



Thursday, 10 October 1957,  
 at 11 a.m.

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**Chairman: Mr. Thanat KHOMAN (Thailand).**

**AGENDA ITEM 38**

**Question of South West Africa (*continued*):**

- (a) Report of the Committee on South West Africa (A/3626; A/AC.73/L.10; A/C.4/L.487/Rev.1, A/C.4/L.488/Rev.1, A/C.4/L.492);
- (b) Study of legal action to ensure the fulfilment of the obligations assumed by the Mandatory Power under the Mandate for South West Africa: special report of the Committee on South West Africa (A/3625, A/C.4/L.490)

**CONSIDERATION OF DRAFT RESOLUTIONS (A/C.4/L.487/Rev.1, A/C.4/L.488/Rev.1, A/C.4/L.490, A/C.4/L.492) (*continued*)**

1. The CHAIRMAN pointed out that the draft resolution he had submitted (A/C.4/L.492) would in no way infringe the jurisdiction of the Committee on South West Africa, which would continue to function as before. Moreover, the draft resolution did not empower the proposed good offices committee to conclude any agreement whatever with the Union of South Africa. The task of the good offices committee would merely be to seek possible ground for an agreement, the General Assembly alone remaining competent to take a decision.

2. He would not defend the text he had proposed, because, as he had already said, it was not for the Chair to intervene in the debates. In submitting his draft resolution his purpose had merely been to act as spokesman for a great majority of the Committee members, who were asking what the United Nations could do to solve the question of South West Africa and who considered that some Member States might be able to serve as mediators between the Organization and the Union Government. At the present stage, the outcome of the proposed steps could not be predicted, but the Committee must decide either to continue its past policy, which had clearly resulted in a deadlock, or to take a new approach in trying to overcome the difficulties and reach a solution.

3. Some delegations had questioned whether he as Chairman had been entitled to make such a proposal and whether the proposal was timely. He would assure the members of the Committee that he had studied

that problem very carefully, had consulted the competent authorities and was certain he had not exceeded his powers. He considered that whatever was not prohibited was permissible and that that rule applied to the chairman of a committee as well as to all representatives in general. There was no provision in the rules of procedure or in the Charter precluding the chairman from introducing a draft resolution, and, in addition, a great many resolutions adopted by the General Assembly had been due to the initiative of a chairman.

4. The timeliness of the proposed step was, he repeated, a matter for the Committee to decide. In his view, some progress could be made towards a solution of the problem with the help of the good offices committee, and the experiment was worth trying. He would refrain from all controversy on the point, but insisted that he had been animated solely by a spirit of conciliation. No one could presume to have a monopoly on loyalty to the principles of the Charter; he, for his part, had never lost sight of those principles, but they could not be upheld unless all Members tried to be loyal to them.

5. Mr. RODRIGUEZ FABREGAT (Uruguay) introduced the amendments (A/C.4/L.494) which his delegation was proposing to the draft resolution submitted by the Chairman (A/C.4/L.492). The first of the amendments concerned the second paragraph of the preamble to the draft resolution and was intended to maintain intact the authority of the United Nations and the purposes of the Charter. The Mandatory Power, which rejected the jurisdiction of the Assembly and regarded itself as both judge and law, could not be placed on the same footing as the United Nations. It must also be clearly stated that the negotiations were to be held on the basis of respect for the principles of the Charter.

6. The second amendment related to operative paragraph 1 of the draft resolution. Uruguay was proposing that the number of members on the Committee should be raised to seven and that those members should be elected. His delegation could state at once that if its amendment were adopted, it would certainly vote for the inclusion of the United Kingdom and the United States among the seven members, but it wished to uphold the principle of election, which was a democratic principle.

7. He was prepared to vote in favour of the Indian amendment (A/C.4/L.493) which would recall not only the principles and standards of the Charter, but also the resolutions of the Assembly. There was, in fact, no reason why the General Assembly should disavow the decisions it had taken so far; to do so would be to pay too high a price for the co-operation of the Union of South Africa.

8. Under the rules, amendments must be put to the vote first. On the other hand, it was difficult to see

why the Committee should postpone entirely judgement on the other suggestions it had heard, such, for example, as that made by the representative of Guatemala at the 658th meeting. Even if the Chairman's draft resolution were adopted, nothing prevented the Committee from adopting the Guatemalan suggestion that Member States should be asked their opinion on the special report of the Committee on South West Africa concerning the possibility of legal action (A/3625). The Liberian draft resolutions (A/C.4/L.487/Rev.1, A/C.4/L.488/Rev.1) also merited attention.

9. He could not accept the alternative before which the Chairman had placed the Committee by telling it that the deadlock would continue if it did not accept his draft resolution. It was clearly not the Committee that was responsible for the impasse but rather the Mandatory Power, which had received a sacred trust towards South West Africa.

10. He did not believe in the validity of the axiom that what was not prohibited was permissible; human behaviour should conform to stricter principles. It would have been more in order for the Chairman to take a place among his delegation, in the ranks of the Committee members, to introduce his proposal. Nevertheless, his draft resolution, despite certain shortcomings, was an excellent contribution to the solution of the problem.

11. Mr. JAIPAL (India) congratulated the Chairman on his initiative. He said, first, that the Indian delegation, although it did not completely approve of the text of the preamble to the draft resolution submitted by the Chairman, was not disposed at that time to make any reservations with respect to it. He then submitted the revised amendments (A/C.4/L.493/Rev.1) that his delegation proposed in connexion with operative paragraph 1 of the draft resolution.

12. Referring to that paragraph, he said it was important that the powers of the good offices committee should be so clearly defined as to leave no doubt concerning the extent of its authority. The International Court of Justice, in its advisory opinion of 11 July 1950,<sup>1/</sup> had declared that South West Africa was a Territory under the international Mandate assumed by the Union of South Africa, and it had unanimously added that that status could be modified only by placing the Territory under the International Trusteeship System. The General Assembly had drafted a recommendation to that effect as early as 1946 (resolution 65 (I)). He saw no reason for departing from the line of procedure thus laid down. It seemed, however, that the draft resolution proposed by the Chairman was not sufficiently clear in that respect, since the wording of paragraph 1 lacked precision. That was the reason for the second amendment proposed by India.

13. With regard to the first Indian amendment, although there might be special reasons for choosing the United Kingdom and the United States of America as members of the good offices committee, the same was not true with regard to the third member, who might very well be elected by the General Assembly. He presumed that no representative would be a candidate unless he was *persona grata*.

<sup>1/</sup> 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.)

14. Mr. LONGDEN (United Kingdom) said that the United Kingdom delegation welcomed the draft resolution submitted by the Chairman as a new approach to the problem. His delegation would accept the assignment which the Committee was requested to entrust to it on condition that the Union of South Africa was prepared to negotiate with the proposed good offices committee and in the expectation that the draft resolution would be adopted in its present form. To judge from the Chairman's remarks, it was a reasonable assumption that the first condition would be fulfilled, but there was no basis for assuming that the Union would agree to co-operate if the resolution were drafted in different terms. For that reason the United Kingdom delegation would not be able to support any amendment which altered the substance of the resolution. If the Committee should adopt any such amendments, the United Kingdom delegation reserved the right to withdraw from the position it had stated. If the Union Government refused its acceptance, the United Kingdom would have no option but to withdraw its own. The Committee in that case would be back in a stalemate.

15. His delegation, like those which had sponsored amendments to the draft resolution or had submitted other draft resolutions earlier, was anxious to see a just settlement which would be acceptable to all parties. It did not, however, consider that the means suggested in other draft resolutions were well founded in law or, which was much more important, were likely to be effective.

16. The United Kingdom delegation had accepted the advisory opinion of the International Court of Justice of 11 July 1950 as a whole; that opinion recognized that the United Nations had replaced the League of Nations as the supervisory entity. The Court had explicitly declared that the degree of international supervision to be exercised by the United Nations should not exceed that which had applied under the Mandates System and should conform so far as possible to the procedure followed by the Council of the League of Nations. The United Kingdom delegation had therefore been unable to approve the setting-up of the Committee on South West Africa, because it had considered that to do so was to add to the burden imposed on the Mandatory Power by the terms of the Mandate and of Article 22 of the Covenant of the League of Nations.

17. He did not consider it very constructive to affirm that Chapter XII of the Charter applied to South West Africa. It was the Committee's wish that the Territory of South West Africa should be placed under the International Trusteeship System, but that could be done only if there were to be a subsequent individual agreement between the Mandatory Power and the United Nations, in accordance with Article 75 of the Charter. The International Court of Justice had expressly ruled that there was no legal obligation upon the Union of South Africa to make such an agreement. In the opinion of the Court, the provisions of Chapter XII of the Charter were applicable to the Territory of South West Africa only in the sense that they provided a means by which the Territory could be brought under the Trusteeship System; until those means (provided in Article 75) were adopted, the other Articles in Chapter XII had no application to South West Africa.

18. It was likewise evident that, from the practical point of view, there could be no final solution to the problem without South African co-operation. Even if

the General Assembly were to resort to sanctions, the peoples of South West Africa would be the first to suffer from them. The Government of the United Kingdom could not, moreover, look with equanimity upon the withdrawal from the United Nations of any Member State, especially one which was also a member of the Commonwealth, because it remembered what had happened to the League of Nations.

19. In the introduction to his annual report, the Secretary-General had recalled that the United Nations was not a super-State but rather an instrument for negotiation among Governments, an instrument for concerting action by Governments in support of the goals of the Charter; the Organization had played that role, sometimes successfully, sometimes, also, with disappointing setbacks (A/3594/Add.1, p. 3). The question before the Committee was an example of those "disappointing setbacks" and could be solved only by patient persuasion, not by passing harrassing resolutions year after year which appeared to attribute powers to the Organization which it did not in fact possess.

20. The Committee ought to avail itself of the opportunity offered to it for obtaining the co-operation of the Union of South Africa. The Union would perhaps accept the resolution in its present form, precisely because it represented an entirely new attitude free of the animus manifest in previous resolutions.

21. There was no reason to fear that the good offices committee would approve a solution which did not respect the principles of the Charter, and, in any event, the decision would rest with the General Assembly. It would be futile to appoint to the good offices committee any third member who for any reason would be considered persona non grata by the Union of South Africa. The President of the General Assembly could be relied upon to make a suitable choice. If the amendments submitted by the delegations of India and Uruguay were to be adopted, the suggested solution would be doomed to certain failure.

22. He thanked all those representatives who had maintained a moderate and constructive attitude, and he thanked the delegation of Liberia for agreeing to have consideration of its two draft resolutions postponed until the thirteenth session. He hoped that the Committee would adopt unamended the draft resolution submitted by the Chairman.

23. Miss DUNNE (United States of America) stated that in view of the assurances recently given to the Committee by the Chairman, the United States would agree to participate as a member of the good offices committee with the terms of reference proposed in the draft resolution (A/C.4/L.192), if such were the wish of the General Assembly. The fact that the Union of South Africa was prepared to discuss the problem of South West Africa was an encouraging sign of a reasonable attitude, and that was essential on both sides if the proposed talks were to be successful.

24. The United States delegation considered the draft resolution submitted by the Chairman to have been wisely drawn up in that it provided the maximum latitude to all parties. The discussions were to be of a purely preliminary nature, and all parties should be free to explore all possible solutions if practical results were to be reached.

25. Addressing the sponsors of amendments, she said she felt sure that the suggested changes were the re-

sult of a desire to contribute constructively to solving the problem. However, the delegation of the United States could not but feel that the language proposed in the amendments might seriously handicap the good offices committee, which would have to enter into conversations of the most delicate kind with a United Nations Member. The committee would not be called upon to make any decisions; it would merely explore the issue and attempt to find a basis for agreement under which the Territory would continue to be accorded an international status. The advisory opinion of the International Court of Justice would be constantly in the background of the discussions. She therefore appealed to her colleagues not to insist on changes in the text of the draft resolution but to co-operate with the many members of the Fourth Committee who saw some hope in the fact that the Government of the Union of South Africa was prepared to take part in discussions. Patience was called for, particularly at a time when there seemed to be some real hope of a practical solution to the problem that would be acceptable to all parties.

26. Mrs. SKOTTSBERG-AHMAN (Sweden) paid a tribute to the Chairman for having indicated an approach that might make it possible for the Fourth Committee to break the deadlock that had existed for several years. It was an unusual procedure for the chairman of a committee to submit in that capacity a substantive proposal, but that very fact should be sufficient reason for the members of the Committee to examine the proposal with the most serious attention. The text of the draft resolution contained in document A/C.4/L.492 recalled to the members of the Fourth Committee and the Government of the Union of South Africa that under the terms of the Charter it was incumbent upon them to seek every possible means for negotiation and conciliation. The United Nations had indisputably made great efforts in that direction and had shown great patience. However, more and more voices had been raised asking for a new approach to the problem.

27. The Swedish delegation believed that the proposal before the Committee constituted such a new approach. It had opened a crack in a hitherto closed door and was a new possibility that it was the duty of members of the Committee to study.

28. Her delegation did not believe that the terms of reference of the proposed committee were too general in character. The main principle, namely, the maintenance of the international status of the Territory, had been safeguarded. Over-detailed terms of reference might hinder the Committee by creating too narrow a frame for its work. The Committee's task would simply be to explore the possibilities ahead. It would not be empowered to conclude an agreement which would present the Assembly with a fait accompli. The Committee was expected simply to find a common denominator, and it would then be the duty of the General Assembly to build on the foundations that had been laid.

29. In advocating the establishment of a good offices committee, the Fourth Committee would be running only a very small risk. If the attempt did not yield any positive results, only one year would have been lost. Despite all efforts made in the past, many years had already been lost, and the work of the Committee on South West Africa and the resolutions of the General Assembly had not brought the United Nations any nearer to the goal it had in mind. If the proposal submitted by

the Chairman was adopted, the United Nations would have nothing to lose. However, it might be that the cause which the United Nations served might gain handsomely from it.

30. She pointed out, in conclusion, that she considered it very important for the Chairman's proposal to be adopted as it stood.

31. Mr. KHAN (Pakistan) recalled the statement he had made to the Committee at the 661st meeting regarding the refusal of the Government of the Union of South Africa to agree to negotiations. He noted that the situation had developed favourably and that the Chairman's proposal constituted a step forward towards negotiations between the Government of the Union of South Africa, on the one hand, and the United Kingdom and the United States, on the other, not so much in their capacity as sovereign States but rather as Members of the United Nations.

32. He believed that there was no reason for any delegation to feel any concern over the wording of the draft resolution embodied in document A/C.4/L.492. It was, in fact, stated in paragraph 1 of the operative part that the proposed agreement "would continue to accord to the Territory an international status". In his view that phrase left no room for any erroneous interpretation.

33. He believed that the adoption of the amendments proposed by the delegations of India (A/C.4/L.493/Rev.1) and of Uruguay (A/C.4/L.494) would undermine the resolution through which the Fourth Committee hoped to reach a solution. He thanked the representative of India for having deleted certain words from his first amendment (A/C.4/L.493). He asked him to go a step further and withdraw his revised amendments. He also asked the representative of Uruguay not to stand in the way of the action proposed in the draft resolution.

34. Mr. GOMES DE OLIVEIRA (Brazil) congratulated the Chairman on submitting a draft resolution which opened new and very interesting prospects. The Brazilian delegation was grateful to the Chairman for the negotiations which he had mentioned in his statement to the Committee, and it had complete confidence in the steps which he had taken. It approved the draft resolution without reservation as an instrument that would be clothed with the full moral authority of the United Nations and should finally make possible a new approach and a practical solution to the problem.

35. He did not think that the adoption of the draft could prejudice the objectives which the United Nations had in mind with respect to South West Africa. It was self-evident that the good offices committee could not depart from decisions and recommendations which had already been adopted by the Assembly. Only positive results could be expected from the efforts of the States appointed to serve on that committee, since its terms of reference were very clearly defined. The General Assembly would, of course, alone be competent to take any final decisions. The only purpose of the good offices committee was to make possible new contacts with the Union of South Africa; it could not conclude any kind of formal agreement. It was to enter into negotiations with the Mandatory Power and then to submit to the General Assembly the basis for a clear-cut solution which would take into consideration all the relevant instruments, including the Covenant

of the League of Nations, the Mandate, the Charter of the United Nations, the Universal Declaration of Human Rights, the advisory opinions of the International Court of Justice and the resolutions of the General Assembly. No Member State could accomplish that special mission if it neglected instruments which constituted the very basis of the United Nations.

36. It was not the first time that the United Nations had tried to solve the problem through negotiations. In establishing the Committee on South West Africa, the General Assembly had requested that Committee (resolution 749 A (VIII)), and subsequently the Secretary-General (resolution 1059 (XI)), to undertake such negotiations, and the confidence which the Assembly had placed in them it could certainly place in the States appointed to the future good offices committee.

37. Mr. KENNEDY (Ireland) said that his delegation regarded the United Nations as the spiritual heir of the League of Nations and thought that it was the duty of the United Nations to take all feasible steps to ensure the well-being and development of the inhabitants of South West Africa and to preserve the international status of the Territory. His delegation had taken a practical and realistic approach to a problem which was becoming more serious as the years went by and it earnestly hoped that that problem would be viewed in a new light. For that reason it had welcomed the Chairman's initiative with great satisfaction and had taken careful note of his introductory statement at the 664th meeting in which he had said that he had already prepared the groundwork. In its statement during the general debate (660th meeting), his delegation had in fact suggested the establishment of a small committee which would be composed of former Members of the League of Nations. The Chairman's draft resolution had the advantage of providing that the good offices committee should report to the General Assembly at the thirteenth session, so that in establishing that committee, the Fourth Committee was not giving it carte blanche and was not departing from previous resolutions.

38. What should be avoided above all was the adoption of a text which would make the task of the new committee difficult, if not impossible. While appreciating the intrinsic merit of the amendments submitted by India and Uruguay, he thought that the Chairman's draft did not require any amendments, especially since the Chairman, in submitting it, had made clear that the text was the result of thorough discussions and that each expression had been very carefully weighed. The Irish delegation would therefore vote for the draft in its present form.

39. Mr. WHITE (Canada) expressed his satisfaction at the presence in the Committee of two new members of the Commonwealth, Ghana and the Federation of Malaya. Canada regretted that not all the present members of the Commonwealth were present. He had hoped that the Union Government would reconsider its decision and resume its participation in the work of the United Nations.

40. Believing that it was impossible to go on year after year in fruitless discussions of the question of South West Africa, the Canadian delegation warmly welcomed the Chairman's draft resolution. It had always considered it unrealistic to hope for any solution of the problem without the co-operation of the Govern-

ment of South Africa. It hoped that the good offices committee would be established by the General Assembly and that that committee would be able, in its discussions with the Union Government, to find the basis for an agreement which would ensure the maintenance of the international status of the Territory. The future committee would be a perfect example of that "diplomacy of reconciliation" which could be served by the United Nations, as the Secretary-General had said in the introduction to his annual report (A/3594/Add.1, p. 3).

41. The Canadian delegation thought that it would be advisable if the other proposals before the Committee were put off for consideration until the thirteenth session when the good offices committee would have submitted its report to the Assembly. The present form of the draft resolution appeared to be that best

calculated to facilitate the proposed discussions. His delegation would not, therefore, be able to vote for the amendments.

42. Mr. VEISTRUP (Denmark) said that his delegation was grateful to the Chairman for his constructive proposal, which finally offered possibilities for a solution of the problem. It was convinced that the success of the proposed negotiations would not be helped by a lengthy discussion of the form of the draft, each word of which seemed to have been carefully weighed. It would therefore vote for the draft resolution without the amendments, which might prejudice the present prospects, and it strongly appealed to all the members of the Committee to do the same.

The meeting rose at 1 p.m.