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FOURTH COMMITTEE, 400th

MEETING

**Tuesday, 5 October 1954,
at 3.15 p.m.**

New York

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Chairman: Mr. Rafik ASHA (Syria).

REQUESTS FOR HEARINGS (A/C.4/266) (*continued*)

1. The CHAIRMAN drew the Committee's attention to the request for a hearing from the Togoland Congress (A/C.4/266).

2. Lord FAIRFAX (United Kingdom) recalled that his delegation's views on the question of hearings in general had been stated at the 398th meeting. Since the Committee had decided at that meeting to grant hearings to representatives of other organizations in Togoland, he could see no objection to granting a hearing to a representative of the Togoland Congress.

3. The CHAIRMAN proposed that, if there were no objections, the Togoland Congress should be granted a hearing.

It was so decided.

4. The CHAIRMAN informed the Committee that a request for a hearing had been received from the Jeunesse démocratique du Cameroun, and that, if there were no objections, the request would be circulated in the form of a document for a later decision by the Committee.

It was so decided.

AGENDA ITEM 34

Question of South West Africa: report of the Committee on South West Africa (A/2666 and Corr.1 and Add.1, A/C.4/L.333/Rev.1) (*continued*)

5. Mr. RODRIGUEZ FABREGAT (Uruguay), speaking on a point of order, said that he had believed the Committee to be examining the question of South West Africa. The report of the Committee on South West Africa (A/2666 and Corr.1 and Add.1) had been made available, and it contained full information on the situation and conditions in the Territory. Yet the Fourth Committee was for the time being laying aside the substance of the item and embarking on a general debate on the procedure to be followed for dealing with questions relating to South West Africa, instead of considering the substance first and the procedure thereafter. As a member of the Committee on South West Africa, he was fully aware of

the delicacy and complexity of the problems affecting the Territory, and he would urge the Fourth Committee to deal speedily with the substance of the matter. It was more than a question of form, and there was a danger that the debate on the substance of the item might be deferred too long. If the Chairman was not prepared to give a ruling on the matter, he thought that the Committee should be asked to take a decision.

6. The CHAIRMAN recalled that the subject had already been discussed by the Committee at its 397th meeting, and that the Union of South Africa had asked for a delay in order to provide more information on the substance of the item. An objection had been raised by the representative of Uruguay, and the representative of Thailand had suggested that as a compromise the Committee might take up first the question of the procedure to be followed by the General Assembly in the examination of reports and petitions relating to the Territory of South West Africa, and then go on to discuss the sections of the report referring to conditions in the Territory of South West Africa. The Committee had decided on that order, which could not be changed unless the Committee took a further decision. He inquired if the representative of Uruguay wished to make a formal proposal for reconsideration.

7. Mr. JOUBLANC RIVAS (Mexico) said that he felt some responsibility for the procedure adopted. As Rapporteur of the Committee on South West Africa, he had suggested that the Fourth Committee should open its debate on the question of South West Africa with a discussion of the proposed rules of procedure and then go on to the substance of the matter. He had felt that the general debate would end in the production of resolutions which would have to be laid before a plenary meeting of the General Assembly, and that it would be premature to produce resolutions on substance before there had been a decision on the procedure which the Assembly was to follow in dealing with the subject. He would like to hear the views of other delegations.

8. Mr. RODRIGUEZ FABREGAT (Uruguay) said that he would accept the Committee's decision on the matter. He had had no intention of putting forward a formal proposal. His delegation would take part in the general debate, and would reserve its position on the substance of the question until it came up for discussion. He would never be in favour of avoiding a discussion of substance by embarking on a debate on procedure.

9. Mr. LALL (India) stressed two points which could not be ignored even in a preliminary, purely technical and procedural discussion. First, the Committee was not concerned just with a matter of procedure and the technicalities of juridical positions; it was discussing a question of vital concern to human beings

whose basic human dignity and aspirations were at stake. The discussion should be seen in its historical context. In the last few decades there had been steady progress in the world's attitude to non-self-governing peoples and areas. Over thirty years ago a system of mandates had been evolved to ensure that the overseas territories of a defeated empire would not come to be regarded as spoils of war to be annexed by victor States. That already marked a development in international thinking and action, and it was inevitable that some twenty years later the United Nations Charter should reflect the increased concern which all nations had come to feel for the non-self-governing peoples. All Member States had pledged their allegiance to the Charter, and he was sure that none had the slightest intention of departing from its letter or its spirit.

10. It had therefore been with deep regret that he had heard the South African representative express the view at the previous meeting that the Mandate in respect of South West Africa had lapsed. In giving its opinion¹ the International Court of Justice had said: "This contention is based on a misconception of the legal situation created by Article 22 of the Covenant and by the Mandate itself. The League was not, as alleged by that Government, a 'mandator' in the sense in which this term is used in the national law of certain States" (p. 132). Hence, the legal position was absolutely clear. Indeed, if the South African representative's contention were accepted, South Africa would appear to have no status at all in South West Africa and there would be no basis for its relationship with that Territory. The Court had stated explicitly that "the authority which the Union Government exercises over the Territory is based on the Mandate. If the Mandate lapsed, as the Union Government contends, the latter's authority would equally have lapsed. To retain the rights derived from the Mandate and to deny the obligations thereunder could not be justified" (p. 133).

11. The Committee on South West Africa was to be congratulated on its restrained and diligent labours. If its report was not as complete as could have been desired, that was only because of the South African Government's unfortunate refusal to co-operate. His delegation could only regret that refusal, and affirm at the same time its deep and continuing concern with the problem, and its determination, however unsatisfactory the conditions, to discharge the responsibilities placed upon it.

12. His delegation wished to propose certain amendments (A/C.4/L.333/Rev.1) to the draft procedure proposed in annex IV of the Committee's report (A/2666 and Corr.1).

13. Paragraph 2 of the draft resolution in part A of annex IV should not be couched in such a way as even unintentionally to give the impression that the General Assembly had itself prejudged the issue on which it might, in certain circumstances, seek the International Court's opinion. That issue arose because of the need to establish a correct working interpretation of the part of the Court's opinion which stated: "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System, and should conform as far as

possible to the procedure followed in this respect by the Council of the League of Nations" (p. 138). Two of the three members of the Working Group of the Committee on South West Africa had been of the opinion that the International Court of Justice, in rendering its advisory opinion, could not have been unaware of the voting procedure established by the United Nations Charter and, hence, that when the Court had stated that the supervisory functions previously exercised by the League should now be exercised by the United Nations it had done so in full recognition of the indubitable fact that the United Nations would act in conformity with its Charter and therefore with the voting procedure prescribed by the Charter. That view was shared by the Indian delegation and had been upheld by the majority of the members of the Committee on South West Africa. The Committee had, however, considered it best, in certain circumstances, to ask the International Court for an advisory opinion on whether the procedure set out in special rule F was in conformity with the Court's previous opinion. If that was the nature of the reference to be made to the Court, the resolutions to be adopted by the Committee should omit any words and phrases such as "concurring vote" and "State most directly concerned" which went beyond the applicable phraseology of the Charter. Paragraph 2 should set out no more than the doubt entertained by some members of the Committee on South West Africa as to whether or not special rule F could be accepted by the General Assembly without the concurrence of the Union of South Africa, and it should be so worded that it would not run the risk of conflicting with any provisions of the Charter. There was no provision in the Charter whereby decisions on such matters were to be made contingent on the concurrence of any Member, however deeply and directly that Member might be concerned. If the Committee were unintentionally, by incorrect wording, to make decisions contingent in that way, it would be conferring upon the Member affected powers akin to the power of veto. That should not be the Committee's intention. The form of words proposed by his delegation in section I of its amendments did not prejudice the issue of acceptance by the Union of South Africa; furthermore, it raised that issue only in so far as it affected South Africa in its capacity as the Mandatory Power, as South Africa had no other relationship to South West Africa.

14. In part B of annex IV, namely the resolution in which the Committee would decide, if necessary, to refer the matter to the International Court, the second paragraph was entirely unnecessary, first, because it prejudged the issue to be referred to the Court and, secondly, because it did not set out the view of the majority of the members of the Committee on South West Africa. Most of the third paragraph became redundant if the Committee did decide to seek the Court's opinion; all that it need say was: "Submits to the International Court of Justice for an advisory opinion the following questions . . ." Finally, some reference to the Court's own observations regarding the degree of supervision and the procedure to be followed should be added to the considerations to be placed before the Court, as they constituted the crux of the whole matter.

15. In conclusion he emphasized that his delegation intended to speak later on the substance of the matter.

¹ See *International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950*, p. 128.

The remarks that he had just made were without prejudice to his delegation's views on the general issue, namely that the proper solution for the Territory of South West Africa was trusteeship, as provided for in Chapter XII of the Charter.

16. Mr. OSMAN (Egypt) said that the Committee on South West Africa was an integral part of the machinery for the consideration of reports and petitions envisaged in annex IV. Its establishment under General Assembly resolution 749 A (VIII) marked a further constructive attempt by the United Nations to regularize the legal situation in South West Africa by placing the inhabitants of that Territory under its protection, a protection to which they were entitled and of which they stood in need. The South African Government's refusal to co-operate with the Committee was deeply to be regretted.

17. The South African Government had attempted to justify its non-co-operation on the grounds that the United Nations would have practical difficulties in conforming to the procedure of the League of Nations, as it had been enjoined to do in the Court's advisory opinion. At the previous meeting, the South African representative had drawn a comparison between the Committee on South West Africa and the Permanent Mandates Commission and had stressed the wide differences in their respective composition and functions. The Egyptian delegation was not convinced by the argument that the Permanent Mandates Commission was a body of independent experts, whereas the Committee on South West Africa was allegedly a political body whose activities were determined, at least in part, by political considerations. Although the Committee was undoubtedly composed of government representatives, the mere perusal of its report and of the records of its meetings was sufficient to indicate the objectivity and impartiality of its approach. It was to be hoped that the South African Government would not attach too much importance to differences in composition between the two bodies.

18. The South African representative had also appeared to deplore the lack of expert knowledge in the Committee on South West Africa as compared with the Permanent Mandates Commission. On the other hand, that Committee had an unprecedented amount of expert advice available to it through the specialized agencies. That objection, too, would therefore seem invalid.

19. It should be noted that the Court's advisory opinion had not stipulated that the procedure adopted by the United Nations should be identical with that followed by the League of Nations; the words used had been "should conform as far as possible" (p. 138). The proposals set out in annex IV of the Committee's report indicated how far the United Nations was prepared to go in finding a compromise between the voting procedure provided for in the Charter and the rule of unanimity of the Covenant.

20. Speaking as the representative of an African country, he urged the South African Government to review its position and to co-operate with the United Nations in the solution of the problem.

21. In conclusion, he accepted all of the Indian amendments.

22. Mr. JOUBLANC RIVAS (Mexico) said that he had been a member of the small Working Group set

up by the Committee on South West Africa to consider a procedure for the examination by the General Assembly of reports and petitions relating to the Territory of South West Africa. A majority of the Working Group had been of the opinion that in rendering its advisory opinion, the International Court of Justice could not have been unaware of the voting procedure established by the Charter of the United Nations and of the fact that it differed from the procedure adopted in the League. In a spirit of conciliation, however, and in order to enable the Working Group to submit unanimous conclusions to the Committee and thus to the General Assembly, his delegation had accepted the recommendation in annex IV that if the Union of South Africa refused to approve special rule F in paragraph 2 of the draft resolution in part A, the International Court of Justice should again be asked to render an advisory opinion.

23. He would be willing to accept the Indian amendment to paragraph 2 of the draft resolution in part A, if the phrase "as may be necessary" was deleted. He felt that the wording proposed by the Indian delegation was not clear as it stood, and might lead to considerable confusion.

24. With regard to the Indian amendments relating to part B of annex IV, he felt that there had been a misunderstanding. Part B of annex IV was a resolution which had been adopted by the Committee on South West Africa, and therefore could not be amended. The Fourth Committee could approve it or not, as it chose, but could not introduce any changes. It was of course open to any delegation to submit a new draft resolution to the Fourth Committee, based on the recommendations of the Committee on South West Africa but with the wording suggested by the Indian delegation. Such a draft resolution would be perfectly acceptable, but it should not be presented in the guise of an amendment. He reserved his delegation's right to speak again if a draft resolution on those lines was submitted.

25. Mr. LALL (India) agreed whole-heartedly with the point made by the Mexican representative. His delegation was prepared to submit the resolution in part B of annex IV as modified in document A/C.4/L.333/Rev.1 to the Committee in the form of a new draft resolution.

26. Mr. CALLE Y CALLE (Peru) drew the Committee's attention to General Assembly resolution 684 (VII), the recommendations of which were embodied in annex II to the rules of procedure of the General Assembly. Paragraph 1 (a) of those recommendations was to the effect that whenever any Committee contemplated making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter might, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the legal aspects and on the drafting of the request, or the Committee concerned might propose that the matter should be considered by a joint committee of itself and the Sixth Committee. The Fourth Committee had perhaps not yet reached such an appropriate stage, but he wished to remind it of the terms of the General Assembly resolution. He would prefer to wait until the new Indian draft resolution had been submitted before giving his delegation's views on the draft pro-

cedure proposed by the Committee on South West Africa.

27. Mr. Fida Muhammad KHAN (Pakistan) said that his delegation had studied the report of the Committee on South West Africa and listened with great care to the opening statement of the delegation of the Union of South Africa (399th meeting). It had been disappointed to find that the South African statement made no fresh contribution to the solution of the matter. He noted with regret that the Government of the Union of South Africa had been adamant in its refusal to co-operate with the Committee on South West Africa or with the General Assembly, so much so that it had not found it advisable even to comment on the provisional rules of procedure for the examination of reports and petitions relating to the Territory of South West Africa.

28. The Committee on South West Africa had done its utmost to reconcile the unanimity rule which had governed voting procedure in the League of Nations with the simple majority vote required in the United Nations. To achieve that end, without compromising the principle at stake, it had recommended special rule F in annex IV of its report. It had gone even further in providing that if special rule F should be approved by the required majority of the General Assembly without the concurring vote of the Union of South Africa, the General Assembly would submit the question whether in adopting special rule F it was correctly interpreting the previous advisory opinion of the International Court of Justice to the International Court for a further advisory opinion. Pakistan had been a member of the Working Group which had formulated the draft procedure, and the Pakistan delegation would therefore whole-heartedly support the recommendations of the Committee on South West Africa regarding the procedure proposed. Those recommendations were a compromise solution of an extremely thorny problem. He hoped that they would prove acceptable to the General Assembly.

29. Miss ROESAD (Indonesia) recalled that in its resolution 449 A (V), 570 (VI) and 749 (VIII), the General Assembly had maintained its acceptance of the Court's advisory opinion with respect to the Territory of South West Africa, namely that South West Africa was still to be considered as a Territory held under the Mandate of 17 December 1920, and that the degree of supervision to be exercised by the General Assembly should not exceed that which applied under the Mandates System. Paragraph 12 (d) of General Assembly resolution 749 A (VIII) requested the Committee on South West Africa to prepare, for the consideration of the General Assembly, a procedure for the examination of reports and petitions which would conform as far as possible to the procedure followed in that respect by the Assembly, the Council and the Permanent Mandates Commission of the League of Na-

tions. The Working Group established by the Committee on South West Africa to prepare such a procedure had performed its task with diligence and care. The main difficulty had been that of the voting procedure. Paragraphs 6, 7 and 8 of annex III of the report of the Committee on South West Africa recorded the Working Group's deliberations, discussions and findings in that respect.

30. The Indonesian delegation was in general agreement with the findings of the Working Group, in feeling that the procedure should conform, as far as possible, to the procedure of the League of Nations. That did not mean, however, that the League procedure must be adhered to *in toto*, since the Court's advisory opinion had stated that the General Assembly was legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory. That gave ample justification for the use of the regular voting procedures laid down in the Charter of the United Nations. The Indonesian delegation had been willing to agree to the application of Article 18, paragraph 2, of the Charter, but felt that since the State concerned was unable to accept that provision, the most advisable course would be to ask the International Court of Justice for a further advisory opinion.

31. The Indonesian delegation would be prepared to vote for the amendments proposed by the Indian delegation (A/C.4/L.333/Rev.1), with the reservation that some further explanation was needed in regard to the meaning of the words "as may be necessary" in the amendment to the draft resolution in part A of annex IV of the report.

32. Mr. CLAREY (Australia) said that he too failed to understand the exact bearing of the words "as may be necessary" in the Indian amendment. He hoped that, at a later stage, the Indian delegation would find it possible to make their meaning much clearer than in the preliminary statement which the Committee had just heard. As it stood, the amendment was ambiguous and confusing.

33. Mr. LALL (India) said that he would prefer to go into the matter in detail at a later stage, since the discussion itself might clarify the meaning of the phrase. In brief, however, the words "as may be necessary" referred to the fact that it would not be known whether the acceptance of the Union of South Africa was in fact necessary until the International Court had rendered a further advisory opinion. The phrase was intended to show an open mind regarding the need for the Union of South Africa to adhere to special rule F. That was precisely the issue which would be submitted to the International Court of Justice in the draft resolution which his delegation intended to place before the next meeting of the Committee.

The meeting rose at 4.45 p.m.