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

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

1. Miss BROOKS (Liberia) thanked the Under-Secretary for Trusteeship and Information from Non-Self-Governing Territories for having, at the preceding meeting, given the Committee the Secretary-General's views in connexion with the draft resolutions before the Committee. The Liberian draft resolution (A/C.4/L.445/Rev.1) did not presuppose that the Secretary-General intended to visit South West Africa, nor did it call upon him to do so. It was rather designed to give him wide powers in approaching the problem of South West Africa should circumstances afford him an opportunity to take it up with the Union Government. Her delegation appreciated the tact and courage with which the Secretary-General had handled the many difficult missions entrusted to him. She did not wish it to be thought that in pressing her draft resolution she was failing to take into account the great responsibilities with which the Secretary-General was burdened. Indeed, it was for that very reason that she had avoided setting a time-limit, leaving it to the Secretary-General's convenience to take up the matter and report on his efforts when he could. She was confident that if all the facts were placed before him he would be willing to co-operate with the Committee to the fullest extent. The fact that the world was going through a time of crisis did not make the question of South West Africa any less important than it had been in the past.

2. In the light of the foregoing she would ask for the Liberian draft resolution to be put to a vote.

3. Mr. RODRIGUEZ FABREGAT (Uruguay) shared the apprehension which he understood the United Kingdom representative to have expressed (579th meeting) that paragraph 1 of the operative part of the Indian draft resolution (A/C.4/L.446) might be interpreted as prejudging the Sixth Committee's answer. The paragraph was, moreover, excessively complex, in that it seemed to involve a number of differing elements, and might therefore

cause confusion. It was not clear from the text whether the question at issue was a legal problem or a political one which was being wrongly labelled a legal one. He therefore doubted the wisdom of consulting the Sixth Committee, which was not familiar with the question. It would seem that the Committee on South West Africa was the organ normally qualified to deal with it. Since that Committee had doubtless already made full use of the machinery provided by the United Nations for dealing with the problem in its various aspects, it might be asked what more the Sixth Committee could do. Furthermore, the International Court of Justice had been consulted on the matter a number of times and the Assembly had endorsed its opinions. He also questioned the reference in the Indian draft resolution to the League of Nations, for it would seem to imply an intention to resurrect the outmoded Mandates System, as the Union Government desired. His delegation would be unable to support the Indian draft resolution until those points had been clarified.

4. In view of the statement the Under-Secretary had made at the previous meeting, his delegation felt that it needed more time to consider the two draft resolutions which invoked the Secretary-General's assistance in finding a solution (A/C.4/L.445/Rev.1 and A/C.4/L.447/Rev.1).

5. Mr. RAMAIAH (India) said that his delegation's object in submitting its draft resolution was very simple. Like other delegations, it had been greatly concerned about how best to proceed in the matter in the face of the South African Government's persistent refusal to co-operate with the United Nations. His delegation did not think the Organization should let the matter rest and thus allow a Member State to flout its obligations. It was advised that there was at least one legal remedy open to the individual Member States of the former League of Nations. Article 7 of the Mandate empowered such Members to bring the matter before the International Court. His delegation felt that the Sixth Committee was the body qualified to give a final opinion on the matter. Moreover, it felt that the Sixth Committee might point out other legal remedies if any.

6. In referring the question to the Sixth Committee, his delegation had no desire to detract from the importance of the Committee on South West Africa, whose work it considered very valuable. That Committee itself had specifically recommended that the General Assembly should seek legal advice (A/3151 and Corr.1, annex II, para. 21); the Indian draft resolution merely followed up the implications of that recommendation.

7. It might be asked what need there was to refer the matter to the International Court once again. The answer was that the ruling hitherto given by the Court had been only advisory opinions, which, although morally binding, were not capable of legal enforcement. Article 7 of the Mandate, on the other hand, contem-

plated a judgement by the Court in the exercise of its compulsory jurisdiction; a decision by the International Court on the basis of that article would be legally binding on the South African Government.

8. As he had already explained, by "legal remedies" the Indian delegation meant remedies available under international law. In using the phrase "either individually or jointly", which some members had questioned, his delegation had had in mind the kind of legal remedy provided in article 7 of the Mandate; in reply to a question by the Philippine representative as to whether the phrase meant the same as "either jointly or severally", he wished to say that, as far as he knew, there was no difference in meaning between those two phrases.

9. Finally, the Indian draft resolution did not exclude the possibility of other action on the Committee's part. The General Assembly could take any number of steps in the matter, and take them simultaneously if it wished. The Indian delegation merely felt that the procedure it had suggested should be tried.

10. Mr. CARPIO (Philippines) said that the Indian representative had failed to answer his most important question: namely, what advantage there would be in referring the question to the Sixth Committee rather than direct to the International Court, which, as the highest judicial organ of the United Nations, would be able to give the most authoritative ruling.

11. Moreover, he still felt that the wording of the question to be put to the Sixth Committee was too vague. If the Fourth Committee wished to request a legal opinion it should so frame its question as to obviate any possibility of misunderstanding. It would be better if the draft resolution enumerated the legal remedies which might be available and asked the Sixth Committee to comment on them.

12. Mr. RAMAIAH (India), replying to the Philippine representative's second point, said that the Indian delegation did not lay claim to omniscience; the Sixth Committee, as the expert legal body, would know what remedies were available and the Indian delegation therefore considered that its opinion should be asked.

13. In reply to the Philippine representative's question why the matter should be referred to the Sixth Committee rather than to the International Court of Justice, he said that it was not the function of a court to tell the plaintiff what kind of action he should bring. A court was there to adjudicate; the plaintiff must present his case. It was for the plaintiff's lawyer to formulate his case and that was what the Sixth Committee would be asked to do.

14. In reply to the representative of Uruguay, who had questioned the reference in the draft resolution to the Mandate, he pointed out that paragraph 1 of the draft resolution asked what legal remedies were open to ensure that the Union of South Africa fulfilled its obligations under the Mandate "pending the placing of the Territory of South West Africa under the International Trusteeship System". The Indian delegation had no wish to retain permanently the Mandates System; it would welcome any advance on that system, but in the meantime it was anxious that at least the conditions prevailing under the Mandates System should be restored until something better could be arranged.

15. Mr. VELANDO (Peru) suggested that paragraphs 1, 2 and 3 of the Liberian draft resolution (A/C.4/L.445/Rev.1) might be replaced by two paragraphs, one requesting all Member States of the United Nations, especially those which had diplomatic missions established in the Union of South Africa, to renew their efforts in the matter, and the other requesting in particular the Governments of the countries of the British Commonwealth of Nations to exercise their good offices with the Government of the Union of South Africa to persuade that Government to reconsider its attitude with respect to South West Africa.

16. Mr. KHOMAN (Thailand) said that since the main points of his delegation's amendments (A/C.4/L.448) to the Philippine draft resolution had been incorporated in the revised Philippine draft resolution (A/C.4/L.447/Rev.1) he would not press for a vote on the remaining proposals.

17. In view of the statement made by the Under-Secretary at the previous meeting, his delegation would abstain in the vote on the Liberian and Philippine draft resolutions.

18. Mr. SMOLDEREN (Belgium) said he had understood from the Indian representative's explanations that the reference in the third paragraph of the preamble of the Indian draft resolution (A/C.4/L.446) was to the recommendation in paragraph 21 of annex II of the report of the Committee on South West Africa (A/3151 and Corr.1). However, the question in paragraph 1 of the operative part of the draft resolution did not seem to him to have any connexion with the third paragraph of the preamble, and he asked if that fact might not perhaps mislead the Sixth Committee with regard to the scope of the question submitted to it.

19. Mr. HARARI (Israel) observed that, according to General Assembly resolution 684 (VII), a matter might be referred to the Sixth Committee for advice in connexion with a request for an advisory opinion from the International Court of Justice or reference of a matter to the International Law Commission; furthermore, when a Committee considered the legal aspects of a question important it should refer it for legal advice to the Sixth Committee or propose that the question should be considered by a joint committee of itself and the Sixth Committee. Those alternatives offered, in his delegation's view, a choice which the Committee concerned must make.

20. Two years previously, the Israel delegation had proposed that the Fourth Committee should ask the advice of the Sixth Committee on the question of South West Africa before referring it to the International Court of Justice.¹ The Fourth Committee had not at that time agreed to the proposal and in his view it was now too late to appeal to the Sixth Committee. He would therefore vote against the Indian draft resolution.

21. Mr. CARPIO (Philippines) said that in view of the present circumstances there appeared to be no hope of pursuing the line proposed in the Liberian and Philippine draft resolutions (A/C.4/L.445/Rev.1 and A/C.4/L.447/Rev.1). As the Liberian representative had explained, the wording of the operative para-

¹ See *Official Records of the General Assembly, Ninth Session, Fourth Committee*, 401st meeting, para. 14.

graphs of either draft resolution was sufficiently broad and general to allow the Secretary-General absolute discretion with regard to the means of performing his task. There would be no necessity for him to travel to South Africa; an exchange of views with the Union Government would be possible by correspondence or through direct conversations with that Govern-

ment's representatives in the United States, or by any other means he might think appropriate. The Philippine delegation therefore felt that the two draft resolutions merited consideration, and it urged that a vote should be taken on them.

The meeting rose at 4.45 p.m.