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

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) (*con-
tinued*)**

**QUESTION OF THE ADMISSIBILITY OF HEARINGS (A/
2913/Add.2, A/C.4/L.415 AND Add.1, A/C.4/L.
416) (*continued*)**

1. Mr. ESPINOSA Y PRIETO (Mexico) recalled that at the previous meeting the Yugoslav representative had asked him whether there was any connexion between the draft resolution that the Mexican and other delegations were planning to submit and the request for a hearing from the Reverend Michael Scott (A/C.4/313). He wished to explain that his delegation had always sought an equitable solution; accordingly, it did not intend to support any request for a hearing which it felt would be inadvisable. The point to be settled in the present instance was whether the Committee on South West Africa, and not the Fourth Committee, was the body competent to receive requests for hearings.

2. In presenting the draft resolution (A/C.4/L.415 and Add. 1) he noted that some representatives had the view that the question of the admissibility of requests for hearings was a matter for the Fourth Committee rather than the International Court of Justice. However, it had not yet been possible to settle the question because neither view had so far been able to secure a majority. The question was linked to the interpretation of a point of law on which delegations had been unable to agree. The normal procedure was therefore to apply to the International Court of Justice, since the point of law was related to the 1950 opinion of the Court.¹ If the draft resolution were adopted, the summary records of the Fourth Committee should be transmitted to the Court.

3. Mr. CALLE Y CALLE (Peru) said that if application was made to the Court it would be to determine

whether the Committee on South West Africa could receive requests for hearings. The representative of Mexico thought that question could not be settled by the General Assembly. Mr. Calle y Calle admitted that, at the time of the discussion on the draft resolutions in documents A/C.4/L.413 and Rev.1, delegations had not been agreed on a suitable form for the reply to the question put by the Committee on South West Africa. As that draft had been withdrawn, however, it was difficult to know whether the disagreement also extended to the substance of the question.

4. The International Court of Justice had stated in its 1955 advisory opinion² that the voting procedure adopted by the General Assembly was valid. It could also be claimed that it increased the degree of supervision exercised by the General Assembly. The question of the admissibility of requests for hearings, however, was largely a question of procedure, of ascertaining in what form petitions could be received. He did not see how the degree of supervision exercised by the General Assembly could be increased if petitions were made orally rather than in writing.

5. With regard to the transmission of the Committee's summary records to the Court, he believed that many delegations would have preferred to know right from the outset of the discussion what was to be done. Accordingly, it would be more prudent to refer the question back to the Committee on South West Africa and ask it to present its observations at the next session of the General Assembly, which could then decide, if necessary, whether to refer it to the Court. As he was not in a position to take a decision on the question forthwith, he would have to abstain if the draft resolution were put to the vote.

6. Mr. ALTMAN (Poland) believed nothing would be gained by referring the matter to the International Court of Justice and would vote against the draft. The Committee was now considering a purely procedural matter. No legal problem was involved, and it would show a lack of consideration for the Court to apply to it on every pretext.

7. Poland felt that South West Africa should be placed under the Trusteeship System. However, even if it were admitted, in accordance with the Court's opinion, that the United Nations should apply the procedure of the Mandates System in exercising its control over that Territory, it must be noted that that arrangement would lead to anomalies and that it failed to take account of the interests of the population. Why should an attempt be made to resurrect a defunct institution? The General Assembly could easily settle the question of the admissibility of requests for hearings by observing the provisions of the Charter, according

¹ *International status of South-West Africa, Advisory Opinions: I.C.J. Reports 1950*, p. 128 (Transmitted to Members of the General Assembly by the Secretary-General by document A/1362).

² *South-West Africa—Voting Procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955*, p. 67 (Transmitted to Members of the General Assembly by the Secretary-General by document A/2918).

to which Trust Territories were entitled to submit written or oral petitions. As the Assembly recognized that South West Africa should be a Trust Territory, the matter presented no difficulty.

8. Mr. RIVAS (Venezuela) said that in his opinion, the question was one of fact rather than of law. A clearer presentation of the issue would have been preferable, by stating that at the present juncture the Committee would do better not to receive requests for hearings, in order to promote an improvement in relations with the Union of South Africa. By putting the question in that way the Committee would not have had to take a decision on the principle of the right of petition but only on the exercise of that right. The draft resolution implied a doubt that he did not feel, and he would therefore abstain if it was put to the vote.

9. Miss BROOKS (Liberia) was convinced that the Committee on South West Africa could accept requests for hearings, but as it must be admitted that the Committee was unable to reach a decision on the question, the only way to break the deadlock was to apply to the Court.

10. Mr. ESKELUND (Denmark) said he would have voted for the draft resolution contained in A/C.4/L.413 in its original form, or even in its revised form; but as its sponsors had withdrawn it, he would vote for the draft contained in A/C.4/L.415 and Add.1, which, though not entirely satisfactory, did offer a solution.

11. Mr. APUNTE (Ecuador) recalled that the Court, in its 1955 opinion on the important procedural question of the voting procedure to be followed by the General Assembly on matters relating to South West Africa, had said (p. 77) that since the United Nations operated under an instrument different from that which had governed the Council of the League, it would not be able to follow precisely the same procedures as the Council. As to the expression "degree of supervision" referred to in the second paragraph of the preamble of the draft resolution, the Court had explained (p. 72) that it referred to the extent of the substantive supervision exercised and not to the manner in which the collective will of the General Assembly was expressed.

12. The Court had drawn a clear distinction between substantive and procedural questions and had said that the General Assembly should apply its own rules to procedural matters. The discussion on draft resolutions A/C.4/L.413 and Rev.1, which had been withdrawn by the sponsors, showed that there was no question of principle to be settled; what was needed was merely a reply to a procedural question put by the Committee on South West Africa. Although the new question to be put to the Court was said to be of a substantive nature, he did not understand how the acceptance of requests for hearings could increase the degree of supervision exercised by the General Assembly.

13. What was the Court to be asked? The question was a procedural one and ought to be settled by the General Assembly, because it was very difficult for any judicial body like the International Court of Justice to pronounce itself or take legal action in such a case. The Committee might be well advised to adopt the Peruvian suggestion to ask the Committee on South West Africa to submit its recommendations on the matter to the Assembly at its eleventh session.

14. Mr. BOZOVIC (Yugoslavia) had hoped that the draft resolution in document A/C.4/L.413/Rev.1, particularly with the amendment suggested by Egypt at the 504th meeting, might provide a solution for the Fourth Committee's difficulties. The addition of the words "as far as possible" was entirely in accord with the Court's opinion of 7 June 1955, which, on page 77, stated that the expression was designed to allow for adjustments and modifications necessitated by legal or practical considerations. What his delegation had had in mind was precisely to allow the Committee on South West Africa to take its decisions on the granting of hearings on the basis of juridical and practical considerations. The Committee might frequently have found it impractical to grant hearings.

15. The draft resolution now before the Committee (A/C.4/L.415 and Add.1) asked the International Court of Justice a question, to which, in his delegation's opinion, the Court had already replied. On the page from which he had just quoted the Court also stated:

"In the matter of determining how to take decisions relating to reports and petitions concerning the Territory of South-West Africa, there was but one course open to the General Assembly. It had before it a text, Article 18 of the Charter, which prescribes the methods for taking decisions."

In the present case, a two-thirds majority vote was required. His delegation thought that the revised draft resolution, with the Egyptian amendment, might have been adopted by a two-thirds majority.

16. He understood the doubts felt by the sponsors of the draft resolution and appreciated their good intentions, but he did not see the need for submitting to the Court the question broached in the new draft resolution. He therefore reserved his delegation's attitude for the future, particularly if the Court should give an affirmative reply, qualified by a clause such as "as far as possible". His delegation would therefore not be able to vote for the draft resolution.

17. Mr. SERAPHIN (Haiti) recalled that his delegation had always felt that the opinion of the International Court of Justice should be asked whenever certain legal subtleties prevented the Committee from reaching a decision. In principle, therefore, he could not condemn the initiative taken by the sponsors of the draft resolution (A/C.4/L.415 and Add.1). He wondered, however, whether its adoption would not constitute a delaying action, likely to postpone indefinitely the question of requests for hearings, which his delegation had always thought deserved support. Nobody could foretell precisely what the Court's opinion was going to be. It might be clear and precise, so as to leave no doubt whatever on the road to be followed, but the Court might also make reservations such as those contained in the expressions "as far as possible", "wherever possible", etc., which would necessitate further consultation on how the opinion was to be interpreted. The Fourth Committee would thus, from year to year, move in a circle of consultations and discussions. His delegation would be compelled to abstain in view of those misgivings.

18. Mr. BELL (United States of America) said that draft resolution A/C.4/L.413/Rev.1 reflected the interpretation which his delegation gave to the Court's advisory opinion of 1950. He did, however, recognize the validity of the arguments submitted by the Mexican

representative, who had pointed out that the Fourth Committee was unable to reach the necessary agreement on the interpretation of the Court's opinion. To end the deadlock, his delegation was therefore prepared to vote for draft resolution A/C.4/L.415 and Add.1.

19. Mr. RODRIGUEZ FABREGAT (Uruguay) expressed surprise that the sponsors of the earlier draft resolution had decided to withdraw their proposal. The text now before the Committee would make it impossible to reply even to those requests for a hearing which the Committee on South West Africa had already received. He saw no reason for taking such action. In his view the two advisory opinions already rendered by the Court, explaining how the organ created by the General Assembly for dealing with questions on South West Africa should discharge its task, were sufficient.

20. He supported the observations made by the Ecuadorian representative. The new question which the General Assembly was to ask the Court appeared to be a repetition of that to which the Court had already replied. If that was not so, if, on the contrary, the draft resolution implied a new question of substance for the Court, he would be glad to have the sponsors explain it clearly.

21. The question to be settled was one of procedure whose solution was easy, because the International Court of Justice had expressly said that the General Assembly must conform wherever possible to the procedure followed in the matter by the Council of the League of Nations.

22. The administering Power did not supply reports; it did not even participate in the work of the Committee on South West Africa to help the United Nations fulfil its obligations towards the populations of a territory which the Union of South Africa administered, not by virtue of a domestic law, but by virtue of an international decision, under a mandate assigned to it by the international community. His delegation therefore thought the General Assembly should grant hearings to petitioners from South West Africa so that it might at long last find out something about the situation in which the populations of that Territory were placed.

23. Mr. ESPINOSA Y PRIETO (Mexico), replying to the Uruguayan representative, pointed out that the delegations sponsoring the five-Power draft resolution (A/C.4/L.413/Rev.1) had decided to withdraw their text, which had been widely criticized, because they considered it would not obtain the two-thirds majority necessary to make it an expression of the Committee's opinion as a group. Each of the Committee members might have his own opinion on the reply that should be given to the question raised by the Committee on South West Africa, but the Fourth Committee would have to take a decision by a two-thirds majority.

24. His delegation thought the only means of surmounting the difficulty was to ask the International Court of Justice for an advisory opinion, to which nobody would be able to take exception, since the Court's views commanded universal respect. He hoped that the four-Power draft resolution (A/C.4/L.415 and Add.1) would be supported by the members of the Committee.

25. Miss BROOKS (Liberia) noted that the Committee was divided on the subject of the earlier draft

resolution. Certain members held that the Committee on South West Africa could grant hearings to petitioners from that Territory, others held that it could not. The latter had invoked the advisory opinion rendered by the International Court of Justice to support their view. In the circumstances, she asked those members that had criticized the new draft resolution who, in their opinion, was competent to decide the question.

26. Mr. CALLE Y CALLE (Peru) felt that, contrary to the assurance given by the Mexican representative to the Yugoslav representative, the second paragraph of the preamble of the draft resolution under discussion (A/C.4/L.415 and Add. 1), in its relationship with the operative part, prejudiced to some extent the right of the General Assembly to grant hearings to petitioners from South West Africa. That paragraph recalled a passage of the advisory opinion of 11 July 1950, in which the Court stated, *inter alia*, that the degree of supervision to be exercised by the General Assembly should not exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in that respect by the Council of the League of Nations. The paragraph in question was therefore a statement of fact which would be in order if the matter concerning the degree of supervision were one of substance, but the Committee was dealing with a question of procedure. As the representative of Ecuador had pointed out, the 1955 advisory opinion of the International Court of Justice differentiated between the substantive and procedural aspects and stated that the term "as far as possible" was designed to allow for adjustments and modifications necessitated by practical considerations.

27. He was submitting a formal amendment (A/C.4/L.416) to the effect that the second paragraph of the preamble should be deleted.

28. Mr. ALTMAN (Poland) agreed with the representative of Uruguay that the International Court of Justice had already given an opinion on the point at issue. That eminent body considered that it was the General Assembly which should take decisions on the granting of hearings.

29. Mr. RODRIGUEZ FABREGAT (Uruguay), in reply to the representative of Liberia, said that the Committee could not undertake to request an advisory opinion of the International Court of Justice every time it found itself in disagreement. He was astonished that the Mexican representative had stated that the Committee was trying to extricate itself from a difficulty. The International Court of Justice should be consulted only on questions of substance, or if its opinions were not clear to the General Assembly. That was not so in the present case.

30. He wondered if it might not be better to adjourn the debate until the following meeting to allow members of the Committee to consider the matter.

31. Mr. ESKELUND (Denmark) considered that it was precisely the function of the Court to help Member States which found difficulty in interpreting one of its opinions.

32. Mr. ESPINOSA Y PRIETO (Mexico) pointed out that it was for the Court to settle a question of international law, namely, the interpretation of the opinion which it had given, on which there was disagreement. The Court would certainly consider the question pertinent.

33. Mr. SAAB (Lebanon) said that the contradictory nature of the comments made by the members of the Committee strengthened his conviction that the General Assembly should apply to the International Court of Justice. The Court had been set up to solve such problems and it must solve them within the framework of the Charter, as the Polish representative had proposed. Indeed, the Court should be consulted more often, for that would mean a step forward in the handling of the problems of the international community.

34. Mr. S. S. LIU (China) explained that his delegation had intended to abstain, for the issue seemed clear. However, many representatives had expressed doubts which his delegation would like to see dispelled once and for all. Consequently it had decided to support the draft resolution.

35. Mr. RODRIGUEZ FABREGAT (Uruguay) said that the Peruvian amendment seemed wise. Nevertheless, if the draft resolution was adopted, it would follow that the United Nations would have to await the opinion of the Court before considering the requests for hearings which it had before it, and in particular the one considered at the previous meeting. His delegation still thought that the Court had already given an opinion and that the General Assembly could agree to the request for a hearing which it had received.

36. Mr. CALLE Y CALLE (Peru) explained that, if his amendment were not adopted, he would vote against the draft resolution, for he felt that the second paragraph of the preamble would prejudice the right of the General Assembly to grant hearings to petitioners.

37. The CHAIRMAN put to the vote the amendment submitted by the representative of Peru (A/C.4/L.416).

The Peruvian amendment was adopted by 24 votes to 4, with 20 abstentions.

38. The CHAIRMAN put to the vote the draft resolution (A/C.4/L.415 and Add. 1), the second paragraph of the preamble having been deleted in accordance with the Peruvian amendment.

The draft resolution as amended, was adopted by 23 votes to 5, with 21 abstentions.

39. Mr. RIVAS (Venezuela) explained that he had voted for the Peruvian amendment because the second paragraph of the preamble of the draft resolution did not appear pertinent. He had abstained on the draft resolution as a whole because he doubted whether the General Assembly was justified in consulting the Court a second time.

40. Mr. GHANEM (Egypt) said he had abstained because the issue was one of procedure rather than the point of law already settled by the Court. The Assembly therefore had every right to apply as far as possible the procedure followed by the Mandates System. The General Assembly and not the International Court of Justice should decide upon the admissibility of requests for hearings by the Committee on South West Africa.

Mr. Kaisr (Czechoslovakia), Vice-Chairman, took the chair.

41. Mr. VIXSEBOXSE (Netherlands) said that his delegation thought the Court's opinion quite clear and concrete enough to enable the General Assembly itself

to answer the question asked by the Committee on South West Africa. But the debates had made it clear that the Assembly was not in a position to formulate its reply. In those circumstances he had felt unable to vote for the draft resolution and had abstained.

42. U ON SEIN (Burma) said he had voted for the draft resolution because he had thought it necessary for the Court to explain the meaning of its advisory opinion.

43. Mr. SCOTT (New Zealand) said that the discussion had revealed wide differences of opinion on the meaning of the advisory opinion, and on the interpretation to be given to the practice followed by the Permanent Mandates Commission. His delegation had no doubts on either of those points: it thought that it was possible for the General Assembly to conform exactly to the practice followed by the League of Nations Council. But other delegations held different views. It was accordingly appropriate to apply to the Court for a clarification of its advisory opinion of 1950. No one questioned the value of that original opinion, which had shown the path to be followed by the Assembly. The question now at issue arose directly out of that. It was therefore reasonable to hope that, by adopting a responsible attitude, the Assembly would continue to fulfil the first condition for the co-operation of the Union of South Africa, which all Member States desired. The New Zealand delegation had accordingly voted for the draft resolution.

44. Mr. DIPP GOMEZ (Dominican Republic) explained that he had voted for the draft resolution because he considered it desirable to request the opinion of the International Court of Justice on a point which had led to such divergencies of view in the Committee.

45. Mr. JASPER (United Kingdom) recalling annex II, part 1, paragraph 1, of the rules of procedure of the General Assembly, suggested that the Chairman might communicate the text of the draft resolution to the Chairman of the Sixth Committee for information.

46. Mr. CALLE Y CALLE (Peru) pointed out that the purpose of the provision to which the United Kingdom representative had referred was to obtain the advice of the Sixth Committee on the legal aspects of a question. The Fourth Committee had just decided that matter for itself, and to refer the question to the Sixth Committee would only complicate the proceedings.

47. Mr. BOZOVIC (Yugoslavia) agreed with the representative of Peru.

48. Mr. JASPER (United Kingdom) explained that he had made the proposal purely out of courtesy to the Sixth Committee, but that, as the members of the Fourth Committee seemed to think it not in conformity with the usual practice, he would not press it.

REQUEST FOR A HEARING FROM THE REVEREND
MICHAEL SCOTT (A/C.4/313) (*continued*)

49. Mr. KHOMAN (Thailand) thought that the Committee would be dealing in the afternoon with the request for a hearing submitted by the Reverend Michael Scott. He would like the Secretariat to inquire of Mr. Scott as to the subject of the statement he would make if the Committee granted him a hearing. His intentions were not clear from his letter (A/C.4/313), and the delegation of Thailand would like to know them, in order that it might vote accordingly. If Mr. Scott intended to comment on general conditions in the

Territory, his delegation, having always maintained the view that under Article 10 of the Charter the General Assembly was a sovereign body and could make its own rules of procedure, would be able to support his request, because he would doubtless provide information relevant to the debate on an item on the agenda. On the other hand, if Mr. Scott intended to deal with a specific case, or to present a petition in the precise sense of the term, his delegation would consider that the Committee was bound by the rules of procedure, which

contained no provisions relating to the hearing of petitioners, and would oppose the request. In that case, he should submit his statement in writing to the Committee on South West Africa.

50. Mr. RIVAS (Venezuela) presumed that in the first case the representative of Thailand would regard Mr. Scott as an expert and in the second as a petitioner. He did not see any reason for making such a distinction.

The meeting rose at 1 p.m.