



**Monday, 4 October 1954,
at 3.5 p.m.**

New York

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Chairman: Mr. Rafik ASHA (Syria).

REQUESTS FOR HEARINGS (*continued*)

1. The CHAIRMAN announced that a letter had been received from the Togoland Congress requesting a hearing in connexion with agenda item 35, the Togoland unification problem. He proposed that the Secretariat should be asked to circulate the letter as an official document. The Committee could then reach a decision on it at an early meeting.

It was so decided.

AGENDA ITEM 34

**Question of South West Africa: report of the
Committee on South West Africa (A/2666 and
Corr.1 and Add.1)**

2. Mr. KHOMAN (Thailand), speaking as Chairman of the Committee on South West Africa, gave a brief review of the efforts exerted by the United Nations in regard to the question of South West Africa, and the stand taken by the Government of the Union of South Africa, which had culminated in the adoption by the General Assembly of resolution 749 A (VIII) establishing the Committee on South West Africa. The Assembly had again affirmed, in paragraph 6 of that resolution, that the supervision of the administration of South West Africa, though it should not exceed that which applied under the Mandates System, should be exercised by the United Nations; and in paragraph 7 had appealed to the Government of the Union of South Africa to continue negotiations with the Committee on South West Africa for the purpose of concluding an agreement providing for the full implementation of the advisory opinion of the International Court of Justice.¹ Unlike the former *Ad Hoc* Committee on South West Africa, the Committee on South West Africa was to continue in being until such time as an agreement was reached between the United Nations and the Union of South Africa. A full record of the Committee's activities was contained in its report and supplementary report to the General Assembly, documents A/2666 and Corr.1/Add.1.

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

3. The Committee's first action had been to notify the South African Government that it was ready to continue negotiations. It had accordingly invited that Government to designate a representative to confer with it. In its reply, the Government of the Union of South Africa had reviewed the position it had taken during earlier negotiations with the *Ad Hoc* Committee on South West Africa, and had again maintained that it was not prepared to consider proposals which did not meet its basic requirements. It had reiterated that it was prepared to enter into an arrangement with the three remaining Allied and Associated Powers, namely France, the United Kingdom and the United States, and that its responsibilities in regard to South West Africa should not in any way exceed those which it had assumed under the Mandate. After recalling that it had been unable to reach agreement on those terms with the *Ad Hoc* Committee, the South African Government had stated that since the terms of reference of the new body appeared to be even more inflexible than those of the old, it was doubtful whether new negotiations within the scope of those terms of reference would lead to any positive results.

4. The Committee on South West Africa had been forced to interpret the South African Government's reply and its failure to appoint a representative to confer with the Committee as a refusal to co-operate for the time being in the resumption of negotiations. It had found the terms laid down by the Union of South Africa to be incompatible with the advisory opinion of the International Court and with General Assembly resolution 749 A (VIII). In communicating its conclusions to the South African Government, however, the Committee had stressed that it remained ready to continue negotiations should that Government be willing to negotiate in accordance with the principles laid down by the United Nations.

5. An account of the renewed efforts made by the Committee on South West Africa to negotiate an agreement with the South African Government was given in Section II of the Committee's report to the General Assembly (A/2666 and Corr.1). Those efforts had so far been unsuccessful. In fact, instead of making progress, the United Nations seemed to be further than ever from its goal. In previous years at least, useful, although unsuccessful, contact had been maintained between the *Ad Hoc* Committee and the representative of the South African Government. During the year under review, all contacts had been cut off and there had ceased to be even a semblance of co-operation. It had become abundantly clear that unless the South African Government was willing at least to enter into negotiations with the Committee, a stalemate had been reached in the matter of concluding an agreement on South West Africa. He felt sure that he spoke on behalf of all the members of the Committee when he expressed the hope that the

South African Government would alter its position and would decide to co-operate with the Committee on South West Africa in regard to those functions which had been entrusted to it by the General Assembly.

6. Since the Committee on South West Africa had been directed by General Assembly resolution 749 A (VIII) to examine reports relating to South West Africa as far as possible in accordance with the procedure of the former Mandates System, the Committee had sought the co-operation of the South African Government in that respect and had invited it to resume the transmission of annual reports. It had also sought the co-operation of that Government in the matter of petitions. The South African Government had responded by stating that it had never recognized any obligation to submit reports or petitions to any international body since the demise of the League of Nations. In the circumstances, the Committee had had no alternative but to proceed to examine petitions relating to South West Africa and whatever information and documentation was available concerning the administration of the Territory.

7. The Committee had told the South African Government when it would be ready to examine the available information and documentation and had invited it to appoint a duly authorized representative to meet the Committee. The South African Government had acknowledged the letter and replied that it had nothing to add to its previous statement on the question of reports.

8. In connexion with the information and documentation relating to South West Africa, he wished to draw the Fourth Committee's attention to document A/AC.73/L.5, which contained the comments of the Food and Agriculture Organization of the United Nations on land tenure and forest law in South West Africa. As those comments had been received after the Committee on South West Africa had adopted its supplementary report to the General Assembly (A/2666/Add.1), they had not been included among the replies from specialized agencies referred to in that report.

9. Another task of the Committee on South West Africa had been to prepare, for the consideration of the General Assembly, a procedure for the examination of reports and petitions conforming as far as possible to the procedure followed by the League of Nations. Since such a procedure would require the approval of the General Assembly in plenary meeting, he suggested that the Fourth Committee should deal with the question of South West Africa in two stages: first, the recommendation of a procedure for adoption by the General Assembly; secondly, the consideration of reports and petitions relating to South West Africa, in accordance with the special rules adopted by the General Assembly. The question of procedure for the examination of reports and petitions by the General Assembly was of the highest importance. It was one of the stumbling blocks which had prevented earlier negotiations from reaching a successful conclusion. The members of the Fourth Committee were undoubtedly aware that from the outset the South African Government had contended that the proposals made by the United Nations would not safeguard the rule of unanimity, and would thereby confer on certain countries, which were Members of the United Nations but had not been Members of the League, rights which they had not possessed under the Mandates System. It

was hoped that the draft procedure submitted to the Fourth Committee and reproduced in annex IV of the Committee's report would to some extent obviate the difficulties raised by the Government of the Union of South Africa and help towards reaching a settlement.

10. It was a welcome fact that after an interval of eight years the General Assembly again had before it a report on conditions in the Territory of South West Africa. It would, of course, have been more desirable if such a report could have emanated from the South African Government or, failing that, if that Government could have appointed a representative to discuss the information and documentation compiled by the United Nations Secretariat, so that the Committee on South West Africa could have benefited from his views and advice. However, despite the absence of any representative of the South African Government, the report, containing the information and data provided by the United Nations Secretariat was a detailed and accurate document, worthy of careful consideration.

11. Mr. JOUBLANC RIVAS (Mexico), speaking as Rapporteur of the Committee on South West Africa, outlined the contents of the Committee's report (A/2666 and Corr.1). With reference to the alternative procedures (i.e., rules XXII to XXIX) mentioned in section III, paragraph 16, he noted that the Committee, to its great regret, had been obliged to apply them, in view of the attitude adopted by the Government of the Union of South Africa. The rules of procedure had been adopted provisionally so that the Union of South Africa could have an opportunity of proposing any changes. They had been sent to the Government of the Union of South Africa on 11 February 1954, but although the Committee had made it known at that time that it was ready to take into account any comments which the South African Government might wish to make, no reply had been received.

12. In connexion with section VI, which dealt with the steps taken by the Committee to prepare a report for the General Assembly on conditions in South West Africa, Mr. Joubanc Rivas said that in the course of seventeen meetings the Committee had examined a great deal of documentation prepared by the Secretariat. The material had included such reports and information as were available in regard to South West Africa for the years since 1946, and was drawn up in the form of a reply to the League of Nations Questionnaire, in accordance with the General Assembly's instruction to the Committee. The documentation had been prepared almost entirely on the basis of official publications of the Government of the Union of South Africa and of the Territory of South West Africa. It was on the basis of that material and other relevant information that the Committee had prepared its report and observations regarding conditions in the Territory, reproduced in annex V of the Committee's report to the General Assembly (A/2666 and Corr.1), with additional observations in the supplementary report to the General Assembly (A/2666/Add.1). It had been a difficult task to draw up the report and observations and the members of the Committee considered that it would have been easier and the results obtained might perhaps have been better if the Union of South Africa, in compliance with the Committee's request, had sent a special representative to provide further explanations or information as had been done in the Permanent Mandates Commission of the League of Nations.

13. Turning to section IV, which dealt with the proposed procedure for the examination of reports and petitions by the General Assembly, he referred the members of the Fourth Committee to annexes III and IV of the report, pages 11 to 14 (A/2666 and Corr.1). In its preparation of the rules of procedure, the Working Group appointed by the Committee had devoted special attention to the relevant statement of the advisory opinion of the International Court of Justice concerning the supervisory function of the General Assembly with regard to the Territory of South West Africa. The Working Group had made its proposals in two draft resolutions which had been adopted without amendments by the Committee and were reproduced in annex IV. The resolution in part A included a draft resolution recommended for adoption by the General Assembly. That draft resolution contained special rules which the Committee recommended should be applied by the General Assembly in relation to the examination of reports and petitions concerning South West Africa. He drew particular attention to the procedure suggested for voting in special rule F. The Fourth Committee would be aware that the proposed voting procedure involved an interpretation of the Court's advisory opinion. In that connexion, he noted that the Union of South Africa had stated on several occasions that in applying the Court's advisory opinion, the General Assembly would have to make decisions relating to South West Africa subject to the principle of unanimity which had applied in the Council and Assembly of the League of Nations. On the other hand, most of the members of the Committee on South West Africa, including himself, had considered that the voting procedure recommended in special rule F was in complete conformity with the Court's advisory opinion. In giving its advisory opinion and in stating that the supervisory functions formerly exercised by the Council of the League should now be exercised by the United Nations, the Court must have been fully aware of the voting procedure laid down in the Charter of the United Nations. However, in order to dispel any doubts which might arise, the Committee on South West Africa had decided to recommend that if special rule F was adopted without the concurring vote of the Union of South Africa, as the State most directly concerned, the matter should be referred to the International Court of Justice for an advisory opinion.

14. As Mr. Khoman had stated, consideration of the rules of procedure proposed by the Committee on South West Africa was the most urgent task before the Fourth Committee in connexion with the problem of South West Africa, since the General Assembly must adopt the procedure it intended to follow before it could come to any decision either on the report of the Committee on South West Africa on conditions in the Territory or on petitions connected with it.

15. He wished to emphasize that the Committee on South West Africa had undertaken its difficult task on the basis of the advisory opinion of the International Court of Justice. All the problems with which it had been faced had been examined with care and their numerous legal implications had been taken into account. The members of the Committee had never lost sight of the fact that although the Government of the Union of South Africa had refused to co-operate with it, the Committee must not go beyond the limits of the Mandates System of the League of Nations. It had

adhered scrupulously to the instructions laid down by the General Assembly.

16. In conclusion, speaking as representative of MEXICO, he expressed his delegation's sincere regret that no representative of the Government of the Union of South Africa had taken part in the meetings of the Committee at which the report under consideration had been prepared and drafted. The Mexican delegation believed that any defects there might be in the report might well have been eliminated if the Committee on South West Africa had been able to benefit from the information which a duly authorized representative of the Government of the Union of South Africa would have been able to supply.

17. The CHAIRMAN announced that, if members had no objection, the Committee would consider the question of the procedure to be followed by the General Assembly in examining reports and petitions relating to South West Africa. That question was dealt with in section IV of the report of the Committee on South West Africa (A/2666 and Corr.1), and annexes III and IV of that report.

It was so agreed.

18. Mr. SOLE (Union of South Africa) expressed his delegation's sincere appreciation of the spirit in which the question of South West Africa had been dealt with by the various United Nations bodies in which it had been discussed. The debates had been on a high level and consideration and courtesy had always been extended to the views of his Government. He hoped that that spirit would continue to prevail.

19. In some years of discussion and negotiation, the position of both the Union of South Africa and the United Nations had been clearly developed, although the question had sometimes been obscured by extraneous considerations, and there was no doubt that a real effort was being made to overcome the deadlock which had been reached. Members of both the *Ad Hoc* Committee and the Fourth Committee had given clear evidence of their desire to settle the disagreement, but he thought that the comments just made by the representative of Thailand had implied some hardening of the attitude of the Government of South Africa. He submitted that the South African Government had given proof of its sincere desire to meet the United Nations as far as its own essential requirements allowed. Since the League of Nations Mandate had lapsed, his Government did not recognize any legal obligation to negotiate with the United Nations or with any other international authority concerning the Territory of South West Africa. But it wished none the less to find some formula for agreement on the question. The history of the efforts made to find some common ground on the question was known. His Government's proposals to the *Ad Hoc* Committee on South West Africa² had been rejected, but the fact that they had been made should serve as a reminder of his Government's earnest desire to settle the matter even though it did not recognize any legal obligation to put forward proposals. He wished to remind the Fourth Committee that one principal reason why a settlement had not been achieved had been the *Ad Hoc* Committee's insistence that negotiations must be either with the United Nations or one of its agencies. The Union of

² See *Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 38, document A/1901, paras. 11 *et seq.*

South Africa had refused to negotiate on that basis because of its conviction that the conclusion of any instrument with the United Nations would oblige it to accept responsibilities more onerous than those which it had assumed under the Mandate, and had repeatedly emphasized to the *Ad Hoc* Committee its view that it would be impossible to devise, under the present organization of the United Nations, any instrument which would not lay it under such an obligation. That view seemed to be confirmed by perusal of the report of the Committee on South West Africa. In the advisory opinion of the International Court of Justice, there occurred the phrase "the degree of supervision" (p. 138), which was of paramount importance to his Government's position.

20. The South African Government had often tried to demonstrate the reason why the United Nations would be unable to exercise the same limited degree of supervision as the League of Nations. The membership was different, and the United Nations possessed no organ analogous to the Council of the League or the Permanent Mandates Commission. Furthermore, as the International Court of Justice had stated, the Charter did not envisage the coexistence of a mandates system as part of the United Nations Organization.

21. He went on to stress the difficulties which arose from the application of resolution 749 A (VIII), paragraph 12 (*d*), which he quoted. The procedure proposed in draft resolution A, in annex IV of the report of the Committee on South West Africa would, if applied, involve the substitution of the United Nations General Assembly for the League Council, a notable departure from the system applicable under the League. It would mean that the Committee on South West Africa would assume the functions of the Permanent Mandates Commission of the League, which had been a very different body. The Permanent Mandates Commission had contained members chosen on grounds of personal qualifications, and substitutes were allowed to attend meetings only on rare occasions. Members had been required to hold no official position under their governments and had been paid a salary by the League. The Commission, an independent body, had considered itself not as a judge but as a body of collaborators resolved to devote their experience and energy to a joint endeavour. In that case there had been a guarantee of technical expertness which was not present in the Committee on South West Africa, a body which was more political in character and whose supervision would be based, in part at least, on political considerations and would therefore be very different.

22. Furthermore, there was a difference in voting procedure. Under Article 5, paragraph 1, of the League of Nations Covenant, the principle of unanimity had to be upheld, and there was no departure from that principle in the Covenant, the Treaty or the Mandate for South West Africa. Under Article 4, paragraph 5, any Member of the League not represented on the Council might be invited to send a representative to sit as a member at any meeting of the Council during consideration of matters specially affecting the interests of that Member of the League. To sit as a member would mean that such a representative would have equal voting rights with other members of the Council. Under Article 18 of the Charter, unanimity was not required of the General Assembly, and the Committee on South

West Africa had proposed a special rule F under which the Assembly's decisions concerning the Territory should be regarded as important within the meaning of Article 18, paragraph 2, of the Charter. The application of that procedure would deprive the Union of South Africa of the right which it had possessed under the League system to prevent a decision which might be unsatisfactory to it, and the Assembly would therefore be exercising a greater degree of supervision than the League Council.

23. The Mandate originally conferred on South Africa had been an international agreement, and therefore the obligations of one party to it could not be made more onerous without that party's consent. The Union of South Africa did not regard the United Nations as the other party to the Mandate, but even if it were so regarded, it could not lawfully require South Africa to submit to such a radical change in voting procedure. His Government would not wish to interpret the Court's advisory opinion as sanctioning an unlawful act, or readily believe that any other Member State would support such an interpretation.

24. Article 18 of the Charter could not be amended except in accordance with the procedure laid down in Article 108, and in view of the terms of that article no amendment would be possible in the immediate future. The Committee on South West Africa had suggested a new special rule of procedure which it believed would be valid if the Union of South Africa would agree to it. But the procedure which it had produced must involve a degree of supervision far greater than that required by the League, so that the South African Government would be quite unable to agree to special rule F.

25. He had referred chiefly to points of principle and policy raised by section IV and annex IV of the report of the Committee on South West Africa, and had done so in line with the suggestions made by the Chairman and Rapporteur of that Committee. He was prepared to co-operate in every way with the Committee, but had wished to place before it his Government's arguments on the question raised in the report regarding the application of the unanimity rule. He had dealt with the question separately because it had been prominent among his Government's reasons for not concluding an agreement with the United Nations.

26. He was prepared to state his delegation's views sincerely and frankly on any further points which might arise in the debate, and hoped that other delegations would do the same, so that, even if the respective viewpoints were not reconciled, the debates would be in keeping with the best traditions of the United Nations.

27. Mr. LANNUNG (Denmark) said that, as one of the sponsors of General Assembly resolutions 338 (IV) and 749 (VIII), his delegation particularly regretted that the South African Government had not seen fit to accept the advisory opinion of the International Court of Justice and had refused to co-operate with the Committee on South West Africa in its efforts to implement that opinion. His Government had accepted the Court's opinion with satisfaction and believed that it should be adhered to by all Members of the United Nations, including the Union of South Africa, because its acceptance was essential to the rule of law and reason in international affairs.

28. When the new Committee on South West Africa had been established, negotiations between the United

Nations and the South African Government to implement the advisory opinion had already been in progress for three years. While it had been hoped that those negotiations would be continued, it had been felt that the United Nations should take a further step to implement the Court's opinion by assuming as much of the international supervision formerly exercised by the League of Nations as was practicable in existing conditions. General Assembly resolution 749 A (VIII) represented a new and constructive approach to the complex question of South West Africa.

29. The Committee on South West Africa was to be congratulated on its excellent report. He had been particularly gratified by the fact that, in accordance with the provisions of General Assembly resolution 749 A (VIII) and the International Court's advisory opinion, the Committee had meticulously adhered to a procedure conforming as far as possible to that of the Permanent Mandates Commission of the League of Nations.

30. Since no annual report on South West Africa by the South African Government had been available to the Committee, it had had to examine, within the scope of the League of Nations Questionnaire, such information as was available on the Territory. The available information and documentation had been submitted to the Committee by the Secretariat in documents A/AC.73/L.3 and Add.1 to 3. He was gratified to note that for all practical purposes the Secretariat had not drawn on unofficial sources; the material had been compiled from an impressive list of government publications of the Union of South Africa and the Territory of South West Africa. The Committee had examined that information in the spirit of the Mandates System.

31. The Committee's method of work and its report should reassure the South African Government that, having accepted the Court's advisory opinion, the United Nations had been unreservedly guided by the principles enunciated therein. His delegation was satisfied that, in exercising its supervisory functions with respect to South West Africa, the United Nations would strictly respect the rules which applied to the Mandates System. That attitude had indeed been expressed in all the relevant paragraphs of resolution 749 A (VIII).

32. His delegation fully supported the Committee's recommendations on the procedure for the examination of reports and petitions relating to South West Africa as set out in draft resolutions A and B in annex IV of

the report. Those resolutions went to the heart of the problem and could be regarded as a new United Nations proposal to the Union of South Africa. The Committee was to be commended on its dispassionate approach in proposing that the special rule F on voting should not be adopted without the concurring vote of the Union of South Africa. He had hoped that the South African Government would vote in favour of that rule, which was not inconsistent with the Court's opinion. If that Government adhered to its regrettable decision not to consent to it, he agreed with the Committee that the matter should be referred to the International Court for an advisory opinion, as suggested in resolution B. It would be injudicious to impose an obligation upon any Member State without first seeking to resolve all possible doubts as to the legality of that action.

33. Mr. KAISR (Czechoslovakia) drew the Committee's attention to the petition from members of the Berg Damara, Nama and Herero tribes set out in annex II of document A/2666/Add.1 and proposed that the Reverend Michael Scott should be granted a hearing as requested in the last paragraph of the petition. Relatively little information on South West Africa was available and the hearing could not fail to advance the Committee's work.

34. Mr. SOLE (Union of South Africa) pointed out that, since the Committee had decided to limit its immediate discussion to the procedural issues dealt with in section IV and annexes III and IV of the report (A/2666 and Corr.1), the Czechoslovak representative's proposal would seem to be out of order at that juncture.

35. Mr. KHOMAN (Thailand) explained that the Committee on South West Africa had already dealt with the petition in question according to its own rules of procedure. Under those rules it had decided to refer the petition to the Government of the Union of South Africa and to postpone further consideration for two months pending that Government's reply. It was of course open to the Fourth Committee not to observe the rules of procedure adopted by the Committee on South West Africa.

36. Miss ROESAD (Indonesia) felt that in those circumstances it would be preferable to postpone any decision on granting a hearing to the Reverend Michael Scott to a later date.

37. Mr. KAISR (Czechoslovakia) agreed to that suggestion.

The meeting rose at 4.45 p.m.