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**Chairman: Mr. Luciano JOUBLANC RIVAS
(Mexico).**

Requests for hearings (A/C.4/312) (continued)

1. The CHAIRMAN drew attention to document A/C.4/312, which contained a telegram dated 7 November 1955 from the Ho District Convention People's Party of Togoland under British administration; and a telegram dated 8 November 1955 from Mr. Allasani, Mr. Braimah and Mr. Bawumia, members of the Gold Coast Parliament, on behalf of the Northern Peoples' Party and the chiefs and people of the northern part of Togoland under British administration. He proposed that the Committee should consider the requests for hearings made in those telegrams.

There being no objections, those requests were granted.

AGENDA ITEM 30

Question of South West Africa (*continued*):

(b) Report of the Committee on South West Africa (A/2913 and Add.1 and 2) (*continued*)

REQUEST FOR A HEARING FROM THE REVEREND
MICHAEL SCOTT

2. The CHAIRMAN announced that he had received a request for a hearing from the Reverend Michael Scott, who wished to present his views on conditions in South West Africa. He suggested that the Secretariat should circulate the request to the members of the Committee.

There being no objections it was so decided.

QUESTION OF THE ADMISSIBILITY OF HEARINGS (A/2913/Add.2, A/C.4/L.413/Rev.1) (*continued*)

3. Mr. ESPINOSA Y PRIETO (Mexico) pointed out a discrepancy between the English text and the French and Spanish texts in operative paragraph 1 of the draft resolution A/C.4/L.413/Rev.1. The English verb "should" had been translated by the future tense in French and Spanish. As the sponsors of the draft resolution had agreed on the English text, he requested that the text in the other two languages should be corrected.

4. The CHAIRMAN said that the Secretariat would see that the correction was made.

5. Mr. ESKELUND (Denmark) did not consider the revised draft resolution (A/C.4/L.413/Rev.1) a great improvement over the original text.

6. Operative paragraph 1, for example, read "until such time as an agreement is reached between the United Nations and the Union of South Africa, the Committee on South West Africa...". Thus the assumption was that the Committee on South West Africa would continue to exist after an agreement had been reached with the Union of South Africa, which made no sense.

7. With regard to the Mexican representative's comment, he understood that the word "should" expressed an obligation. There was therefore no need, in his opinion, to alter the French and Spanish translations, in which the future tense was used. The conditional tense in those languages would not express an obligation and that might raise difficulties for the Committee.

8. Reverting to the Syrian representative's remarks at the two previous meetings to the effect that his delegation reserved the right to vote in favour of granting hearings before the Fourth Committee to petitioners from South West Africa, he asked what was the meaning of the decision the Committee was being asked to take: whether it was intended to bar the Committee on South West Africa from granting hearings while preparing to grant such hearings before the Fourth Committee. He could not see the logic of such an action or any legal basis for it. There did not seem to be any reason why the Committee on South West Africa could not grant hearings while the Fourth Committee could.

9. He asked the sponsors of the draft resolution to explain whether the revised text meant that in no circumstance could any United Nations body grant hearings to petitioners from South West Africa.

10. Mr. RYCKMANS (Belgium) considered the Danish representative's inquiries to be relevant. Presumably the sponsors of the draft resolution had altered their text in order to make it more acceptable to a number of delegations. On the other hand, the draft resolution did not, in his view, answer the question put by the Committee on South West Africa regarding the admissibility of requests for hearings. The Committee had to be told whether requests for hearings were admissible or not. He would like to know whether the members of the Committee on South West Africa considered that the revised draft resolution provided a clear answer to that question.

11. Mr. BOZOVIC (Yugoslavia) thought that the sponsors of the draft resolution, like the General Assembly hitherto, had attempted to adhere to the 1950 advisory opinion of the International Court of

Justice.¹ They had, however, forgotten to include a basic element of the advisory opinion in paragraph 1. In that paragraph, after the word "adhere", the words "as far as possible" should be added.

12. That drafting change would also resolve the difficulty raised by the Danish representative, with whom he agreed. If allowance was made for the granting of hearings before the Fourth Committee, it was not logical to prohibit such hearings before the Committee on South West Africa. That body should be left free to decide, in accordance with the procedure of the former Mandates System, whether or not to grant hearings.

13. Mr. ESPINOSA Y PRIETO (Mexico) said that after due deliberation, the sponsors of the draft resolution had decided to use the word "should" because it expressed a less forceful obligation than "shall" or "must".

14. Mr. ABOU-AFIA (Egypt), replying to the Belgian representative, said that he did not think the sponsors of the draft resolution had to provide any text other than that contained in document A/C.4/L.413/Rev.1 as a full reply to the question put by the Committee on South West Africa.

15. He agreed with the Yugoslav representative that the words "as far as possible" should be added in paragraph 1.

16. Mr. RYCKMANS (Belgium) thought that the representatives of Yugoslavia and Egypt were mistaken. The Court had been categorical on the matter of supervision. It had said in its 1950 opinion (p. 138): "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which was applied under the Mandates System". It was with regard to the procedure that it had used the expression "as far as possible".

17. Moreover, if the English word "should", in the conditional, were used, the text would be ambiguous, especially with the phrase "as far as possible". Some members of the Committee on South West Africa might feel that the Committee should grant hearings while others might argue that the Committee should not grant them.

18. Mr. BOZOVIC (Yugoslavia) observed that the Belgian representative, in speaking of the advisory opinion of the Court, had used the word "categorical" as if the opinions of the Court were binding, whereas in fact, they were not.

19. Furthermore, there was no question of increasing the degree of supervision, but only of establishing the procedure for exercising that supervision.

20. Mr. KHOMAN (Thailand), Chairman of the Committee on South West Africa, replying to the Danish representative, pointed out that the question asked by the Committee was whether it could grant hearings, and not whether the Fourth Committee could do so. The draft resolution was thus a reply to the question of the Committee on South West Africa. In reply to the Belgian representative, he said that the text of the draft resolution was sufficiently clear for that Committee. He referred to the practice under the Mandates System and the Permanent Mandates Commission's decision at the fourth meeting of its seventh

session, when it had considered the same question (A/2913/Add.2, annex II).

21. The Belgian representative had referred to the 1950 advisory opinion of the International Court of Justice. The sentence, which said (p. 138): "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", was a whole and could not be split in two.

22. The Yugoslav representative's proposal to add the words "as far as possible" to operative paragraph 1 would make difficulties for the Committee and complicate its work.

23. Mr. ESKELUND (Denmark) felt that the sponsors of the draft resolution were not entirely in agreement. Some of them, whilst sponsoring the draft resolution, had shown a tendency to grant hearings before the Fourth Committee. If the Court's advisory opinion said that petitioners could not be heard by the Committee on South West Africa, they could not be heard by the General Assembly either. He was sure that some of the sponsors of the draft resolution would agree.

24. The effect of the Yugoslav representative's proposal would be not to answer the Committee's question, but to evade it.

25. Mr. GREKOV (Byelorussian Soviet Socialist Republic) said that his delegation had always maintained the right of the inhabitants of the Trust Territories to present written or oral petitions. His reading of the draft resolution was that the revised text would preclude the granting of hearings. His delegation would accordingly be obliged to vote against it.

26. Mr. RIFAI (Syria) maintained that the existing draft resolution gave a clear answer to the question put by the Committee on South West Africa, while not detracting from the General Assembly's ability to grant hearings. If a petitioner requested a hearing before the Fourth Committee, and that Committee felt he should be heard, his delegation would certainly vote in favour.

27. He did not think there was disagreement among the sponsors of the draft resolution. He was sorry that the Danish representative could not approve the revised text, but he did not see how the Committee's question could be better answered.

28. Miss BROOKS (Liberia) reiterated her delegation's position: she had always felt that the Committee on South West Africa should hear petitioners from the Territory and a careful study of the advisory opinion and of the draft resolution had confirmed that view. When the question of the procedure followed under the Mandates System had been discussed, she had proposed that the Chairman of the Committee on South West Africa should hear petitioners, just as the Chairman of the Permanent Mandates Commission had done.

29. She thought that the inclusion of the words "as far as possible" in operative paragraph 1 of the draft resolution would improve it considerably. She felt, however, that paragraph 2 was inadequate, as her delegation maintained the Committee's competence. She would accordingly vote against the draft resolution. If it were adopted, she thought the International

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 by document A/1362).

Court of Justice might be asked for a new advisory opinion.

30. Mr. RIVAS (Venezuela) said that the sponsors of the draft resolution had taken into account the suggestions that he and the Peruvian representative had put forward at the 501st meeting in order to make the text less rigid. It would have been better, in his opinion, if they had solved the problem in a practical manner without touching on any question of principle. There were some discrepancies between the Spanish and the English texts of the draft. It would have been better to say *práctica* instead of *procedimiento* and *debería* instead of *deberá*, so as to render the conditional shade of the English text.

31. Mr. JASPER (United Kingdom) said that he had acknowledged the conciliatory spirit of the sponsors of the draft resolution. The only question before the Fourth Committee, however, was the admissibility of requests for hearings by the Committee on South West Africa.

32. Mr. RYCKMANS (Belgium) still thought that the Assembly's reply to the Committee's question would lack clarity. He would like to know whether the members of the Committee present felt that the draft resolution, if adopted, would mean that requests for hearings could be granted or not.

33. Mr. ESKEKUND (Denmark) agreed with the United Kingdom representative that the only question was the admissibility of requests for hearings by the Committee on South West Africa. The Syrian representative had, however, raised the question of the admissibility of requests for hearings by the Fourth Committee or the General Assembly. If the Committee on South West Africa, which had been established to examine matters relating to the Territory, could not hear petitioners, the General Assembly and the Fourth Committee were legally still less competent to do so.

34. Mr. PIMENTEL BRANDAO (Brazil) said that his country was a member of the Committee on South West Africa. The revised text of the draft resolution would guide the Committee in its work, and completely answered the question.

35. Mr. BELL (United States of America) felt that the revised text, of which his delegation was one of the sponsors, required no explanation. It might not be as clear-cut as some representatives would like, but it would nevertheless be a useful guide to the Committee on South West Africa in deciding on requests for hearings. He agreed with the Thai representative's observations on the Yugoslav representative's suggestions.

36. Mr. BOROOAH (India) thought that the word "should" most often meant "shall" or "must", but the spirit of the English language required that the idea of command or obligation should be softened. In the present case, the Yugoslav suggestion would prevent the word from being taken in its absolute meaning by qualifying it with the words "as far as possible". That would be in accordance with the Court's advisory opinion and would make it easier for the Indian delegation to cast its vote. India considered that the solution adopted by the Permanent Mandates Commission was empirical and temporary, that it applied to a particular case in a specific situation and that the words "as far as possible" would allow for the possibility of departing from the procedure in certain circumstances.

37. Mr. ALTMAN (Poland) did not consider that the General Assembly's reply to the Committee on South West Africa in operative paragraph 1 would be ambiguous; in fact it would be a negative reply, and the Polish delegation would therefore vote against the draft resolution.

38. Mr. CORTINA (Argentina) thought that operative paragraph 2 was a clear answer to the question put by the Committee on South West Africa. Operative paragraph 1 seemed more like a preamble, since it merely noted the facts. Moreover, the phrase "until such time as an agreement..." was not very appropriate, since, by the terms of resolution 749 A (VIII) establishing the Committee on South West Africa, it would cease to exist the day an agreement was reached between the United Nations and the Union of South Africa. Consequently, when the draft resolution was voted in parts, the Argentine delegation would vote for operative paragraph 2, but would abstain on paragraph 1 unless it were amended.

39. Mr. BOZOVIC (Yugoslavia) explained that, when he had suggested that the words: "as far as possible" should be added, he had been thinking of circumstances that might arise after some years to justify departures from the practice followed under the Mandates System. He had wished to leave it to the Committee on South West Africa to decide whether in those circumstances petitioners should be heard or not. As his suggestion seemed to be complicating rather than simplifying matters, he would withdraw it.

40. Mr. HARARI (Israel) did not think that the draft resolution could solve the problem. The Committee on South West Africa was being asked to work as far as possible in accordance with the procedure of the former Mandates System, but that system had disappeared with the League of Nations and the Permanent Mandates Commission, and the General Assembly's voting procedure was different from that of the League of Nations. That being so, he would abstain when the draft resolution was put to the vote.

41. Mr. SAAB (Lebanon) recalled that he had stated that he would abstain during his first statement on the question (500th meeting). The situation had changed, however, now that the Union of South Africa had withdrawn its delegation from the General Assembly. That decision was particularly deplorable because the Fourth Committee had taken a most conciliatory attitude towards problems concerning the Union of South Africa in the hope of securing the Union's confidence and co-operation.

42. He did not think that it could be concluded from the Court's advisory opinion that requests for hearings were inadmissible. That would in any case be a dangerous conclusion, as it would restrict the right of petition of the inhabitants of South West Africa, whereas they ought on the contrary to be convinced that the United Nations was always prepared to hear them. To facilitate hearings would not only be in the interests of the Territory, but would also help to maintain public order. Thus, although he appreciated the fact that the sponsors of the draft resolution had attempted to reconcile divergent positions, he would be obliged to vote against it.

43. Mr. RODRIGUEZ FABREGAT (Uruguay) observed that the admissibility of requests for hearings was bound up with the problems raised by the negative

attitude of the Union of South Africa. In view of the Union's refusal to supply information on the Territory, there was no way the General Assembly could be informed of the situation other than by granting the Committee on South West Africa the right to hear persons who were prepared to give it information. On the one hand, the General Assembly was trying to obtain the information the Union of South Africa refused to give, while on the other hand it was hesitant about taking advantage of the only source of information available to it. There was a contradiction there.

44. The second paragraph of the preamble to the draft resolution referred to General Assembly resolution 749 A (VIII) instructing the Committee on South West Africa to examine petitions "as far as possible" in accordance with the procedure of the former Mandates System. On the other hand, operative paragraph 1 stated quite baldly that the Committee should adhere to that procedure. Hence, operative paragraph 1 was much more restrictive than the second paragraph of the preamble, and he failed to see any logical connexion between the two parts of the draft resolution.

45. He approved of operative paragraph 2, since it would enable the Committee on South West Africa to secure information on the situation in the Territory. The Committee should nevertheless be authorized to hear petitioners, if necessary, so that they could supplement their written statements and so that the Committee could reach definite conclusions.

46. Mr. McMILLAN (Australia) pointed out that the Mandates Commission's rules had not contained any provision on the admissibility of requests for hearings. The Commission had rejected a proposal to amend its rules to that effect and its members had been able to have only private interviews with petitioners. There were also the provisions of General Assembly resolution 749 A (VIII), which were based on the Court's advisory opinion that the degree of supervision exercised by the United Nations should not exceed that which had applied under the Man-

dates System and that the General Assembly should, in exercising its supervisory functions, follow the procedure of the League as far as possible. There could be no doubt that if requests for hearings were admitted, the United Nations would be exercising supervisory functions more extensive than those exercised under the League of Nations. He felt that requests for hearings from South West Africa should be held inadmissible.

47. The procedure laid down in Chapter XIII of the Charter was irrelevant, because its provisions were obviously not applicable to the case in point.

48. Finally, the Australian delegation made no distinction between the various bodies through which the General Assembly claimed to exercise its supervision over South West Africa. The Court had referred to the degree of supervision exercised by the General Assembly, not merely by the Committee on South West Africa. That being so, whatever decisions were made on the admissibility of requests for hearings would apply to all United Nations organs and not simply to the Committee.

49. Mr. ABOU-AFIA (Egypt) formally proposed that the words "as far as possible" should be added in operative paragraph 1 after the word "adhere". That amendment would make paragraph 1 more in accordance with the Court's advisory opinion. In any event, the Committee on South West Africa could not follow the procedure of the Permanent Mandates Commission to the letter.

50. Mr. CALLE Y CALLE (Peru) supported the Argentine suggestion that operative paragraph 1 should become a third paragraph of the preamble. The operative part of the draft resolution would then consist only of the present paragraph 2. He thought that would be a good solution of the difficulties, and proposed that the vote should be postponed until that amendment had been circulated.

It was so decided.

The meeting rose at 1.55 p.m.