States was refusing to grant the Organization the legal privileges to which it was entitled.

27. It was pointed out in the opinion of the Legal Counsel that there was no precedent covering the present question, but the absence of precedents surely did not mean that there was no law. The opinion further stated that the rights of invitees stemmed from the Headquarters Agreement and not from the Charter, but it was clear that the Agreement itself was based on the Charter and should be considered in the light of Chapter XVI of the Charter. It was to be regretted that the United States was not prepared to allow the Organization to enjoy the privileges and immunities which were necessary for the fulfilment of its purposes. It was common knowledge that officials of the United Nations Secretariat were not allowed to enjoy the privileges to which they were entitled because the United States wished to be able to prosecute such officials under United States laws and to make them liable to United States taxation. The whole issue clearly needed careful study and he would strongly recommend that the Secretary-General should make every effort to bring the United States to implement the provisions of Article 105 in respect of Secretariat officials. He considered that it was the duty of the Secretary-General, in the light of Article 105, paragraph 3, to make the necessary recommendations to the General Assembly on the matter.

28. He did not think that there could be any objection to Mr. Galvão's being granted a hearing. The Fourth Committee had never rejected a request for a hearing, and it was undesirable for a precedent to be created

in that regard. He would therefore support the request, as he would support any request for a hearing which would assist the United Nations in fulfilling its obligations.

29. If the United States argument was allowed to stand, the question would arise whether the United Nations must have its own airports and hotels. As had been pointed out by other speakers, section 11 of the Headquarters Agreement laid down categorically that United States authorities must not impose any impediments to transit to or from the Headquarters district of persons invited there by the United Nations on official business, and that the appropriate authorities must afford all necessary protection to such persons while in transit. It was the duty of the United Nations to ensure that persons invited by it were able to arrive and depart safely.

30. His delegation considered that the matter needed more careful study by the Secretariat, since the paper which had been circulated did not cover all the aspects of the question.

31. Mr. HASHIM (Sudan) said that there were two questions for the Committee to consider: the first was whether Mr. Galvão should be invited to appear, and the second was the question of principle concerning the liability of petitioners to prosecution by United States courts.

32. With regard to the first point, his delegation had little sympathy for the views of Mr. Galvão and was not sure how useful his testimony would be to the Committee. He therefore had no strong views regarding the granting of a hearing.

33. With regard to the question of principle, his delegation viewed with concern the possibility of exercise by the United States of a supposed right to obstruct the access of petitioners to United Nations Headquarters, especially in pursuance of extradition agreements which might soon come to be considered anachronistic. At the same time, he recognized that the United States could not be asked to alter its legislation overnight. He would advocate a study by the United Nations and hoped that the United States would help the Organization to put an end to the present undesirable state of affairs. The matter might be considered by the International Court of Justice. In the meantime the Committee should address itself to the substantial matters on its agenda.

34. Mr. DIALLO Seydou (Guinea) agreed with the view of the Algerian representative that the General Assembly should take the opportunity to clarify the question of the safety of petitioners. If, on the one hand, the United Nations felt unable to invite Mr. Galvão, the right of petitioners to free access to the United Nations would be placed in doubt, whereas if Mr. Galvão came and was arrested no more petitioners would dare to come to the United Nations. The Secretary-General should be asked to ensure that the safety of petitioners was guaranteed. A General Assembly resolution on the matter might be appropriate. The problem was a grave one: if the United States was prepared to invoke an agreement with Portugal signed in 1908, it was also liable to invoke an agreement with South Africa signed in 1947. The real question was whether the United States wished to help the United Nations and allow it to function properly.

35. What he had said concerned the question of principle, not the particular question of Mr. Galvão's request. His delegation was not convinced that a Por-

tuguese former Inspector General of Colonies who had not been in Africa for seventeen years could give much useful information. It might be asked whether the practice of forced labour had ceased while Mr. Galvão had been Inspector General of Colonies. He was not particularly encouraged by the tone of Mr. Galvão's letter to the Chairman (A/C.4/600/Add.5). He was more interested in the struggle of the African people of the Portuguese Territories for independence than in the power struggle between Mr. Galvão and Mr. Salazar. It was therefore immaterial to his delegation whether Mr. Galvão appeared before the Committee or not.

36. Mr. EOUAGNIGNON (Dahomey) said that the question of granting a hearing to Mr. Galvão could be considered under two headings. The first question was whether Mr. Galvão would be able to give the Committee any information it had not already had from delegations and from the petitioners who had appeared before it for a number of years. In his delegation's opinion the answer was in the affirmative: Mr. Galvão had been a high Portuguese official and undoubtedly possessed unpublished information which had not been available to the petitioners. If only for that reason, he should be granted a hearing.

37. The second question was whether it had been wise to establish United Nations Headquarters in the territory of a committed country. The attempt by the United States representative to prevent Mr. Galvão's being granted a hearing had given the Committee food for thought. Perhaps consideration should be given to moving the Headquarters to a neutral country. When the United States had signed the Headquarters Agreement it should have revised any parts of existing treaties which might hamper the free operation of the Organization. The Legal Counsel had pointed out in paragraph 4 of his written opinion that the "Headquarters Agreement does not confer any diplomatic status upon an individual invitee because of his status as such". That was undoubtedly a defect in the Agreement which should be rectified.

38. The CHAIRMAN said that the Legal Counsel would make a statement in amplification of his written opinion.

39. Mr. AZIMOV (Union of Soviet Socialist Republics) suggested that the Legal Counsel should speak only at the end of the debate, after delegations had expressed their views.

40. Mr. BAYONA (Colombia), Mr. KING (United Kingdom), Mr. MUDENGE (Rwanda) and Mr. MUFTI (Syria) thought that the Legal Counsel should be allowed to make his statement immediately. He could speak again at the end of the debate if necessary.

41. Mr. KHALAF (Iraq) pointed out that according to rule 113 of the rules of procedure the Secretary-General or his representative might at any time make oral or written statements to any committee concerning any question under consideration.

42. Mr. AZIMOV (Union of Soviet Socialist Republics) said that if the Committee desired to hear the Legal Counsel immediately he would have no objection.

43. Mr. SALIFOU (Niger) suggested that in view of the importance of the debate the Legal Counsel's statement should be reproduced very fully in the summary record.

It was so decided.

44. Mr. STAVROPOULOS (Legal Counsel) said that he had asked to speak, not in order to correct the paper in which he had given his opinion (Conference Room Paper No. 2) or to give any additional information, but in order to provide some necessary clarification. It seemed to him that his paper was being called the Legal Counsel's "thesis", whereas it was promoting no thesis, and he did not want the Committee to go on discussing the matter under some misunderstanding.

45. He realized that the Legal Counsel's paper was most unpopular in the Committee. He could assure the Committee that it was equally unpopular with him, but it was his duty to give the Committee his honest opinion and that was what he had done.

46. The opinion he had given was not intended as an advocate's brief, because it did not press any particular argument. It reviewed the problem and the only conclusion it gave—which had been disregarded in the discussion of the law—was to be found in the first sentence of paragraph 6, viz: "It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvão concerning immunity from legal process during his sojourn in the United States". Several delegations had stated that they disagreed with the arguments and conclusions of the Legal Counsel of the Secretary-General. He would repeat: he was not pleading a particular case, for he made one point only. Could the United Nations give the man assurances and then let him come to New York and see him go to prison? If that happened, the matter could of course be submitted to arbitration, but meanwhile the man would be in prison.

47. He had said truthfully that the relevant treaty provisions were not clear on that particular point. The Committee was thus confronted with two problems. One was the Galvão problem and on that

problem the Committee would have to take a decision. The other was whether the legal question should be clarified in the future; in other words, whether some additional work should be done by the Secretary-General on the underlying principle regardless of the Galvão case—though it could of course be done for the Galvão case too if the Committee was prepared to postpone that issue. For the present, the question was whether the Committee could assure a petitioner that he could come to Headquarters safely so long as there was some uncertainty about the law. In his opinion, that could not be done—unless the petitioner were brought by boat and, from a position outside the territorial sea, were flown by helicopter to land at the Headquarters site, where he could certainly not be arrested. Since that, however, was quite impracticable, there was no way of assuring him that he would not be arrested.

48. In short, the Legal Counsel had not said that the case was clear and that the matter should be resolved one way or another. On the contrary, he had himself raised the possibility of arbitration. He had said one thing only: that it was impossible in all good conscience to give a man assurances that if he came to New York he would not be arrested.

49. He would add one further comment: his opinion as a lawyer was that, whether or not the text was unclear, the United Nations should be in a position to bring anyone to Headquarters in special conditions. That, however, was not the point: the point was whether it could be done or whether a way of doing it should be found. He shared the apprehensions expressed by several delegations that the Committee might be prevented from hearing a petitioner because he might be afraid to come to Headquarters.

The meeting rose at 6.5 p.m.