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

Requests for hearings (continued)

1. The CHAIRMAN announced that the Secretariat had received two additional requests for hearings, one from the Ho District Convention People's Party of Togoland under British administration and the other from the Northern Peoples' Party and the chiefs and peoples of the northern part of Togoland under British administration.
2. Mr. RYCKMANS (Belgium) asked how many hearings the Committee had already decided to grant and when the General Assembly's tenth session would end.
3. Mr. WIESCHHOFF (Secretary of the Committee) said that the Committee had decided to hear the following: from Somaliland under Italian administration, the representatives of the Somali Youth League; from Togoland under French administration, the representatives of Juvento (Badji and Apaloo factions), the Parti togolais du progrès and the Union des chefs et des populations du Nord-Togo; from Togoland under British administration, the representatives of the All-Ewe Conference, of the Togoland Congress and of the Akan Krachi Electoral Constituency, and individuals not connected with any special political party—Messrs. Simon Kumah and Francis Asare, and also Demon-Na; from the Cameroons under French administration, the representatives of the Union des populations du Cameroun, the Jeunesse démocratique du Cameroun and the Union démocratique des femmes camerounaises. The General Assembly was expected to complete its work by 10 December 1955.
4. The CHAIRMAN suggested that the Secretariat should circulate the texts of the requests for oral hearings to the members of the Committee.

There being no objections, it was so decided.

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*)**

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

5. Mr. ESPINOSA Y PRIETO (Mexico), while not in principle rejecting the criticism levelled at the draft resolution before the Committee (A/C.4/L.413), wondered whether those who had made such criticism were aware of the abnormal situation which existed. It was a question of adapting the vestiges of the Mandates System to the institutions set up for the Trusteeship System. The position taken by the sponsors of the draft was fully warranted. They were acting in accordance with the 1950 advisory opinion given by the International Court of Justice,¹ although they believed, as did the large majority of Member States, that the best solution would be for a trusteeship agreement to be concluded in the near future for the Territory of South West Africa.

6. It was true that in the present case, the General Assembly could once more have recourse to the International Court of Justice, but the Mexican delegation did not think that such a step was necessary, since the course had already been set and it would be sufficient to follow the procedure applied by the Permanent Mandates Commission.

7. With regard to the arguments adduced against paragraph 2 of the operative part, he had urged that the paragraph should be included in the text because the interviews which the members of the Permanent Mandates Commission had had with petitioners formed a link between the methods followed by the League of Nations and the oral hearings the United Nations granted; it was thus possible to gauge the progress made between 1925 and 1955. He understood representatives who wanted to be orthodox, but the Mexican delegation was no less consistent than other delegations and had participated in the drafting of the draft resolution because it wanted to encourage the broad views with which the community of nations approached such a delicate question.

8. He considered that the amendment proposed by the Peruvian representative at the previous meeting, as modified by the Venezuelan representative, was useful; he would be prepared to accept it.

9. Mr. RIFAI (Syria) said that it was his delegation's view that while the Committee on South West Africa could not hear petitioners, the Fourth Committee or the General Assembly could. As a sponsor of the draft resolution, his delegation would not therefore consider itself bound to reject requests for oral hearings received from the Territory of South West Africa and submitted to the Fourth Committee. Its position in that connexion was justified by the inclusion of the

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).

words "the oral hearing of petitioners by the Committee on South West Africa" in paragraph 1 of the operative part. The draft resolution was intended to regulate what the Mexican representative had rightly described as an abnormal situation, in which it was necessary to graft a new procedure on to an old system, a process that involved certain legal difficulties.

10. Mr. KHAN (Pakistan) pointed out that just as title to property was not recognized by a court if the property had not been registered, so the committee that had succeeded the Permanent Mandates Commission had no official title to hear petitioners, the Mandates Commission's procedure having been empirical; the hearing of petitioners by that committee could not therefore be recognized. But, as the Syrian representative had said, that did not apply to the General Assembly.

11. He disagreed with the Belgian representative's view (501st meeting) that paragraph 2 of the operative part was superfluous; it was necessary to the extent that it left the door open. It was a question of adopting a formula based on the procedure of the Permanent Mandates Commission, which had been extremely conservative in the matter of hearings.

12. It had been asked whether the Committee on South West Africa would be entitled to use any information which the General Assembly might obtain orally from petitioners. He would not take it upon himself to extend the scope of a draft resolution which appeared to him to be the best adapted to the circumstances and most likely to be accepted by Member States and by the Union of South Africa.

13. Mr. ALTMAN (Poland) considered that the draft resolution tended to prevent the hearing of petitioners from South West Africa on the basis of the principle that it was desirable to conform to the procedure followed by the Permanent Mandates Commission. His delegation had always thought that it was not in accordance with the Charter for the provisions of the former Mandates System to be applied to South West Africa. It further considered, in the present case, that the spirit as well as the letter of the relevant provisions should be borne in mind. Even if the Mandates System did not meet the needs of the times, Article 22 of the Covenant of the League of Nations declared that it was the duty of the international community to assist the peoples of mandated territories where conditions were especially difficult. There could therefore be no doubt that it would be contrary to that principle of the Covenant to deprive the people of South West Africa, whose situation was especially difficult, of the right to make oral petitions.

14. The right to a hearing was an integral part of the right of petition. If the people of South West Africa were refused that right, the Territory would be placed on the same footing as the territories covered by Chapter XI of the Charter, which were in a worse position than the Trust Territories or even the mandated territories, although it was the duty of the United Nations to spare no effort to protect the interests of such peoples.

15. The General Assembly had accepted the 1950 advisory opinion of the International Court of Justice and had instructed the Committee on South West Africa to examine petitions "as far as possible in accordance with the procedure of the former Mandates System"

(resolution 749 A (VIII)). If the Fourth Committee decided that requests for oral hearings could not be entertained, it would plainly be doing less than was possible. It was not bound to take such a decision either by the Court's advisory opinion or by the General Assembly's decision.

16. He challenged the sponsors' argument that one more concession must be made in order to persuade the Government of the Union of South Africa to co-operate with the Committee on South West Africa and with the United Nations generally. He agreed that such co-operation was desirable but nothing that had so far happened seemed to indicate that concessions would produce the desired result. As the attitude of the Government of the Union of South Africa remained unchanged, it was difficult to see what purpose was served by continual concessions. In any case, the object was not to achieve a compromise with the South African Government, but to protect the interests and aspirations of the people of the Territory, a fact of which some members of the Fourth Committee seemed to be losing sight.

17. His delegation could not therefore accept paragraph 1 of the operative part. Paragraph 2 was unnecessary and meaningless; members of the Committee on South West Africa obviously had the right to have private interviews with the petitioners without need for a decision of the General Assembly, which would cast doubt on the seriousness of its resolutions. Paragraph 3 was also meaningless; when a petitioner requested a hearing, the Committee on South West Africa, being bound by the General Assembly's decision prohibiting hearings, would naturally inform him that he could submit his views in writing.

18. His delegation therefore agreed with the USSR representative that the draft resolution was a step backwards and was moreover contrary to the draft resolution (A/C.4/L.409) adopted by the Committee at its 498th meeting. His delegation would vote against draft resolution A/C.4/L.413 if it was put to the vote.

19. Mr. ABOU-AFIA (Egypt) would have been able to support draft resolution A/C.4/L.413 if paragraph 1 of the operative part had not been drafted in such categorical terms going beyond the opinion of the International Court of Justice, which had used the words "as far as possible". He would have been able to agree to the formal prohibition of hearings if the South African Government had decided to co-operate with the Committee on South West Africa, but as that was not the case, it was impossible for the Committee to discharge its responsibilities without hearing the inhabitants of the Territory. In the circumstances, and in order not to obstruct the conciliatory efforts of the sponsors, his delegation would abstain.

20. Mr. KHOMAN (Thailand) said that at the previous meeting, he had accepted the United Kingdom's suggested interpretation of paragraph 2 of the draft. He was afraid, however, that that interpretation might complicate the work of the Committee on South West Africa and he therefore preferred to adhere to his own interpretation of paragraph 2; the Committee would not be able to take a decision concerning information it received unless it was seized of a petition in writing.

21. He thought that the sponsors of the draft resolution would be able to accept the Peruvian and Venezuelan suggestions (501st meeting).

22. With regard to the criticism voiced by the USSR representative at the previous meeting, to the effect that the draft resolution was a step backwards, he pointed out that whether it liked it or not, the Committee had been faced with the same problem for ten years. It was now a matter of deciding whether the Committee should accept or reject requests for hearings received from the Territory. If it accepted them, the Organization would abandon the position which it had hitherto taken and which had been based on the opinion of the International Court of Justice. In that event it was difficult to see how the United Nations could justify its attitude, as South West Africa could be placed under the Trusteeship System only with the consent of the South African Government. Such a retreat would in a sense confirm that Government's victory.

23. The Court's opinion could not be construed to mean that requests for hearings were admissible. Nevertheless, if the Committee thought that it could accept such requests, felt that the draft resolution was not in conformity with the provisions of the Charter or was able to suggest a better solution, he would be fully prepared to withdraw his text.

24. Mr. BOROOAH (India) understood that the sponsors of the draft resolution did not wish to depart from the procedure followed by the Permanent Mandates Commission. That was certainly the correct approach. It was consistent with the position hitherto taken by the Committee on South West Africa and he did not think that any other solution was possible.

25. He pointed out, however, that the Committee on South West Africa had been asked to examine petitions while adhering as far as possible to the procedure of the former Mandates System. That procedure had been an empirical solution applied to a specific problem. Hence it was not a matter of obeying a strict rule to the letter. It seemed unwarranted to decide that the hearing of petitioners was inadmissible when the Permanent Mandates Commission had merely stated that it was not in a position to hear them.

26. He saw no fundamental difference between written and oral petitions. Both were sources of information and the written petitions could be supplemented by the oral. The Committee on South West Africa might even find that it was necessary to hear an inhabitant of the Territory in order to throw some light on a written petition, particularly as the majority of the Territory's population was illiterate.

27. Although he was generally in favour of the draft resolution, he would accordingly request that the last phrase of operative paragraph 1 should be put to the vote separately.

28. Mr. ESKELUND (Denmark) did not think that that phrase could be deleted. The Committee on South West Africa had asked the General Assembly to decide whether oral hearings of petitioners were admissible. The Assembly could not therefore evade the issue.

29. He thought, like the Polish representative, that operative paragraphs 2 and 3 were superfluous. They should therefore be deleted.

30. He also doubted whether it was necessary to take into account the observations made by the Peruvian and Venezuelan representatives, for the clause they had suggested was already included in the draft resolution adopted at the 499th meeting.

31. Analysing the position of Syria, which took a different view of the admissibility of requests for oral hearings depending on whether the Committee on South West Africa or the Fourth Committee was involved, he said he doubted whether the Organization could exclude petitioners from one body while admitting them to another. That attitude might perhaps forestall some criticism but would be dangerous, because it would create uncertainty in the minds of the petitioners, and the inhabitants of the Non-Self-Governing Territories might then claim a right which they did not possess.

32. Mr. BOZOVIC (Yugoslavia) was not certain that the supervisory functions of the United Nations should be similar to those of the Permanent Mandates Commission. The General Assembly should consider the latter body's procedure in the light of the provisions of the Charter. In fact, the opinion of the International Court of Justice led to that conclusion.

33. In his view, it would be better to substitute the word "practice" for the word "procedure" in operative paragraph 1. He shared the Indian representative's view of the last phrase of the paragraph.

34. The essential point was to determine whether requests for oral hearings were admissible. The right of petition had existed for years, but the interpretation placed on the right had changed. In denying the admissibility of requests for an oral hearing, the Committee would actually be taking a step backwards and would be reverting to the position in 1925.

35. He would suggest that the sponsors of the draft resolution should confine themselves to noting the facts. Thus, operative paragraph 1 might start as follows: "Notes that the oral hearing of petitioners, . . .". Operative paragraph 2 would read as follows: "*Considers, nevertheless, that this fact . . .*". He had not, however, changed his opinion concerning operative paragraph 2, which he thought was unnecessary and incomplete.

36. If those suggestions met with support, he would be prepared to introduce them as formal amendments and in that event he would be able to vote for the draft resolution. Otherwise, he would vote against the last phrase of operative paragraph 1.

37. Miss BROOKS (Liberia) said that the problem was not to determine whether the Fourth Committee had the right to hear petitioners, but only whether the Committee on South West Africa had that right. In order to clarify the position, she therefore proposed that operative paragraph 1 should be amended to read as follows: "*Decides that the oral hearing of petitioners would not be in accordance with the procedure of the former Mandates System and is therefore not admissible before the Committee on South West Africa.*"

38. Miss ROESAD (Indonesia) congratulated the sponsors of the draft resolution for having attempted to establish some kind of procedure for the handling of requests for oral hearings by the Committee on South West Africa. She regretted that she was not satisfied with the results of their efforts. In her view, the operative part was unacceptable, particularly paragraph 1 which stated that the oral hearing of petitioners was not admissible.

39. She repeated that, in her delegation's opinion, all requests for oral hearings emanating from the Trust Territories should be accepted and there was no reason to follow a different procedure with regard to requests concerning South West Africa. As the General Assem-

bly had placed certain restrictions on the Committee on South West Africa, her delegation was ready to support a formula that would permit the Chairman of the Committee on South West Africa to hear petitioners and report to the Committee, which in turn would report to the General Assembly. It could not, however, vote for the present text.

40. The Yugoslav suggestions would make the draft resolution more acceptable to her delegation.

41. As regards the Danish representative's remarks, she said that in her delegation's view the General Assembly was perfectly entitled to grant oral hearings to petitioners who were concerned with the Territory of South West Africa. If such applications were made, her delegation would vote for the granting of a hearing.

42. Mr. CALLE Y CALLE (Peru) recalled the proposal he had made at the previous meeting to make what he felt to be an essential addition to the preamble. All the resolutions the General Assembly had adopted on the subject of South West Africa had recommended that that Territory should be placed under the International Trusteeship System. Pending the conclusion of a trusteeship agreement between the United Nations and the Union of South Africa, the General Assembly, desiring to fulfil its obligation towards the inhabitants of the Territory, had established a committee, which it had requested to carry out the task assigned to it as far as possible in accordance with the procedure of the former Mandates System. The Assembly had also requested that committee to prepare for its consideration a procedure for the examination of reports and petitions submitted to it. In 1954, the Committee on South West Africa had submitted rules of procedure (A/2666 and Corr. 1, annex II) which did not expressly exclude the admissibility of oral hearings, for it did not feel that such hearings would be at variance with the established practice. For that reason, it had added to its rules of procedure section D, entitled "Transitional Provisions", which implied that requests for hearings could be submitted.

43. The Yugoslav representative had made a very shrewd remark about the difference between the rights of petitioners and the exercise of those rights, in particular under the Trusteeship System. Any petition, written or oral, implied the assertion of certain facts on which the administering Power concerned could submit observations. It would therefore be irregular for a petitioner to make statements to a committee on which the administering Power concerned was not represented and in which, consequently, it could submit no observations on the petition.

44. The draft resolution was not satisfactory. At the previous meeting, the Venezuelan representative had suggested to the Peruvian delegation that the words it proposed to add to the preamble, purely as a reminder, should be placed in the operative part, a proposal to which the sponsors of the draft resolution had no objection. On reflection, the Peruvian delegation had decided to withdraw its amendment or at least not to maintain it as a formal proposal. However, it would be glad if the sponsors of the draft resolution would submit a revised text taking into account the Peruvian suggestion as well as those of other delegations.

45. The Committee should find a flexible compromise formula which did not impose a rigid set of rules on the Committee on South West Africa, since, before a

trusteeship agreement was concluded with the Union of South Africa, it might be possible to establish a procedure, midway between the Mandates System and the Trusteeship System, under which hearings could be granted. The Peruvian delegation felt that operative paragraph 1 might, for instance, be drafted as follows: "*Considers*"—and not *Decides*—"that, for the time being, the Committee on South West Africa should not grant hearings to petitioners." The General Assembly would thus be tendering advice instead of giving a ruling, and the words "for the time being" would make the paragraph less rigid.

46. Mr. RIVAS (Venezuela) recalled that when the General Assembly had adopted resolution 449 A (V) accepting the opinion of the International Court of Justice that the Territory of South West Africa should be treated as far as possible as it had been under the Mandates System, the Venezuelan delegation had abstained on the grounds that that system no longer met the needs of the present time. It had always maintained that the Territory should be placed under the International Trusteeship System of the United Nations.

47. However, in giving effect to the Court's advisory opinion, the General Assembly had set up a Committee on South West Africa, which was a negotiating body charged with the task of reconciling the views of the United Nations with those of the Union of South Africa. That body should therefore be given every facility for fulfilling its task.

48. The draft resolution was certainly not perfect. Operative paragraph 1 expressed conclusions which were somewhat categorical. The peremptory decision which it appeared to embody would be out of keeping with the spirit of compromise by which the Committee on South West Africa should be governed. It would be going too far to state, on the basis of a principle, or more correctly, of a procedure, which had been open to revision by the Permanent Mandates Commission (a body of experts), that the oral hearing of petitioners by the Committee on South West Africa was inadmissible.

49. If included in operative paragraph 1, the Peruvian amendment might reconcile the most extreme views put forward during the debate. It would set a time limit for the restrictions imposed on the exercise of the right by the population of the Territory. There was no question of limiting the General Assembly's role. Moreover, the General Assembly had already granted hearings to representatives of petitioners from South West Africa. It was to be hoped that the sponsors of the draft resolution would submit a revised text which would take into account, *inter alia*, the suggestion made by the Peruvian representative.

50. Mr. MALLI (Pakistan) said that his delegation, which was one of the sponsors of the draft resolution (A/C.4/L.413), would like the various suggestions made to be formally submitted as amendments.

51. Mr. RIFAI (Syria) said, with reference to the Danish representative's remarks, that the draft resolution was expressly concerned with hearings of petitioners by the Committee on South West Africa. It in no way prejudiced the position which the Syrian delegation would adopt with regard to the hearing of petitioners by the General Assembly.

52. He was glad to note that many representatives had put forward ideas and suggestions. The sponsors

of the draft resolution might usefully consult with those representatives in order to prepare a new text for the Committee to examine at a later meeting.

53. Mr. SCOTT (New Zealand) pointed out with reference to operative paragraph 3 of the draft resolution that the Trusteeship Council had some difficulty in classifying the petitions it received and in deciding whether they were admissible or not. The Committee on South West Africa had drawn up rules of procedure for the examination of written petitions, which were modelled on those of the former Mandates Commission. It might perhaps be useful if, in informing persons applying for hearings that they could submit their views in writing, the Chairman of the Committee also informed them of the rules of procedure governing the examination of petitions. Embarrassing situations would then be avoided in the event of the Committee's subsequently finding that petitions were not admissible.

54. He therefore suggested that the words "in accordance with the Committee's rules of procedure" should be added to the end of operative paragraph 3.

55. Mr. KHOMAN (Thailand), Chairman of the Committee on South West Africa, drew the New Zealand representative's attention to rule XXVI of the rules of procedure of the Committee (A/2666 and Corr. 1, annex II). That rule laid down an alternate procedure for the handling of petitions from the inhabitants of the Territory of South West Africa.

56. Mr. SCOTT (New Zealand) accepted that explanation.

57. The Chairman proposed that the meeting should be adjourned to allow the sponsors of the draft resolution and representatives who had made suggestions to consult together, as the Syrian representative had suggested.

It was so decided.

The meeting rose at 12.50 p.m.