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Chairman: Mr. Rafik ASHA (Syria).

REQUESTS FOR HEARINGS (A/C.4/267) (*continued*)

1. Mr. MONTEL (France) regretted that the Committee's debates should be complicated by the political manoeuvres in which the organizations granted hearings usually engaged. It was unfortunate that the United Nations should lend itself to such manipulation. He warned the Committee against the danger of indiscriminate acceptance of requests for hearings and hoped that it would think the matter over before voting on the granting of a hearing to the Jeunesse démocratique du Cameroun requested in document A/C.4/267. His delegation would vote against the request, for though his Government had no knowledge of the organization itself, it was aware of the inspiration behind it. The granting of a hearing would provide certain persons with opportunities which his delegation could only consider undesirable.

2. Mr. RYCKMANS (Belgium) said that he would vote against the request. He wondered how many Committee members who would vote in favour of granting a hearing came from countries whose constitutions allowed the submission of oral petitions.

The Committee decided by 28 votes to 11, with 3 abstentions, to grant a hearing to the Jeunesse démocratique du Cameroun.

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.2, A/C.4/L.334, A/C.4/L.335, A/C.4/L.336, A/C.4/L.337) (*continued*)

3. Mr. RAJAN (India), introducing the draft resolution (A/C.4/L.334) which his delegation was sponsoring jointly with those of Mexico, Norway, Syria and the United States, said that it contained, with certain deletions, that part of his delegation's original proposal (A/C.4/L.333/Rev.1) which had referred to the request for an advisory opinion from the International Court of Justice. The Committee would note that all considerations had been omitted and the resolution now

consisted of a simple reference to the International Court in which only the relevant part of the Court's formal opinion¹ was cited. In the earlier version a passage from the Court's argument on which the South African Government had largely based its attitude had also been cited. That had been in the hope that the Court's subsequent opinion might thereby be made acceptable to the South African Government. However it had been pointed out that a portion of the Court's argument should not be given the same status as its formal opinion. His delegation, in co-sponsoring the new draft resolution, had recognized the force of that contention.

4. The Indian proposal (A/C.4/L.333/Rev.2) amending the condition governing the adoption of special rule F contained no changes in wording. The phrase "as may be necessary", which had caused some difficulties, had been retained because his delegation recognized that acceptance by the Union of South Africa might be necessary in certain circumstances but wished to make it quite clear that that necessity should be accepted only to the extent required and only in the manner that was proper. Any special rights which the Union of South Africa might have could derive only from its status as a Mandatory Power and not as a Member of the United Nations or as "the State most directly concerned". As to the extent to which South Africa's concurrence was necessary, that was a question the answer to which would have to await the Court's opinion. The phrase merely expressed as precisely as possible the problem which would be before the Committee if rule F were adopted without the approval of South Africa. That approval might or might not be found necessary eventually, depending on the terms of the International Court's opinion.

5. Mr. LYRA (Brazil) agreed with the view expressed by the representative of Mexico at the 400th meeting that some further clarification of the phrase "as may be necessary" was required. The original text would make the approval of special rule F subject to the concurrence of the Union of South Africa. Under the amendment, that approval would be subject only to such concurrence as might be necessary. He was still not quite clear who was to decide whether the acceptance of South Africa was necessary. He wondered whether the Union of South Africa itself would reach some decision. In the absence of further clarification as to the reasons for changing the text originally submitted by the Committee on South West Africa, his delegation would be unable to take a decision.

6. Mr. RAJAN (India) said that the matter was to be referred to the International Court of Justice, which would decide as to the extent to which acceptance by South Africa would be necessary. The General Assembly would then take its decision on the basis of the

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

opinion of the International Court. It seemed to him evident that South Africa itself could not take the decision. The mere fact of reference to the International Court of Justice made it clear that the Court's opinion would be the guiding factor in the Assembly's action.

7. Mr. RIVAS (Venezuela) recalled certain reservations made by his delegation at the fifth session (192nd meeting) when voting in favour of accepting the International Court's advisory opinion on South West Africa. His delegation had been moved by a sincere desire to seek a practical settlement of the controversy which divided the Union of South Africa from the majority of Members of the United Nations. One such practical method, of which his delegation had always been in favour, was the avoidance of academic, legalistic and abstract discussions which only accentuated differences and promoted distrust. With those considerations in mind, his delegation was prepared to support the recommendations made by the Committee on South West Africa appearing in annex IV of that Committee's report.

8. The Chairman and Rapporteur of the Committee on South West Africa had already explained the constructive and conciliatory intentions which had prompted those recommendations. The Committee had demonstrated its wish to avoid dealing with the academic aspect of the problem by laying it before the International Court of Justice, as suggested in part B of annex IV. That was probably a faithful reflection of the desire of the majority of the General Assembly to facilitate a settlement even if it might entail a temporary sacrifice of some of the ground gained at San Francisco. He agreed with those speakers who had regretted the radical position taken up by South Africa, which appeared to be demanding all or nothing. That was hardly the best means of reaching a compromise. Mutual concessions were the only way to conciliation. The General Assembly had already made concessions, starting with the acceptance of the Court's advisory opinion, involving an interpretation of Article 80, paragraph 1, of the Charter, which, although conforming to the reservations made by some delegations at San Francisco, was hardly calculated to achieve the objectives of the Trusteeship System as expressed by the United States representative at a meeting of Committee 4 of Commission II on 15 May 1945.² Subsequent events had on many occasions borne out the connexion noted by Mr. Stassen between the welfare of dependent peoples and the maintenance of international peace and security. Many of the conflicts which had arisen since 1946 had their origin in dependent territories and were due to the fact either that the countries were emerging into independence or that international subversive elements had taken advantage of the delays occasioned by the legal interpretation of relevant texts to sow unrest amongst the peoples and incite them to violence.

9. In view of those facts, he wondered whether it was advisable for the Fourth Committee to engage in heated theoretical debates. The statement made at the 399th meeting by the representative of the Union of South Africa was an admirable legal document, but he wondered whether its final effect on the peoples of

South West Africa might not be to make them ready victims of any subversive element intending to sow distrust of law and institutions and encourage rebellion against them. The tendency to turn United Nations debates into theoretical contests was one of the weakest points in the international front against subversion. He had already had occasion to deplore the academic debates on the power of the General Assembly to grant hearings to representatives of organizations in Trust Territories. The arguments in favour of reducing that power provided ample grounds to fear that Article 87 would soon become as controversial as Article 73 had become in the previous year. In that connexion he recalled his delegation's appeal during the previous year's debate on factors which should be taken into account in deciding whether a territory was or was not a territory whose people had not yet attained a full measure of self-government. His delegation had then urged that doctrinal divergences, which threatened to give the impression of irreconcilable differences of opinion between States closely allied on what he had previously called the international front against subversion, should no longer be accentuated. He was renewing that appeal with the same sincerity and good faith. He felt that the same principles should apply both to the question of hearings and that of South West Africa and to any matter in which lengthy theoretical discussions might further shake public confidence in the United Nations.

10. With that hope in view, his delegation would not hesitate to support what might prove to be a preliminary step to an understanding with the Union of South Africa. Despite the South African representative's categorical statement that he would not accept the new proposal, it was still to be hoped that the dangers threatening mankind would lead South Africa to interpret the relevant legal texts less rigidly and to adopt a more dynamic attitude towards the purposes and principles underlying Chapter XII of the Charter.

11. He saw the same objections to the Indian amendment (A/C.4/L.333/Rev.2) as the representative of Brazil.

12. Miss BROOKS (Liberia) said that, after due consideration, her delegation would refrain from commenting on the draft resolutions before the Committee.

13. Mr. HARARI (Israel) congratulated the Committee on South West Africa on the conciliatory spirit revealed in its report. He did not feel, however, that annex IV could be entirely acceptable to the Fourth Committee or the General Assembly. The adoption of the draft resolution in part A, as it stood, would result in the establishment of a new type of veto in favour of the Union of South Africa, and that his delegation could not accept it. The logical step would be to delete that draft resolution entirely, as it would hardly be consistent both to propose rules and to request an advisory opinion from the International Court of Justice. In any case, the resolution promised to be ineffective since South Africa itself refused to accept it. The only draft resolution acceptable to his delegation would be one which confined itself to asking for an advisory opinion from the International Court of Justice on the question of voting procedure in the United Nations.

14. In the second place, he wished to draw attention to the provisions of General Assembly resolution 684 (VII). The purpose of that resolution had been to en-

² See United Nations Conference on International Organization, II/4/13.

sure that requests for an advisory opinion from the International Court of Justice should be couched in the proper terms. He thought that the resolution in part B of annex IV of the report of the Committee on South West Africa should be submitted to the Sixth Committee, as prescribed in General Assembly resolution 684 (VII), or to a joint committee of the Fourth and Sixth Committees. The request to the International Court of Justice should refer only to the voting procedure appropriate, and the Fourth Committee by itself could not make such a request. His delegation would be glad if other delegations would join it in a resolution to that effect.

15. Mr. CANAL RIVAS (Colombia) congratulated the Committee on South West Africa on its report. His delegation regretted the refusal of the South African Government to co-operate with the United Nations in reaching an agreement concerning the situation of the Territory of South West Africa, for which it had assumed a Mandate in 1920. To that extent, the efforts of the Committee on South West Africa, which represented the desire for a settlement felt by most Members of the United Nations, had been in vain.

16. His delegation wished to comment on the rules of procedure proposed by the Committee on South West Africa in annex IV to its report. With regard to part A, he was submitting his delegation's amendment (A/C.4/L.337) to special rule A because the rule in its present form envisaged two alternative possibilities, either that the General Assembly would receive an annual report from the Union of South Africa, or that the report on South West Africa would be prepared by the Committee in accordance with paragraph 12 (c) of General Assembly resolution 749 A (VIII), which would be done if the South African Government did not submit a report. It was therefore necessary to take into account the possibility that that Government would not appoint a representative as proposed.

17. His delegation had no objections to special rules B, C, D and E, but was submitting an amendment (A/C.4/L.336) to the Indian amendment (A/C.4/L.333/Rev.2) to paragraph 2 of the draft resolution in part A. His delegation's amendment would place some limitation on the appeal to the Union of South Africa, a limitation which was desirable in that the effect of the rule was to confer on that country a kind of right of veto, a procedure which had already been proved undesirable and had given rise to much criticism.

18. His delegation reserved the right to speak in the debate on part B of the draft procedure outlined in annex IV according to whether his proposals regarding part A were accepted or rejected.

19. In conclusion, he said that his delegation wished for nothing better than the settlement of the question of South West Africa through an agreement between the United Nations and the Government of the Union of South Africa, with which Colombia had always sought to maintain most friendly relations.

20. Mr. JACKSON (United States of America) considered the report of the Committee on South West Africa a very thorough, constructive and intelligent effort to solve a difficult and complex problem. The proposals contained in annex IV had been carefully worked out after much expenditure of time and thought. They embodied a sound procedure for ensuring that the

action of the Committee on South West Africa should remain within the legal limits of the opinion of the International Court of Justice. With that end in mind, his delegation had joined four others in sponsoring the draft resolution in document A/C.4/L.334. His delegation could not, however, accept the Indian amendment to part A of annex IV, because it was far from clear.

21. Mr. KHOMAN (Thailand) said that the Committee on South West Africa had drafted its resolutions in the belief that the special rules of procedure would be considered one by one. It was quite clear that if the Union of South Africa accepted those rules, part B would not apply; but if part A were not accepted, then part B, providing for a request for an advisory opinion from the International Court of Justice, would apply. It seemed clear that if the concurrence of the Union of South Africa were obtainable, there would be no need for part B. His delegation still clung to the hope that the South African Government's refusal would not be its final position.

22. He did not feel that the phrase "as may be necessary" in the Indian amendment was clear. There was a direct connexion between the passage in which the phrase occurred and the question of submitting the matter to the International Court of Justice. If the Union of South Africa concurred, there would be no need to submit the matter to the International Court of Justice and therefore no need for the phrase "as may be necessary". With regard to the joint draft resolution (A/C.4/L.334), he felt that if the South African position did prove to be final, it should be made clear that the Committee noted that special rule F had not been accepted by the Union.

23. Mr. KUCHKAROV (Union of Soviet Socialist Republics) said that before stating his delegation's position on the report of the Committee on South West Africa, he wished to make it clear that the USSR delegation thought that under the Charter of the United Nations there were only two courses open in connexion with the former mandated territories: they must either be granted independence or be brought under the Trusteeship System. The Union of South Africa had deliberately annexed the Territory of South West Africa on the pretext that the Mandate had lapsed. The representative of India had pointed out that even if the Mandate had lapsed, the Union of South Africa had forfeited its rights over the Territory. In any case it had no rights other than those conferred by the Mandate. South Africa's refusal to deal with the matter in the appropriate manner constituted a violation of the Charter.

24. The Fourth Committee was now considering rules of procedure proposed by the Committee on South West Africa. His delegation had voted against paragraph 12 of General Assembly resolution 749 A (VIII) because it had felt that the provisions of Articles 77, 79, and 80 of the Charter should be implemented and that if they were implemented there would be no need to set up a special new organ of the United Nations. The Charter entitled the United Nations to demand that the Union of South Africa should place the Territory under the Trusteeship System. His delegation had voted against sub-paragraph (b) of paragraph 12 because that sub-paragraph endorsed the colonial principles of the League of Nations.

25. He thought that the proposals before the Committee represented a method of circumventing the United Nations Charter. They would establish a special status for the Union of South Africa, and he felt that the Committee on South West Africa had gone too far in its search for a compromise solution. Any reports in connexion with the Territory should be submitted by the Union of South Africa rather than the Committee on South West Africa. He saw no reason to apply to the International Court of Justice, as the question was clear—the Union of South Africa had simply refused to make South West Africa a Trust Territory as it was bound to do under the Charter.

26. Special rule A would establish the Committee on South West Africa as a standing committee operating alongside the Trusteeship Council. The adoption of that rule would subvert the rules and the authority of the Council, and there was a danger that other standing committees might be set up and have the same effect. His delegation would be unable to support either part A or part B of annex IV of the report. With regard to the report of the Committee on South West Africa as a whole, he reserved his delegation's right to speak on it later.

27. Mr. RYCKMANS (Belgium) asked for further explanations on the question under discussion from the Chairman of the Committee on South West Africa and the sponsors of the joint draft resolution (A/C.4/L.334). Bearing in mind that the object of requesting an advisory opinion from the Court was to ascertain whether the General Assembly would be able, under special rule F, to take decisions on matters concerning South West Africa by a two-thirds majority, why was it that, though the Court's ruling that the Territory of South West Africa should be considered as a mandated territory was recognized in the request for an advisory opinion, no reference was made to the crux of the Court's opinion, namely, the view that the degree of supervision to be exercised by the General Assembly should not exceed that which applied under the Mandates System. He thought that the draft resolution should be submitted to the Sixth Committee or to a joint committee of the Fourth and Sixth Committees, in accordance with General Assembly resolution 684 (VII).

28. Mr. KHOMAN (Thailand) replied that in view of the constant assertions by the South African Government that the Mandate had lapsed with the demise of the League of Nations it seemed essential that the Fourth Committee should once again reaffirm the United Nations contention that South West Africa was still governed by the terms of the Mandate. Recognition of the continuing nature of the Mandate clearly implied that the degree of supervision exercised by the General Assembly should not exceed that which applied under the Mandates System.

29. Mr. RODRIGUEZ FABREGAT (Uruguay) reiterated the strong disapproval which he had expressed at the previous meeting of the manner in which the Committee was discussing the item on South West Africa.

30. In resolution 749 A (VIII), paragraph 12, the General Assembly had instructed the Committee on South West Africa to prepare a report on conditions in the Territory "taking into account, as far as possible, the scope of the reports of the Permanent Mandates

Commission's and to prepare a procedure for the examination of reports and petitions "which should conform as far as possible to the procedure followed . . . by the Assembly, the Council and the Permanent Mandates Commission of the League of Nations". The actual machinery of the Mandates System, however, was less important than the purposes and ideals underlying it. The Mandates System had been established to ensure the advancement of former colonial peoples whose future had been entrusted by the international community to certain States, such as the Union of South Africa, which had been felt to be capable of guiding, educating and leading those peoples along the road to self-government and independence. The same humanitarian ideals underlay the International Trusteeship System embodied in the Charter. The Fourth Committee must bear those ideals in mind. It was not discussing a purely formalistic question but a matter affecting the sacred trust assumed by the international community, and the lives and destinies of millions of human beings.

31. As far as the factual situation was concerned, no new events had supervened. The South African Government had reiterated its refusal to co-operate with the Committee on South West Africa. It had sent no representative to the Committee's meetings and had supplied no information or report on conditions in the Territory. That failure to co-operate had made it extremely difficult for the Committee to gather the necessary information for its report.

32. The South African Government's non-co-operation derived from its contention that the Mandate had lapsed, its rejection of the International Court's advisory opinion and its refusal to recognize United Nations jurisdiction over South West Africa. Under the Mandate, however, the Union of South Africa was clearly responsible for its administration of South West Africa to the international community, which, in turn, had a duty to supervise the development and protect the interests of the indigenous inhabitants. The Mandate was an international instrument and it could not possibly be argued that the administration of South West Africa was a matter of domestic jurisdiction falling within the purview of Article 2, paragraph 7, of the Charter.

33. Despite the fact that in successive resolutions the General Assembly had consistently maintained its right to supervise the administration of South West Africa, the Union of South Africa was still proposing that the old machinery of the League of Nations should be resurrected. The clock could not be put back, and his delegation deplored the refusal to recognize the march of time and adopt a procedure in keeping with general United Nations practice. He was therefore unable to accept paragraph 2 of the draft resolution in part A of annex IV. Adoption of the phrase "subject to the concurring vote of the Union of South Africa as the State most directly concerned" would be tantamount to giving South Africa a right of veto, and that at a time when more and more voices were being raised in the General Assembly in condemnation of the veto privilege now enjoyed by the permanent members of the Security Council.

34. With regard to part B of annex IV, the International Court of Justice had already given its opinion on the South West African question; the Assembly had accepted that opinion *in toto* and had acted in

accordance with it. It seemed unnecessary at that juncture to ask the International Court of Justice for a further opinion on the applicability of Article 18, paragraph 2. The Assembly had sufficient experience itself to judge which items should be regarded as "important questions" within the meaning of that Article.

35. His Government's position on the substance of the question remained unchanged. He hoped that, with co-operation, a solution would ultimately be found and that the peoples of South West Africa would achieve the independence that was their due. He reserved his right to speak on the joint draft resolutions and the amendments as and when they were put to the vote.

36. Mr. CALLE Y CALLE (Peru) introduced an amendment (A/C.4/L.335) which his delegation and the Philippine delegation wished to insert in the preamble of the draft resolution contained in part A of annex IV. According to General Assembly resolution 749 A (VIII), the Committee on South West Africa had been set up until such time as an agreement was reached between the United Nations and the Union of South Africa. South Africa had an obligation towards the community of nations to place South West Africa under trusteeship and it was the conviction and hope of the majority of Member States that sooner or later some agreement along those lines would be reached. That conviction formed the basis of all previous General Assembly resolutions on the subject and should find an echo in the draft resolution under discussion.

37. Lord FAIRFAX (United Kingdom) recalled that his delegation had abstained from voting on the draft resolution which had later become General Assembly resolution 749 (VIII) because it had felt that that resolution went too far and gave the Committee on South West Africa instructions and powers which went beyond the provisions governing the Mandates System, and that it was therefore contrary to the International Court's advisory opinion, which had been accepted as a whole by the United Kingdom and recognized by the General Assembly. The procedure recommended in annex IV also went beyond the procedure in force under the Mandates System. In special rule A, for example, it was proposed that the Committee on South West Africa should compile a report for the General Assembly in default of one by the South African Government. His delegation did not welcome any tendency by the Committee to depart further from the procedure of the Permanent Mandates Commission. He would therefore be unable to support the draft procedure recommended by the Committee.

38. Mr. JOUBLANC RIVAS (Mexico) felt that the Indian amendment (A/C.4/L.333/Rev.2) to the draft resolution in part A was an improvement over the original text. He would vote in favour of it, provided that the phrase "as may be necessary" was deleted. The scope of that phrase was not clear; two or three different interpretations had been given.

39. The Belgian representative had asked why the part of the International Court's advisory opinion referring to the degree of supervision to be exercised by the General Assembly had not been included in the joint draft resolution (A/C.4/L.334). The Working Group of the Committee on South West Africa had borne in mind four statements in the advisory opinion: they were set out in paragraph 4, sub-paragraphs (a), (b),

(c) and (d) of annex III to the report. The point to which the Belgian representative had referred appeared as sub-paragraph (c). At the previous meeting the Indian representative had suggested that that particular point should be included in the draft resolution, but he had later withdrawn that suggestion. The Mexican delegation would have had no objection to the inclusion of the point cited in sub-paragraph (c) provided that the points mentioned in sub-paragraphs (a), (b) and (d) had also been included. The matter had been discussed with the other sponsors of the joint draft resolution and it had been agreed that the inclusion of all four points would make the draft resolution confused and unwieldy. That was why the point mentioned by the Belgian representative had been omitted.

40. The representatives of Israel and Peru considered that the Committee was under an obligation to submit to the Sixth Committee the text of its question to the Court. The terms of the General Assembly recommendation, however, as they appeared in annex II, part 1, of the Assembly's rules of procedure were not mandatory: the recommendation stated that "the matter may . . . be referred to the Sixth Committee for advice . . . or the Committee concerned may propose that the matter should be considered by a joint committee." It was therefore open to the Fourth Committee to decide whether or not to refer the question to the Sixth Committee.

41. Various speakers had voiced some anxiety about when the substance of the South African question would be considered. In his opinion the substantive debate would undoubtedly take place in the near future, whatever procedural decisions were reached, but the recommendations to be made at the outcome of that debate would be subject to certain restrictions, pending the International Court's opinion on the question of voting procedure.

42. He was prepared to accept the amendment submitted jointly by the delegations of Peru and the Philippines.

43. Mr. CARPIO (Philippines) said that his delegation had read the invaluable report of the Committee on South West Africa (A/2666 and Corr.1 and Add.1) and listened to the discussions in the Fourth Committee with great care. He shared the regret of the representative of Uruguay that the Fourth Committee had seen fit to consider the question of rules of procedure in respect of functions that had not yet been decided upon. Nevertheless, in considering the procedure to be adopted by the General Assembly in examining reports and petitions relating to the Territory of South West Africa, there were certain basic facts which must be borne in mind.

44. The question of South West Africa had been discussed in the United Nations every year since its establishment. The crucial question was whether the United Nations possessed any supervisory functions in regard to the administration of the Territory. The United Nations had maintained each year, in a series of resolutions, that it possessed such authority, and the Mandatory Power, the Union of South Africa, had as often denied it. At the current session, the representative of the Union of South Africa had again repeated the argument that his Government's obligations had ceased with the demise of the League of Nations, under whose

auspices the Mandate had been concluded. However, there were certain obligations common to all signatories to the Charter of the United Nations. He drew the Committee's attention to the provisions of Article 77, paragraph 1 a, and Article 80, paragraph 2, and recalled that when the Charter was signed, the League of Nations had still been in existence and all obligations under the Mandates System had subsisted. Of all the former mandated territories, only the Territory of South West Africa had still not been brought under the International Trusteeship System, despite the annual entreaties of the United Nations for the negotiation of a satisfactory agreement in compliance with the provisions of Articles 77 and 80.

45. Among the other obligations deriving from the Charter was that in Article 2, paragraph 5, whereby all Members must give the United Nations every assistance in any action which it might take in accordance with the Charter. The *Ad Hoc* Committee on South West Africa, and the subsequent Committee on South West Africa, had been set up under the Charter to secure the recognition of United Nations authority over the Territory. The report of the Committee on South West Africa showed clearly that it was not at fault in having failed to do so. The Fourth Committee could decide for itself whether the Union of South Africa had given the United Nations the co-operation required in Article 2, paragraph 5.

46. Article 18, paragraphs 2 and 3, of the Charter laid down the rules governing the voting procedure of the United Nations. The General Assembly had adopted resolution 749 A (VIII) in accordance with that procedure, but the Union of South Africa now objected to the differences between the voting procedures of the United Nations and those which had obtained under the Mandates System.

47. Article 1, paragraph 3, of the Charter included among the purposes of the United Nations the achievement of international co-operation in solving international problems of various kinds. The Union of South Africa could hardly be said to have complied with the terms of that article in the many years during which the problem of South West Africa had been before the General Assembly. Article 94 of the Charter stated that each Member of the United Nations undertook to comply with the decision of the International Court of Justice in any case to which it was a party. It was true that the Court had so far issued only an advisory opinion, but the provisions of the Charter and the Statute of the Court did not distinguish between the binding effect on States of a decision of the Court and an advisory opinion. Yet, although it was a signatory to the Charter, the Union of South Africa had not yielded to the Court's advisory opinion. Article 2, paragraph 2, provided that all Members should fulfil in good faith the obligations assumed by them in accordance with the Charter. He wondered whether it could be said that that stipulation had been obeyed by the Union of South Africa. Article 1, paragraph 2, called for respect for the principle of equal rights and self-determination of peoples. The South African Government had stated that the Territory of South West Africa had been made a part of the metropolitan territory of the Union of South Africa. He wondered whether, in accordance with the principle in Article 1, paragraph 2, the wishes of the inhabitants had been ascertained.

48. The Fourth Committee had again heard from the representative of the Union of South Africa that, on the demise of the League of Nations in 1946, the Government of the Union of South Africa had been relieved of any further responsibility in respect of the Territory of South West Africa. However, the resolution adopted by the Assembly of the League of Nations dissolving the organization,³ and the speeches made on that occasion, showed quite plainly that the League had been confident that its functions and ideals would continue in the United Nations. The Charter of the United Nations had been signed in 1945, before the dissolution of the League in 1946, and the statement that South Africa's international obligations had ceased with the demise of the League was therefore somewhat extraordinary. He quoted from speeches made by representatives at the last session of the League Assembly, including one by the representative of the Union of South Africa pledging his Government to continue to discharge South Africa's obligations under the Mandate until other arrangements had been agreed upon.⁴ It was clear that such arrangements had in fact been envisaged as arrangements with the United Nations. All the other Mandatory Powers had concluded such arrangements.

49. The United Nations had failed so far in its efforts to assert its authority over the Territory of South West Africa. It might perhaps be advisable to consider the possibilities of alternative action. The attempt to apply the provisions of the Charter regarding the International Trusteeship System had failed in the past. Attention might now be devoted to the provisions of Article 14 of the Charter, regarding General Assembly recommendations for the peaceful adjustment of, *inter alia*, situations resulting from a violation of the provisions of the Charter. Articles 5 and 6 made provisions for the suspension or expulsion of Members which violated the principles of the Organization. In a different direction, the United Nations might explore the possibility of applying the principle of self-determination, as expressed in Article 1, paragraph 2, to the Territory of South West Africa. Lastly, it might consider the application of the provisions of Chapter XI of the Charter. Any of those provisions might give the United Nations the jurisdiction over the Territory of South West Africa so far denied by the Mandatory Power. In the meantime, the Philippine delegation would support any resolution maintaining the position of the United Nations in regard to its authority over the Territory of South West Africa.

50. The Philippine delegation would vote for the Indian amendment to the draft procedure proposed by the Committee on South West Africa (A/C.4/L.333/Rev.2) and for the joint draft resolution asking the International Court of Justice for a further advisory opinion (A/C.4/L.334). The Peruvian representative had already explained the purpose of the joint Peruvian and Philippine amendment (A/C.4/L.335), which was to bring the draft resolution contained in part A of annex IV into line with previous General Assembly resolutions.

51. In conclusion, he emphasized his delegation's desire to contribute to the proper functioning of the United Nations as envisaged at San Francisco. Only

³ See *League of Nations, Official Journal, Special Supplement No. 194*, p. 281.

⁴ *Ibid.*, p. 33.

the constant vigilance of all Members could secure the fulfilment of the purposes of the Charter.

52. The CHAIRMAN hoped that the Committee would be able to complete at the next meeting its voting on the procedure to be followed in dealing with the question of South West Africa, and then pass to the next item on its agenda, namely, the item concerning information from Non-Self-Governing Territories transmitted under Article 73 (e) of the Charter.

53. Mr. WINIEWICZ (Poland) objected that that would give no opportunity for a discussion of the substance of the report of the Committee on South West Africa.

54. The CHAIRMAN understood that the draft resolutions on the procedure to be followed in dealing with the question of South West Africa would go to a plenary meeting of the General Assembly. When it had been dealt with, the Fourth Committee would be able to return to the substantive question.

55. Mr. KHALIDY (Iraq) shared the doubts which had already been expressed by the representative of Uruguay. He felt that it would set an unfortunate precedent to adopt a draft resolution without a general debate on the substantive question. He suggested that the Committee should not vote on the draft resolution on procedure until a general debate had been held.

56. Mr. RODRIGUEZ FABREGAT (Uruguay) said that he had wanted to consider the question as a whole. He felt it would be unwise to interrupt its consideration in order to submit a draft resolution to the General Assembly, and then return to it at a later date. The procedure proposed by the Chairman would be tantamount to a decision not to discuss the substance of the report of the Committee on South West Africa.

57. The CHAIRMAN said that the procedure had been agreed upon at the 399th meeting and no objection had been raised at the time. He then read a passage from the summary record of the Committee's 399th meeting. He noted that he had not prevented representatives who had spoken from touching on the substance of the question.

58. Mr. KUCHKAROV (Union of Soviet Socialist Republics) said that when the Fourth Committee had discussed its agenda at the 397th meeting, the general opinion had been that the items should be taken in the order suggested by the Secretariat. The South African delegation had said that it was not ready to discuss the substance of the question, but would seek instructions from its Government while the Fourth Committee discussed the question of procedure. The Chairman now

suggested that a vote should be taken on the draft resolution on procedure and that the Committee should then go on to the next item on the agenda. His delegation objected most emphatically. The Fourth Committee must finish the discussion of the question of procedure and then go on to discuss the substance of the report, namely the conditions which prevailed in the Territory of South West Africa.

59. Mr. WINIEWICZ (Poland) felt that if annex IV of the report of the Committee on South West Africa was taken to the General Assembly as a separate item, the discussion there would inevitably range over the whole issue. He believed that it would shorten the debate in the General Assembly if the Fourth Committee was allowed to finish discussing the substance of the report.

60. The CHAIRMAN read a passage from the summary record of the 397th meeting of the Fourth Committee reporting the Committee's decision to consider first the procedure for the examination of reports and petitions.

61. Mr. SOLE (Union of South Africa) said that the decision made at that meeting had been reaffirmed at subsequent meetings. However, the Chairman had now intimated that he would be willing at the next meeting to allow speeches on the substance of the report as well as on the procedural aspects. He submitted that that would be a deviation from the Committee's previous decision. He noted that a two-thirds majority of the Committee would be needed to reverse the earlier decision, under rule 124 of the rules of procedure.

62. Mr. RIVAS (Venezuela) associated himself with the Polish suggestion that the Committee should go on to a debate on the substance of the report.

63. Mr. KHALIDY (Iraq) said that the South African delegation had objected to any deviation from the decision to discuss the procedural aspects of the report of the Committee on South West Africa first. He noted, however, that the statement made by the South African delegation had touched upon the substance of the matter. The most important point of the present discussion was the precedent that would be set. He repeated that his delegation could not agree to the adoption of a draft resolution on an item without a debate on the substance of the matter.

64. Mr. CARPIO (Philippines) moved the adjournment of the meeting. *That motion was adopted by 34 votes to 5, with 3 abstentions.*

The meeting rose at 6.45 p.m.