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Chairman: Mr. Enrique de MARCHENA
 (Dominican Republic).

AGENDA ITEM 37

Question of South West Africa: report of the Committee on South West Africa (A/3151 and Corr.1, A/C.4/338, A/C.4/L.442/Rev.1, A/C.4/443, A/C.4/L.444/Rev.1, A/C.4/L.445, A/C.4/L.446, A/C.4/L.447) (*continued*)

CONSIDERATION OF DRAFT RESOLUTIONS (A/3151 and Corr.1, annexes VI and IX; A/C.4/L.442/Rev.1, A/C.4/L.443, A/C.4/L.444/Rev.1, A/C.4/L.445, A/C.4/L.446, A/C.4/L.447) (*continued*)

1. Mr. KHOMAN (Thailand) said that the two draft resolutions appearing in annex VI, section (c), and annex IX, section (b), respectively, of the report of the Committee on South West Africa (A/3151 and Corr.1) represented the considered opinion of all members of the Committee regarding the steps which could at present be taken by the General Assembly in that connexion. As a member of the Committee on South West Africa, Thailand hoped that the Fourth Committee would be able to approve the draft resolutions.

2. The four-Power draft resolution (A/C.4/L.442/Rev.1) presented no problems, since it merely sought the General Assembly's approval and endorsement of the conclusions reached by the Committee on South West Africa. It had been said that the words "and endorses", in operative paragraph 4, were superfluous, approval and endorsement being synonymous; his delegation felt, however, that there was a great deal of difference between the two words. It also felt that there was every justification for the repetition of the recommendations of the Committee on South West Africa in the draft resolution, for they represented the essential actions without which the Mandatory Power could not be said to be carrying out its obligations under the Mandate.

3. His delegation would also support the two draft resolutions appearing in documents A/C.4/L.443 and A/C.4/L.444/Rev.1.

4. Thailand shared the view expressed by a number of delegations that the Committee should seek a new approach to the problem. Some interesting suggestions for a new approach had been put forward, one of which had now been embodied in the draft resolution submitted by Liberia (A/C.4/L.445). His delegation did not discount the usefulness of the suggestion but it felt that the Committee should exercise some caution, to

avoid placing the Secretary-General in an embarrassing position. If the Secretary-General was planning to visit South Africa, the fact that the General Assembly had authorized his visit might jeopardize the success of his efforts. If the General Assembly merely drew the Secretary-General's attention to the situation in the Territory, the Secretary-General would understand that the Assembly wished him to take the matter up on the occasion of his visit to South Africa and the Assembly could be sure that he would use all his tact and discretion in endeavouring to fulfil its wishes and that on his return he would report to the Assembly on what he had accomplished. In the existing circumstances, that seemed the best way to handle the matter.

5. The Philippine draft resolution (A/C.4/L.447) would serve the purpose admirably if sub-paragraph (b) were replaced by a paragraph drawing the Secretary-General's attention to the discussions which had taken place in the Fourth Committee on the subject of South West Africa. That would be a sufficient indication of the Assembly's desire that the Secretary-General should do his best to seek a settlement of the problem if and when the opportunity arose.

6. His delegation had no objection in principle to the Indian draft resolution (A/C.4/L.446) but it did not see how the Sixth Committee could help to solve the problem.

7. Another suggestion, which had been made by the Liberian representative at the 576th meeting, was that the Assembly might appoint a small committee to negotiate with the South African Government. His delegation had tried in the past to explore that possibility but had found that it would be very hard to put into effect, because of the difficulty of finding States that would be willing to serve on such a committee. There was no reason to believe that that was no longer the case.

8. The suggestion made by the Guatemalan representative at the 576th meeting, to the effect that a special commissioner should be appointed to negotiate with the South African Government was open to the same objections. Any one accepting that assignment would wish to be assured in advance that he would have the co-operation of the South African Government, which, as the Committee knew, was very difficult to obtain.

9. His delegation therefore felt that the procedure it had suggested was the most realistic. The Committee should first ask the Secretary-General to examine the situation with a view to determining what could be done, on the tacit assumption that he would bring up the problem when he conferred with the representatives of the South African Government. When the Assembly had received the Secretary-General's report on what he had accomplished, it would be in a better position to decide on the next step. Meanwhile, his delegation felt that the Assembly's best course would be to reaffirm its position and hope that the situation would improve.

10. His delegation reserved the right to speak again after a careful study of the new proposals.

11. Mr. SMOLDEREN (Belgium) said his delegation wished to welcome the Japanese representative to the Committee.

12. He would like the Indian delegation to explain two points in its draft resolution (A/C.4/L.446). The first was whether the question directed to the Sixth Committee concerned the legal obligations of the South African Government or the means of pressure that might be brought to bear on that Government by the General Assembly. If it were the former, it might be asked what purpose would be served by that new consultation after the opinions given by the International Court of Justice; if it were the latter, the Sixth Committee would answer that the remedies were those enumerated in the United Nations Charter and the League of Nations Covenant; and that since the means by which pressure might be exerted on the South African Government were essentially political, they did not lie within its competence. His second point concerned the phrase "either individually or jointly" in paragraph 1 of the draft resolution. States could of course take action individually; that was for their Governments to decide. But any action taken within the framework of the United Nations was of necessity collective.

13. Miss BROOKS (Liberia) said that the Committee had heard a number of suggestions for new approaches to the problem. Her delegation had submitted a draft resolution (A/C.4/L.445) embodying one of those suggestions, in the hope that the Committee would suggest amendments which might make it acceptable to the majority of members. The Philippine draft resolution (A/C.4/L.447) embodied a substantially identical proposal and she wondered if it would not be possible for the two delegations to combine their ideas and present a joint draft resolution.

14. Replying to a point raised by the Soviet Union representative at the previous meeting, she said that her delegation felt that the second paragraph of the preamble of the draft resolution in document A/C.4/L.443 should be retained. The same paragraph had appeared in General Assembly resolution 852 (IX), adopted on the subject in 1954, at which time the Committee had taken the view that the paragraph was advisable, or at least not objectionable. Since the Committee had already accepted the opinion of 11 July 1950 of the International Court of Justice¹ by approving that earlier resolution, her delegation saw no reason why the paragraph should not be retained. It therefore felt that a separate vote should be taken on the paragraph.

15. Mr. CARPIO (Philippines) drew attention to certain important differences between his delegation's draft resolution (A/C.4/L.447) and that submitted by Liberia (A/C.4/L.445).

16. Firstly, the Philippine draft resolution requested the Secretary-General to study the question of South West Africa, with a view to finding ways and means to achieve a satisfactory solution in accordance with the advisory opinions of the International Court of Justice. His delegation had emphasized the latter point,

because it felt it important that those opinions should be taken into consideration. Although the Assembly had decided that the Territory should be placed under the Trusteeship System, the International Court had expressed the opinion that the South African Government was not obliged to do so but that its obligations under the Mandate continued to exist. The phrasing of that paragraph of the resolution was designed to leave the Secretary-General free to negotiate for a settlement in line with the International Court's point of view if he could not obtain the South African Government's agreement that the Territory should be placed under the Trusteeship System.

17. Secondly, the Philippine draft resolution requested the Secretary-General to consult or negotiate with the South African Government, while the Liberian draft resolution called for negotiation only, thus restricting the Secretary-General's field of action.

18. Thirdly, the Philippine draft resolution requested the Secretary-General to report to the Assembly at its twelfth session, while the Liberian draft resolution set no date for the Secretary-General's report. His delegation felt it was important to maintain the momentum of the Committee's new action by setting a specific time for the report.

19. With regard to the Thai representative's suggestion that sub-paragraph (b) of the Philippine draft resolution should be deleted, he would leave that decision to the Committee. His delegation felt, however, that whatever request the Committee made should be definite enough to guide the Secretary-General; too vague a wording might leave the draft resolution open to misinterpretation.

20. His delegation did not think that its draft resolution would restrict the Secretary-General's activities in any way. It was broader than that submitted by the Liberian representative. He would point out, incidentally, that although the Liberian draft resolution referred to Article 76 of the Charter, Article 77 was the one relevant to the matter under discussion.

21. Mr. DORSINVILLE (Haiti) observed that at the 575th meeting he had stated his delegation's position with regard to the three draft resolutions in documents A/C.4/L.442, A/C.4/L.443 and A/C.4/L.444. He was happy to note that the amendments to draft resolution A/C.4/L.442 proposed by the Tunisian representative (574th meeting) and to draft resolution A/C.4/L.444 proposed by the Guatemalan representative (576th meeting) had been accepted, and he would support those draft resolutions in their revised form.

22. The third Liberian draft resolution (A/C.4/L.445) and the Philippine draft resolution (A/C.4/L.447) were very similar and he wondered whether it would not be possible for the sponsors to pool their ideas and produce a joint text. He observed that there was no mention in either of them of the appointment of a United Nations commission or commissioner, as had been suggested in the course of the debate.

23. With reference to the Indian draft resolution (A/C.4/L.446) he did not quite see the point of paragraph 1. He hoped that the Indian delegation would give some further explanations in order to enable him to come to a decision. He reserved the right to speak again on the matter after the Indian representative had spoken.

24. Mr. RAMAIAH (India), replying to the representative of Belgium, pointed out that under article 7

¹ *International status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128.* (Transmitted to Members of the General Assembly by the Secretary-General under cover of document A/1362.)

of the Mandate the Mandatory agreed that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or application of the provisions of the Mandate, such dispute, if it could not be settled by negotiation, should be submitted to the Permanent Court of International Justice. The action contemplated by the Indian draft resolution would be a reference by a former Member of the League of Nations and would thus be subject to the compulsory jurisdiction of the International Court, as distinct from the opinion already given, which was advisory only. The Mandate had clearly envisaged action taken by one Member or several Members and that fact explained the use of the expression "acting either individually or jointly" in paragraph 1 of the draft resolution. The proposed reference to the Sixth Committee would be in accordance with the terms of General Assembly resolution 684 (VII). It was not proposed to ask for the Sixth Committee's advice with reference to action of a purely political nature.

25. He reserved the right to speak again later.

26. Mr. LOOMES (Australia) said he would not deal with the substance of the question for the time being but, like the representative of Haiti, would like some guidance regarding the procedure the Indian draft resolution entailed. That draft resolution was in the name of the Fourth Committee. On the other hand, the Committee had before it two substantive draft resolutions, one proposed by the Philippine and one by the Liberian delegation, which were intended for adoption by the General Assembly. If the Indian proposal was meant to be a preliminary procedural motion it should logically be dealt with first. It appeared to him to suggest that the General Assembly should take no action until the Sixth Committee's report had been received. If that were so, consideration of the Philippine and Liberian draft resolutions should be deferred until then.

The meeting was suspended at 4.25 p.m. and was resumed at 4.40 p.m.

27. Mr. Krishna MENON (India) recalled that the Territory of South West Africa had been placed under the administration of the Union of South Africa in accordance with the provisions of the Mandates System. Although the mandates as operative instruments in the form in which they had originally been framed had ceased to have effective existence when the League of Nations had been dissolved, the obligations which the Union of South Africa, as the Mandatory Power, had assumed towards the international community were still valid. The Union Government seemed to regard itself as a residuary legatee of the League of Nations. His delegation opposed that view, because it was obvious that the United Nations, in its corporate capacity, had inherited the position of the League. That view formed part of the advisory opinion of the International Court.

28. Article 22 of the Covenant of the League of Nations conferred certain rights and obligations, and was based on the conception that the tutelage of the so-called backward peoples was entrusted to the so-called advanced nations. That constituted a sacred trust which could not be dissolved by conferring all the obligations upon the trustee. The sacred character of the mandate was imperishable, for if it was perishable, the entire foundation of the United Nations would disappear.

29. The Mandates System had represented an advance over colonialism in that it had been based on the concept of the sovereignty of peoples. Earlier ideas of sovereignty had given way to the modern concept that the rights rested in the people, and to the extent they were dominated, the sovereignty was latent in them. In the case in point, sovereignty rested with the people of South West Africa; it had not been conferred upon the Mandatory Power. The purpose of self-government was to make the latent sovereignty potent and that was the function and the purpose of the Mandates System.

30. Under Article 22 of the Covenant of the League of Nations, which had established the Mandates System, the well-being and the development of the peoples of the mandated territory constituted a sacred trust of civilization. Article 22 likewise made it clear that the primary obligation upon the Mandatory Power was that of accountability. Every function and every authority exercised by the Mandatory Power on the people of the mandated territory was subject to the supervisory jurisdiction of the international community. That accountability could not be destroyed because sovereignty rested in somebody else.

31. The question at issue was what procedure would best enable the Mandatory Power to fulfil that obligation of accountability. The other Mandatory Powers had settled the issue by voluntarily contracting Trusteeship Agreements with the United Nations. There could of course be no compulsion by the United Nations, but the Charter must be read as a whole, and Article 80 should not be interpreted as giving grounds for delay in placing mandated territories under trusteeship. The founders of the United Nations had provided only the trusteeship machinery and while it was arguable that procedurally there was no obligation to use it, the obligation of accountability still remained. His delegation did not suggest that the Trusteeship System was the only conceivable system whereby the issue could be resolved. Had the United Nations Charter provided for an alternate solution or had the Union Government itself suggested one, those alternates should also have provided for accountability to the United Nations. The Union Government had claimed that, with the demise of the League of Nations, its obligations to the international community with regard to the administration of the Territory had terminated. By having integrated the Territory into the Union, it was seeking to deny that the obligation of accountability was still incumbent upon it or that a separate sovereignty was vested in the people.

32. The Union Government itself, however, had not always held that position. By its acceptance of the resolution adopted by the League of Nations Assembly on 18 April 1946,² it had recognized that upon the termination of the League's existence the latter's functions with regard to mandated territories had been bequeathed to the United Nations. That resolution had specifically referred to Article 22 of the Covenant and had noted that the principles embodied therein were the basis of Chapters XI, XII and XIII of the Charter. It had likewise noted the League's intention that the Powers administering territories under the Mandates System should continue to administer them in such a way as to promote the well-being and development of their peoples in accordance with the obligations in the

² See League of Nations, *Official Journal, Special Supplement No. 194*, pp. 278-279.

mandates until other arrangements were made between the United Nations and the Mandatory Powers. There was thus an instrument in the United Nations capable of enabling South Africa to carry out its obligations. The meaning of that resolution was that, pending a trusteeship arrangement for the Territory, the Union of South Africa was bound to honour its obligations under the Mandate. That view had been accepted by the Union Government and expression had been given to it in the United Nations by representatives of the Union Government in 1946 and later. The Union's responsibilities under the Mandate had been regarded as necessarily unalienable. Furthermore, in a letter dated 23 July 1947 (A/334), the South African delegation had referred to a resolution of the Union Parliament stating that the Government intended to render reports to the United Nations on its administration of South West Africa, and had recognized that the Government had no alternative but to retain the *status quo* in the Territory. Thus, on its own admission, the Union Government was still under an obligation to render an account of its administration of the Territory to the United Nations.

33. However, in a letter dated 25 March 1954, from the permanent representative of the Union of South Africa to the United Nations, addressed to the Chairman of the Committee on South West Africa (A/2666, annex I, section (c)), the Union Government had gone back on its earlier position, maintaining that since the demise of the League of Nations it was under no obligation to submit reports or petitions to any international bodies. In that letter it had stated that it was prepared to enter into an arrangement with the three remaining Allied and Associated Powers. Since, however, international law regarded the Allied and Associated Powers as having been merged in the League when they signed the Covenant, any reference to them was anachronistic. Presumably all the signatories to the Covenant had thus undertaken the rights and obligations that the former Allied and Associated Powers had had in that regard.

34. The question of South West Africa was particularly important because it constituted a test case which challenged the whole concept of human rights and of the independence of peoples. The inhabitants of the Territory had lost their identity and had been absorbed into the territory of a neighbouring nation, which had not even granted them equality with its own citizens but had placed them under the jurisdiction of its own Native Affairs administration. Under the very eyes of the United Nations, a Member State, defying the principles of the Mandates System, had set out to create an empire. The United Nations would be abdicating its responsibility if it allowed such a precedent to be established.

35. The fact that the United Nations had not succeeded in persuading the Union Government to place the Territory of South West Africa under the Trusteeship System did not mean that its efforts on behalf of that Territory had been a total failure. Many formerly subject countries had similarly endured frustrations and set-backs before finally winning their struggle for independence. In the present case world opinion had been mobilized and the facts of the situation had been clarified. The United Nations should now try to determine what legal remedies were open to it. Article 7 of the Mandate had made it clear that no unilateral decision to change the status of the Territory could

be taken. That would mean that in the present case the consent of the United Nations on the one hand and of the Union Government on the other would have to be obtained before a change in the status of the Territory could be effected. Furthermore, article 7 of the Mandate had provided that should any dispute arise between the Mandatory and another Member of the League of Nations relating to the interpretation or application of the provisions of the Mandate, such dispute, if it could not be settled by negotiation, should be submitted to the Permanent Court of International Justice. The Mandate thus imposed a compulsory obligation to accept the jurisdiction of the Court. Since the International Court of Justice was the successor to the Permanent Court of International Justice, the International Court of Justice should deliver a judgement in the matter rather than confining itself to issuing an advisory opinion.

36. The Belgian representative had asked for an explanation of the words "individually or jointly" in the Indian draft resolution. That wording was based on the fact that while article 7 of the Mandate had referred to "another Member of the League of Nations", in the singular, his delegation held that if one Member had the right, a number of Members could exercise it collectively.

37. The draft resolutions proposed by the Liberian and Philippine delegations expressed the general concern with regard to the question. He would submit, however, that the procedure they proposed was not advisable. That remark did not imply any lack of confidence in the Secretary-General but was based, firstly on the practical consideration that the Secretary-General was already heavily burdened and that if the General Assembly was going to contract the habit of asking him to deal with every question that might arise it would be shifting its own responsibilities onto his shoulders; secondly, if it were true, as had been suggested, that the Secretary-General was to visit South Africa shortly, it was important that his hands should not be tied by a General Assembly resolution. Any persuasion the Secretary-General might be able to exert would by its nature be entirely private. By the adoption of a resolution, however, world public opinion would necessarily be involved.

38. For those reasons he was sceptical of the wisdom of adopting draft resolutions such as those before the Committee. Furthermore, as far as he was aware, the suggestion had not been discussed with the Secretary-General himself. All those factors should be taken into account in considering the matter. He would suggest suspending consideration of the draft resolutions for a time. Of the two draft resolutions, the Indian delegation was inclined to prefer that proposed by the Philippine representative, but it hoped that neither of them would be put to a vote for the time being.

39. The question had been raised of the effect the Indian draft resolution would have on the other draft resolutions before the Committee. His reply was that it would not affect them in any way. It was a supplementary motion. The Indian delegation would vote in favour of the draft resolutions in documents A/C.4/L.442/Rev.1, A/C.4/L.443 and A/C.4/L.444/Rev.1 and hoped that they would be adopted unanimously.

40. It had also been asked what was meant by the expression "What legal remedies are open . . ." The Indian delegation had not had in mind the application

of sanctions or any such action; it had merely meant that the Sixth Committee should examine and define the legal obligations arising from the Mandate.

41. Another member of the Committee had asked why the Indian delegation proposed referring the matter to the Sixth Committee. His delegation had no desire to shift the responsibility to the Sixth Committee, but it was that Committee's function to examine such questions; its opinion would have the weight of a body of legal experts, and moreover it would be able to consider the matter objectively without the influence of political considerations. It would refer the matter back to the Fourth Committee as the Committee responsible for the item and the Fourth Committee would then form its own judgement and submit its decision to the General Assembly.

42. Some doubt had been expressed whether the Fourth Committee would be doing right in referring the matter direct to the Sixth Committee. He understood that similar action had been taken in the past; he could see no objection to it but if the Committee would prefer the question to be referred first to the President of the General Assembly for reference to the Sixth Committee he would be quite willing to agree. The Sixth Committee would undoubtedly be able to deal with the matter at the present session, for he understood that it was nearing the end of its agenda and would shortly adjourn, subject to recall at any time before the end of the session.

43. He commended the Indian draft resolution to the Committee's consideration and hoped that the General Assembly would see in it another possible method of dealing with a question which had been before the United Nations for many years. It was essential to exercise restraint, particularly in view of the absence of the South African delegation, which the Indian delegation deeply regretted.

44. The Indian proposal would provide a further means of utilizing the machinery of the International Court of Justice. The Court had so far done only what it could within the scope of the question put to it, but it could be asked for more; that was why the Indian delegation had submitted its draft resolution.

45. The CHAIRMAN pointed out that it was customary for questions to be referred from one Committee of the General Assembly to another through the President of the General Assembly. It had often been decided, however, that two Committees should sit jointly to deal with some question that concerned them both.

46. Mr. MENON (India) said he would have no objection to either proposal; all his delegation wanted

was that the final draft resolution submitted to the General Assembly should have the weight of two Committees behind it.

47. Mr. CARPIO (Philippines) said he would like some further clarification of the Indian draft resolution.

48. He wondered whether its effect would be that no action would be taken by the Fourth Committee until the Sixth Committee had rendered a legal opinion. He was aware that the Indian representative had replied to the question, but in the light of his own experience his opinion was that little would be gained by consideration of the matter by the Sixth Committee. There were probably as many legal experts in the Fourth Committee as there were in the Sixth Committee and in view of the difficulties in the way of a group of eighty lawyers emitting a definite legal opinion it was probably too much to hope that by the end of January a satisfactory opinion would be transmitted to the Fourth Committee on the legal remedies mentioned in the draft resolution.

49. The second and more important question was what would be the advantage of referring the matter to the Sixth Committee rather than to the International Court of Justice, which under Article 92 of the Charter was the principal judicial organ of the United Nations.

50. Finally, he was still not clear about the meaning of the expression "either individually or jointly".

51. He wondered whether in the opinion of the Indian delegation it would not be better to enumerate all the legal remedies envisaged, or at least some of them, to preclude any possible misinterpretation or misapprehension on the part of the Sixth Committee.

52. The Indian representative had suggested that one question that might be asked was whether or not the Union Government was entitled unilaterally to change the legal status of the Territory. He believed, however, that the International Court of Justice had already answered that question in the negative.

53. The Indian representative had expressed the view that the course of action proposed in the Philippine and Liberian draft resolutions would not be the best. The United Nations had been discussing the question of South West Africa for ten or eleven years and so far no better solution had been presented. He wondered whether the Indian delegation had any better solution to offer.

The meeting rose at 5.50 p.m.