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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.445/Rev.2, A/C.4/L.446, A/C.4/L.447/Rev.1) (*continued*)

CONSIDERATION OF DRAFT RESOLUTIONS (A/C.4/L.445/Rev.2, A/C.4/L.446, A/C.4/L.447/Rev.1) (*continued*)

1. The CHAIRMAN drew attention to the motion proposed at the previous meeting by the delegation of Denmark that the Committee should not take a vote on the draft resolutions before it, on the understanding that the Secretary-General would, in the exercise of his normal functions, give the matter his serious attention and, when he deemed it appropriate, submit to the General Assembly his comments and suggestions as to ways and means conducive to a satisfactory solution of the question of South West Africa.

2. That motion was in effect a motion for adjournment of the debate. At the previous meeting one delegation had supported that motion and two had opposed it. Under rule 117 of the rules of procedure, one further delegation might speak in support of the motion before it was put to the vote.

3. Mr. KHOMAN (Thailand) said he would support the Danish motion. The purposes of the Liberian draft resolution (A/C.4/L.445/Rev.2) and the Philippine draft resolution (A/C.4/L.447/Rev.1) would best be served by acquainting the Secretary-General with the Committee's wishes, which had been made quite clear in the course of the debate.

At the request of the representative of Denmark, a vote was taken by roll call.

Hungary, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Italy, Netherlands, New Zealand, Pakistan, Portugal, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France.

Against: India, Indonesia, Iraq, Liberia, Mexico, Peru, Poland, Romania, Syria, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Afghanistan, Albania, Argen-

tina, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti.

Abstaining: Israel, Japan, Philippines, Yugoslavia, Burma.

The motion was rejected by 30 votes to 18, with 5 abstentions.

4. Mr. RODRIGUEZ FABREGAT (Uruguay) said that he had arrived too late to take part in the vote. Had he been present, he would have voted against the motion.

5. Mr. SMOLDEREN (Belgium) said he had voted in favour of the motion in view of the statement made at the 579th meeting by the Under-Secretary, concerning the Secretary-General's position.

6. The CHAIRMAN asked the members of the Committee to vote on the Liberian draft resolution (A/C.4/L.445/Rev.2) and the Philippine amendments (A/C.4/L.449 and Corr.1) and the Thai amendments (A/C.4/L.450) to that draft resolution.

The first Philippine amendment (A/C.4/L.449 and Corr.1, para. 1) was rejected by 27 votes to 4, with 19 abstentions.

7. Mr. TAZHIBAEV (Union of Soviet Socialist Republics) suggested the insertion of the word "former" between the words "eleven" and "mandated" in the second Philippine amendment (A/C.4/L.449 and Corr.1, para. 2). As the text stood, it implied that all eleven territories including ten former mandated territories, which had now become Trust Territories, were still under mandate, which did not correspond to the facts.

8. Mr. PACHACHI (Iraq) suggested that the best course would be for the representative of the Philippines to withdraw his second amendment and for the words "Class B and C" to be inserted in the first paragraph of the Liberian draft resolution, between the words "under" and "mandate".

9. Mr. CARPIO (Philippines) thought that the wording "Considering that, of the eleven former mandated territories under Class B and C . . ." might satisfy both the USSR and Iraqi delegations.

10. Mr. PACHACHI (Iraq) thought it unnecessary to say "the former mandated territories". If his proposal were adopted there could be no ambiguity.

11. Mr. KHOMAN (Thailand) argued that the Committee could not insert the word "former" between "eleven" and "mandated territories" since those eleven territories included South West Africa, which both the General Assembly and the International Court of Justice had declared to be still a mandated territory. It was the contention of the South African Government that the Mandate had lapsed.

12. Either the Liberian draft resolution as it stood or the amendment proposed by the delegation of Iraq would be acceptable to his delegation.

13. Mr. TAZHIBAEV (Union of Soviet Socialist Republics) disagreed with the representative of Thailand; he was ready to support the Iraqi proposal.

14. The CHAIRMAN said he had been informed by the representative of Liberia that she would accept the Iraqi amendment.

The second Philippine amendment (A/C.4/L.449 and Corr.1, para. 2) was rejected by 35 votes to 3, with 15 abstentions.

The first paragraph of the preamble of the Liberian draft resolution (A/C.4/L.445/Rev.2), as amended by Iraq, was adopted by 42 votes to none, with 10 abstentions.

The third Philippine amendment (A/C.4/L.449 and Corr.1, para. 3) was adopted by 8 votes to 2, with 43 abstentions.

The second paragraph of the preamble of the Liberian draft resolution (A/C.4/L.445/Rev.2) was adopted by 32 votes to 8, with 15 abstentions.

15. Mr. CARPIO (Philippines) withdrew his fourth amendment (A/C.4/L.449 and Corr.1, para. 4).

The third paragraph of the preamble of the Liberian draft resolution (A/C.4/L.445/Rev.2) was adopted by 41 votes to none, with 11 abstentions.

The fourth paragraph of the preamble of the Liberian draft resolution was adopted by 36 votes to none, with 17 abstentions.

The amendment (A/C.4/L.450, para. 1) proposed by the delegation of Thailand to operative paragraph 1 of the Liberian draft resolution was rejected by 19 votes to 17, with 12 abstentions.

The fifth Philippine amendment (A/C.4/L.449 and Corr.1, para. 5) was adopted by 13 votes to 3, with 34 abstentions.

Operative paragraph 1 of the Liberian draft resolution (A/C.4/L.445/Rev.2), as amended, was adopted by 30 votes to 2, with 17 abstentions.

16. Mr. KHOMAN (Thailand) withdrew his delegation's second amendment (A/C.4/L.450, para. 2).

17. Mr. TAZHIBAEV (Union of Soviet Socialist Republics) asked for a separate vote on the final part of operative paragraph 2 of the Liberian draft resolution (A/C.4/L.445/Rev.2), reading "and the advisory opinion of the International Court of Justice", which he would like to see deleted.

The final part of operative paragraph 2 was retained by 20 votes to 9, with 18 abstentions.

Operative paragraph 2 of the Liberian draft resolution, as a whole, was adopted by 20 votes to 9, with 24 abstentions.

The sixth Philippine amendment (A/C.4/L.449 and Corr.1, para. 6) was rejected by 24 votes to 14, with 13 abstentions.

Operative paragraph 3 of the Liberian draft resolution (A/C.4/L.445/Rev.2), as a whole, was adopted by 29 votes to 8, with 15 abstentions.

At the request of the Haitian representative, a vote was taken by roll call on the amended Liberian draft resolution as a whole.

Iran, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Iraq, Liberia, Mexico, Pakistan, Peru, Philippines, Poland, Syria, Tunisia, Uruguay, Venezuela, Yugoslavia, Afghanistan, Argentina, Brazil, Chile, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Guatemala, Haiti, Honduras.

Against: Italy, Sweden, Thailand, Australia, Belgium, Canada, Denmark, Finland, France, India.

Abstaining: Japan, Netherlands, New Zealand, Portugal, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Austria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, China, Czechoslovakia, Ethiopia,¹ Indonesia, Israel.

The amended Liberian draft resolution, as a whole, was adopted by 24 votes to 10, with 20 abstentions.

18. Mr. CARPIO (Philippines) withdrew his draft resolution (A/C.4/L.447/Rev.1) since it paralleled the Liberian draft which had just been adopted.

19. The CHAIRMAN asked the Committee to consider the Indian draft resolution (A/C.4/L.446).

20. Mr. ROLZ BENNETT (Guatemala), on behalf of his own delegation and the other sponsors, presented the amendments in document A/C.4/L.451. The reason they had proposed consulting the Committee on South West Africa rather than the Sixth Committee with regard to the legal aspects of the South West African problem was that the Committee on South West Africa had been set up by the General Assembly for the express purpose of studying that problem and was already familiar with it. Hence it was better qualified than any other body to determine what legal remedies might be taken. If that view were adopted, then logically the second and third paragraphs of the preamble to the Indian draft resolution would be deleted, since they referred to the Sixth Committee. It was also proposed that the word "remedies" should be changed to "action" because it was felt that the latter term was more appropriate from the legal point of view. The Liberian draft resolution sought to open the way to negotiations with the Union Government in an effort to find a new method of settling the problem of South West Africa; the Indian draft resolution as amended, far from being in conflict with the Liberian draft resolution, would supplement it by providing a way of exploring the legal aspects of the problem. The amended Indian draft resolution, moreover, would not in any way prejudice the action that might eventually be taken by the Assembly. Finally, the adoption of the draft resolution as amended would strengthen the Committee on South West Africa.

21. He reserved the right to refer to the matter subsequently if necessary.

22. Mr. GRILLO (Italy) said he would like to clarify some legal points which had been brought up at the 581st meeting. The Indian representative had been right in maintaining that the advisory opinion given by the International Court of Justice in July 1950² had made it clear that the Union Government was under an obligation to accept the compulsory jurisdiction of the Court, in accordance with the terms of article 7 of the Mandate and Article 37 of the Statute of the

¹ See paras. 29 and 30, below.

² *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.)

Court. What he himself had been trying to point out was that unless it were enforceable, any verdict of the Court would remain a dead letter. The General Assembly had only the power to adopt recommendations. Article 94, paragraph 2, of the Charter provided for recourse to the Security Council when a party to a case failed to perform the obligations incumbent upon it under a judgement rendered by the Court. The question of enforcing decisions of the Security Council came within the scope of Chapters VI and VII of the Charter. He had also been reminded that Article 6 provided a legal remedy in that a Member which had persistently violated the principles of the Charter might be expelled from the Organization by the General Assembly upon the recommendation of the Security Council. If that was all that was meant by "legal remedies", he could not see why it was necessary to ask the Sixth Committee to confirm it. The difficulty was to reach a decision in the Security Council. The Members of the United Nations should direct their efforts towards obtaining the co-operation of the Union Government.

23. Mr. RIVAS (Venezuela) said it was not possible to judge what legal remedies might be open to the organs of the United Nations without first determining what peaceful means of solving the problem were available. The sponsors of the joint amendments had not wished to imply any lack of confidence in the legal ability of the Sixth Committee, but had felt that since the Committee on South West Africa was a specialized body with experience in the matter, it was the body best qualified to study the problem from the point of view of the available legal remedies. Furthermore, it had already established a procedure for examining information, and an advisory opinion had been received from the International Court of Justice to the effect that that Committee might grant oral hearings to petitioners.³

24. Mr. OSMAN (Egypt) associated himself with the comments made by the representatives of Guatemala and Venezuela.

25. Miss BROOKS (Liberia) said that although she had been instructed to vote against the Indian draft resolution, she had received no instructions on the amendments; and in view of their underlying intention, she would merely abstain from the vote on the amendments.

26. Mr. CARPIO (Philippines) wondered what was the difference in meaning between "remedies" and "action". He feared that since the word "action" was in the singular, it might be understood to mean that only one action could be taken. He thought the word "remedies" more appropriate; if the word "action" was to be retained, however, it should be in the plural, or in the form "action or actions".

27. Mr. RIVAS (Venezuela) pointed out that the word "remedies" in the Indian draft resolution had been translated by the word "*medios*" in Spanish which was felt to be less harsh than "*remedios*". The Spanish word "*medida*" had likewise been considered too strong, in view of the fact that it was desired to avoid using a term that might be reminiscent of the word "sanctions" as used by the League of Nations.

³ *Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 23. (Transmitted to Members of the General Assembly by the Secretary-General under cover of document A/3147.)*

28. Mr. HASAN (Pakistan) felt that "action" was the correct English legal term and, when used as in the present instance, did not necessarily imply only one action. The difference between the words "action" and "remedy" was that "remedy" was more restrictive.

29. Ato YIFRU (Ethiopia), speaking on a point of order, drew attention to a mistake in the voting on the Liberian draft resolution (A/C.4/L.445/Rev.2). He wondered whether his delegation's abstention could be changed to an affirmative vote.

30. The CHAIRMAN said that the Ethiopian representative's statement would appear in the record and that the latter could change his vote in the plenary meeting.

31. Mr. DORSINVILLE (Haiti) said that his delegation was gratified to note that if the amendments (A/C.4/L.451) to the Indian draft resolution (A/C.4/L.446) were adopted, the problem would be referred to the Committee on South West Africa. He would vote for the amended draft resolution.

32. Mr. RAMAIAH (India) said his delegation had felt that the Sixth Committee would be the most appropriate body to deal with the question, since it was a legal body. However, it had decided to accept the proposed amendments (A/C.4/L.451) since it felt that they did not alter the essential purpose of the Indian draft resolution, namely to keep the matter under study by the United Nations.

33. His delegation would also have preferred to see the matter settled during the present session of the General Assembly. Since that was not possible, however, it was willing to agree that the report should be submitted to the twelfth session of the Assembly.

34. His delegation had voted against the Liberian draft resolution (A/C.4/L.445/Rev.2) because the Under-Secretary had told the Committee that the Secretary-General would not be in a position to take the action requested.

35. Mr. KIANG (China) said that although his delegation could not support the Indian draft resolution (A/C.4/L.446), it was glad to see that paragraphs 2 and 3 of the preamble had been deleted, since the references in them to General Assembly resolution 684 (VII) and the recommendation of the Committee on South West Africa had nothing to do with the matter at hand. With regard to the substance of the draft resolution, his delegation felt that the task it assigned to the Committee on South West Africa was entirely outside the terms of reference of that body. The General Assembly had certainly had no intention, in establishing the Committee, that it should be assigned such a task.

36. Although his delegation had abstained on the Liberian draft resolution, it felt that the action proposed in it was politically wiser than the step embodied in the Indian draft resolution. The General Assembly should be careful to leave the door open for a reconciliation with the Union of South Africa.

37. Mr. RODRIGUEZ FABREGAT (Uruguay) said that since the powers of the Committee on South West Africa were established by the General Assembly, and the Assembly was now requesting it to make the study, there could be no question of the Committee exceeding its terms of reference in doing so.

38. His delegation felt that the General Assembly must continue to hold before it the ideal of creating harmony among its Members, and it was therefore glad that India had accepted the amendments proposed by the eight Powers.

39. Ato YIFRU (Ethiopia) said that his delegation had intended to abstain in the vote on the original Indian draft resolution, but would vote for it as amended.

The Indian draft resolution (A/C.4/L.446), as amended (A/C.4/L.451), was adopted by 29 votes to 3, with 19 abstentions.

40. Mr. JASPER (United Kingdom) said that his delegation's vote had been cast in error. It had, in fact, been its intention to vote against the draft resolution as a whole, first of all because it conferred upon the Committee on South West Africa powers which went even further than the powers given it by the General Assembly—and his delegation had already regarded them as excessive—and secondly because it felt that the action proposed was superfluous now that the Liberian draft resolution had been adopted.

41. Mr. SMOLDEREN (Belgium) said his delegation had voted against the Indian draft resolution because it meant a considerable extension of the powers of the Committee on South West Africa. His delegation's first concern in considering the entire question had been to promote the welfare of the inhabitants of the Territory, and it had been unable to support any of the draft resolutions submitted to the Committee because it did not feel that they were calculated to do so.

42. Mr. LOOMES (Australia) said that his delegation's position throughout the discussion of the item had been one of abstention because it had some doubt as to the validity of the advisory opinion given by the International Court and hence of the competence of the United Nations to intervene in the question of South West Africa. In any case, however, it could not agree that efforts should be made to persuade the Union of South Africa to place the Territory under the Trusteeship System, as the International Court had clearly ruled, in its advisory opinion of 11 July 1950, that the Union was not required to do so.

43. Australia had not supported the draft resolution in document A/C.4/L.443, which had been approved by the Committee at its 579th meeting, on the grounds that it was inconsistent with the dignity of the General Assembly to continue to pass the same resolution year after year.

44. His delegation regretted that the Thai amendment (A/C.4/L.450) to the Liberian draft resolution (A/C.4/L.445/Rev.2) had not been accepted, and had voted against the Liberian draft resolution because the Committee had been informed that the Secretary-General did not think it would be appropriate for him to undertake the action proposed.

45. It had not supported the Indian draft resolution (A/C.4/L.446) because it had doubts as to the desirability or usefulness of such a study, and about the way in which the question had been stated. It also doubted the competence of the Committee on South West Africa to undertake such a study.

46. Mr. PERERA (Ceylon) said that his delegation wished to see some positive action taken on the matter and had therefore voted for the Indian draft resolution, as amended.

47. Mr. PACHACHI (Iraq) said that his delegation had voted in favour of the Liberian draft resolution (A/C.4/L.445/Rev.2) because it felt that a fresh approach was necessary at present, and that the General Assembly would not be fulfilling its duty if it failed to follow up the Liberian initiative. Its vote had not, however, been meant to imply that the Committee on South West Africa had failed to accomplish its task. On the contrary, his delegation felt that it had done its work admirably. At the same time the Committee had repeatedly stated in its reports that in view of the South African Government's refusal to co-operate, the General Assembly should re-examine the entire question.

48. Iraq had also voted for the Indian draft resolution (A/C.4/L.446), as amended, because it felt that the Assembly should explore certain possibilities for legal action which it had so far neglected. His delegation would have preferred the question to be referred to the Sixth Committee, because it doubted that the Committee on South West Africa was the appropriate body for the task. It had, nevertheless, accepted the amendments in a spirit of compromise.

49. Mr. GRINBERG (Bulgaria) said that although it was his delegation's firm conviction that the South African Government's refusal to co-operate posed a challenge to the United Nations which must be met if the Organization was to fulfil its functions, it had been unable to vote for the Liberian and Indian draft resolutions first, because it had come to the conclusion that no serious action could be taken at present, and secondly, because it could not accept the reference to the advisory opinion of the International Court. It was his Government's opinion that the Union of South Africa was obliged under the Charter to place the Territory under the Trusteeship System.

50. Although his delegation had voted for the five draft resolutions concerning South West Africa adopted at the 579th meeting, in spite of the fact that they contained references to the advisory opinions of the International Court, it had done so with that reservation in mind.

51. Mr. CARPIO (Philippines) said that his delegation had voted for the draft resolutions adopted earlier not because it felt that they would be efficacious but in deference to the will of the majority. It had voted for the Indian draft resolution (A/C.4/L.446), as amended, for the same reason, in spite of its belief that the question should have been addressed to the International Court.

52. His delegation agreed that the work done by the Committee on South West Africa had been excellent, and felt that it had provided the Fourth Committee with information it could not otherwise have obtained.

53. U ON SEIN (Burma) said his delegation had abstained on the Danish motion because it had not seemed calculated to lead to further action. It had abstained on the Liberian draft resolution (A/C.4/L.445/Rev.2) in view of the statement made to the Committee by the Under-Secretary; but it had voted in favour of the Indian draft resolution (A/C.4/L.446), which did seem to offer the possibility of further action.

54. Mr. KHOMAN (Thailand) thanked the Committee, on behalf of the members of the Committee on South West Africa, for the kind words which had been

said about their work. However, since the adoption of the Indian draft resolution made it clear that the Committee on South West Africa had failed to accomplish two important tasks assigned it by the General Assembly, namely, to continue negotiations with the Union of South Africa and to implement fully the advisory opinion of the International Court of Justice, his delegation wished to reserve the right to introduce proposals regarding a change in the Committee's composition.

It therefore requested that the agenda item should be left open for the time being.

It was so decided.

55. Miss BROOKS (Liberia) said that her delegation associated itself with the welcome extended to the Japanese representative.

The meeting rose at 5.55 p.m.