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New York

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Chairman: Mr. Enrique de MARCHENA
 (Dominican Republic).

Requests for hearings (*continued*)

1. The CHAIRMAN announced that requests for hearings had been received from the Reverend Michael Scott and from Mr. Mburumba Kerina Getzen. If there was no objection they would be circulated to the members of the Committee.

It was so decided.

AGENDA ITEM 38

Admissibility of hearings of petitioners by the Committee on South West Africa: advisory opinion of the International Court of Justice (A/3147, A/C.4/338, AC.4/L.438)

2. The CHAIRMAN drew attention to a letter he had received from the permanent representative of the Union of South Africa, which had been circulated under the symbol A/C.4/338, stating that the South African delegation would not be present at further meetings of the Fourth Committee.

3. Miss BROOKS (Liberia) introduced a draft resolution proposed by her delegation (A/C.4/L.438). At the tenth session of the General Assembly her delegation had been strongly of the opinion that for the Committee on South West Africa to grant hearings to petitioners from the Territory would be consistent with the advisory opinion of 11 July 1950 of the International Court of Justice.¹ She was glad that that view had been confirmed by the Court's opinion of 1 June 1956.²

4. She understood that the United States delegation intended to propose the addition of a further paragraph to the draft resolution to the effect that the General Assembly should authorize the Committee on South West Africa to grant hearings to petitioners from South West Africa if it felt it was necessary to do so. The Liberian delegation had always held that

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

² *Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 23.* (Transmitted to Members of the General Assembly by the Secretary-General under cover of document A/3147.)

hearings should be granted without restriction to petitioners from any Trust or Non-Self-Governing Territory. She regretted, therefore, that her delegation would be unable to accept the United States amendment because it felt it to be superfluous, since the draft resolution accepted and endorsed the Court's advisory opinion of 1 June 1956, which meant in effect that the Fourth Committee considered that the Committee on South West Africa should grant hearings to petitioners who requested them.

5. It might be well to delete the words "by eight votes to five" in the second paragraph of the draft resolution.

6. Mr. BOZOVIC (Yugoslavia) said that the Court's advisory opinion confirmed the view his delegation had expressed to the Committee (491st meeting) at the tenth session. The Yugoslav delegation had seen no necessity to submit the question to the International Court of Justice, since the Permanent Mandates Commission had been authorized to grant hearings. Nevertheless he would support the Liberian draft resolution and was prepared to vote immediately.

7. Mr. ESKELUND (Denmark) said that at the tenth session his delegation had voted in favour of asking the Court for an advisory opinion and it was therefore prepared to accept and endorse the opinion that had been given. In his view, however, it would be well to quote the words used by the International Court; he therefore suggested the insertion of the words "who have submitted written petitions" in the second paragraph of the draft resolution, after the word "petitioners".

8. He supported the Liberian representative's suggestion that the words "by eight votes to five" should be deleted from the draft resolution.

9. He would support the United States suggestion to which the Liberian representative had referred if it were put forward as a formal proposal.

10. Mr. GERIG (United States of America) said his delegation was prepared to vote for the draft resolution as it stood.

11. He thought the amendment suggested by the Danish representative would be a valuable addition to the draft resolution and he would vote in favour of it. At the same time the words the Danish representative had quoted did not form part of the opinion of the Court but were to be found in the paragraph immediately preceding the opinion; for that reason he thought it would be well for the Fourth Committee specifically to authorize the Committee on South West Africa to grant hearings. Nevertheless, if the majority of members of the Committee felt that it was unnecessary to do so, the United States delegation would not press the point.

12. Mr. ESKELUND (Denmark) regretted that the United States delegation was not maintaining its con-

templated amendment, which was logical and consistent with the opinion of the International Court.

13. Mr. RIVAS (Venezuela) said that his delegation had abstained in the vote on General Assembly resolution 942 (X) asking for an advisory opinion by the International Court because it had consistently held the view that South West Africa should be placed under the Trusteeship System. Since, however, the advisory opinion was in favour of the right to grant hearings, he would vote in favour of the Liberian draft resolution.

14. With regard to the amendment suggested by the United States delegation, he considered that since the General Assembly was authorized to grant hearings, the Committee on South West Africa, which like the Trusteeship Council was its subsidiary body, was likewise authorized to do so. That was a point to which his delegation attached great importance.

15. Mr. KHOMAN (Thailand) said that his delegation would support the acceptance and endorsement of the advisory opinion of the International Court. The advisory opinion was based on the fact that the right of petition had existed under the League of Nations, although in fact no hearings had ever been granted. It was also interesting to note that the International Court felt that by granting hearings to petitioners the General Assembly would not be exceeding its powers as the successor to the League of Nations.

16. He would support the proposal made by the Danish representative if it were put to the vote.

17. He felt that the suggestion the United States delegation had made was useful, although perhaps not absolutely necessary. The Committee on South West Africa was a subsidiary organ of the General Assembly and could only function under the instructions of the General Assembly. Thus it would be appropriate and proper for the General Assembly formally to authorize the Committee on South West Africa to proceed on certain lines. He would therefore support the United States suggestion if it were submitted as a formal amendment.

18. Mr. PACHACHI (Iraq) said that it was important to be aware of the interpretation the International Court had placed upon the question submitted to it by the General Assembly. Although the General Assembly had specifically asked whether the Committee on South West Africa could grant requests for oral hearings, the Court had interpreted the question as meaning whether the General Assembly could authorize the Committee to grant such hearings, and had concluded that it could do so. Hence the point raised by the United States delegation was entirely correct and the addition it had suggested, although it was implicit in the last paragraph of the draft resolution, would be an improvement in that it would bring the resolution into explicit conformity with the terms of the advisory opinion.

19. Mr. DORSINVILLE (Haiti) said his delegation agreed that the words "by eight votes to five" in the second paragraph of the draft resolution were unnecessary.

20. He did not understand the purpose of the amendment suggested by the Danish representative. If it was intended to suggest that the Committee was taking action only on those requests for hearings which had

already been received, his delegation would oppose it, since it believed that any requests for hearings could be granted; it felt that that was the interpretation which should be given to the advisory opinion.

21. Mr. RAMAIAH (India) said his delegation did not agree that the words "who have submitted written petitions", which the Danish representative quoted, should be inserted in the second paragraph of the draft resolution. The Court's observation in which those words occurred was in relation to an argument which in substance was that, since under the League of Nations procedure there was provision only for written petitions and not for oral hearings, and since the General Assembly had only replaced the Council of the League as the supervisory organ in respect of the Mandate, it would be an extension of the Assembly's supervisory powers to grant oral hearings even in cases where there were written petitions. The words the Danish representative had quoted were only the conclusion of the view the Court took on that argument. The question actually asked by the General Assembly made no mention of written requests already submitted; it referred simply to the granting of oral hearings to petitioners. The Danish amendment was therefore not only unnecessary but would abridge the very clear opinion given by the International Court and might create difficulties in the future.

22. Mr. RYCKMANS (Belgium) said his country's position on the question of South West Africa was based on one consideration only: that of promoting the welfare of the indigenous inhabitants. It had abstained in the vote on General Assembly resolution 942 (X) because it had felt that the policy adopted by the Committee on South West Africa was not calculated to further that goal. It would abstain from the vote on the Liberian draft resolution for the same reason.

23. Mr. JASPAR (United Kingdom) said it had always been the policy of his Government to maintain and uphold the status of the International Court and the authority of its decisions. In the present case, however, although the question submitted to the Court had been intended to determine whether the Committee on South West Africa would be exceeding its powers under the procedure established by the Mandates System in granting oral hearings to petitioners, the Court had in fact based its opinion on a different question, and one not put to it: namely, whether by reason of the attitude adopted by the Union of South Africa and its refusal to forward written petitions the General Assembly would be justified in disregarding the conditions laid down in the Court's earlier opinion. His delegation would therefore be forced to abstain on any resolution endorsing the Court's opinion.

24. Moreover, it was his delegation's view that the Court's opinion referred only to petitioners who had already submitted written requests for oral hearings. In making that reservation the Court had accepted the argument of the United Kingdom Attorney-General that it would be inconsistent with the Court's opinion of 11 July 1950 to generalize the Assembly's power to authorize the hearing of petitioners. His delegation would find it necessary to vote against any substantive proposal for the oral hearing of persons who had not submitted written petitions.

25. On page 25 of its advisory opinion of 1 June 1956 the Court stated that it understood the expres-

sion "grant oral hearings to petitioners" to relate to persons who had submitted written petitions to the Committee. If the Committee attempted to blur the meaning of that expression it might be difficult in the future to decide exactly who was or was not a petitioner. He therefore suggested that the words "as therein defined" should be inserted after the word "petitioners" in the second paragraph of the draft resolution. If that was done, his delegation would be able to abstain rather than vote against the draft resolution.

26. Mr. TAZHIBAEV (Union of Soviet Socialist Republics) recalled that his delegation had voted against General Assembly resolution 942 (X) because it had felt that the Committee on South West Africa had a clear right to grant hearings to petitioners and that consequently no advisory opinion was necessary, and because the resolution made the Committee's procedures dependent on the procedures of the Permanent Mandates Commission of the League of Nations, which had not granted hearings to petitioners. His delegation felt that the Committee on South West Africa could consider oral petitions as well as written ones, and that was in the interests of the indigenous inhabitants and would promote the more effective supervision of the Territory by the United Nations. The suggestion of the Danish representative imposed a restriction on the Organization's power to act in pursuance of those goals and if it were moved formally, his delegation would vote against it. His delegation saw no reason for or against the addition suggested by the United States. If the Liberian draft resolution was put to a vote without additions or amendments which detracted from its strength, his delegation would vote in favour of it.

27. Mr. KIANG (China) said that his delegation would vote in favour of the draft resolution, firstly out of respect for the International Court of Justice as the highest international judicial organ, and secondly on the principle that the right of petition, written or oral, should be upheld. Furthermore, the granting of hearings to petitioners from South West Africa would help to overcome the lack of information with which the Committee on South West Africa had to contend as a result of the attitude of the Union of South Africa. China's vote should not, however, be regarded as criticism of that attitude; it had no wish to jeopardize future co-operation between South Africa and the Committee on South West Africa, and it considered that in implementing the Court's opinion that Committee should treat each request for a hearing on its merits.

28. He hoped that the United States suggestion would be submitted as a formal proposal.

29. Mr. GERIG (United States of America) said that his delegation appreciated the support its suggestion had received from several delegations. The majority, however, regarded such an amendment as unnecessary and he would accordingly refrain from making a formal proposal.

30. Mr. LOOMES (Australia) said that his delegation would abstain on the draft resolution, consistently with its previous abstentions on the endorsement of opinions of the International Court of Justice on South West Africa. His Government had had some reservations on the advisory opinion of 11 July 1950.

Australia's abstention did not, however, imply any disrespect for the International Court.

31. Australia, like Belgium, considered that the main objective of United Nations action relating to South West Africa was to further the interests of the inhabitants of the Territory. That objective could not be attained without the co-operation of the Union of South Africa, which the Committee would not encourage by implementing the advisory opinions of the International Court over that country's objections.

32. Mr. FERNANDEZ (Argentina) said that, at the tenth session, his delegation had abstained on General Assembly resolution 942 (X) on the grounds that it was not necessary to make such a request of the International Court; but as it had always accepted the admissibility of hearings in principle, it would vote in favour of the draft resolution.

33. Argentina could not support the Danish suggestion because it introduced a limitation which had not appeared in the statement of the problem as it had been referred to the International Court.

34. Mr. THORP (New Zealand) said that his delegation had voted in favour of General Assembly resolution 942 (X) in the belief that recourse to the International Court was useful when differences of opinion arose on questions unmistakably legal in character. It had, however, felt at the time that the granting of hearings by the Committee on South West Africa would be inconsistent with the International Court's advisory opinion of 11 July 1950, and it had not been dissuaded from that view by the reasoning of the present advisory opinion or the narrow majority by which it was given.

35. Since, however, it recognized the Court as the highest international tribunal and attached great weight to its findings, New Zealand was prepared to accept the opinion of 1 June 1956 as legal advice which the General Assembly should take into account. The present draft resolution did not contain any authorization for the Committee on South West Africa to proceed. The Fourth Committee should reflect whether by recommending action which was admittedly in the broadest sense legally open to the General Assembly to take, it would in fact be furthering the objectives of the United Nations with regard to South West Africa. Were any reference to authorization added, his delegation would have to abstain, as it did not agree that such objectives would be achieved by those means.

36. Mr. BARGUES (France) agreed with the New Zealand representative that the advisory opinion left the General Assembly complete freedom of action.

37. In its opinion of 11 July 1950, the International Court had stated that the degree of General Assembly supervision should conform as far as possible to the procedure followed by the Council of the League of Nations in that respect. That Council, when consulted by the Permanent Mandates Commission on the admissibility of hearings, had decided in the negative and the Commission had not granted oral hearings to petitioners at any time. In his report to the Council,³ the Rapporteur had stated that the Council might decide on exceptional procedure if in any particular case it was impossible for all the necessary information to be secured by the usual means. There were

³ League of Nations, *Official Journal*, 8th Year, No. 4, Forty-fourth Session of the Council, annex 938.

no such exceptional circumstances in the present case and France was accordingly unable to support the draft resolution.

38. Mr. MUNK (Denmark) said that his delegation's suggestion had been put forward only in the interests of clarity. Denmark did not wish to do anything to discourage support for the draft resolution and it would accordingly make no formal proposal.

39. Mr. RIFAI (Syria) took the view that the wording of the Committee's resolution should not go beyond the substance of the International Court's opinion. It would be prepared to support the Liberian draft resolution as it stood, on the understanding that, by implication, the operative paragraph authorized the Committee on South West Africa to implement the advisory opinion, but it suggested, for greater clarity, an additional operative paragraph to read:

"Authorizes the Committee on South West Africa

to grant requests for oral hearings in accordance with the above advisory opinion."

40. At the request of Miss BROOKS (Liberia), Mr. RIFAI (Syria) amended the proposed new paragraph to read:

"Therefore authorizes the Committee on South West Africa to grant oral hearings to petitioners."

41. Miss BROOKS (Liberia) accepted the Syrian proposal.

42. Mr. QUIROS (El Salvador) moved the adjournment of the meeting in order to give delegations an opportunity to submit amendments to the draft resolution, in writing, for consideration at the next meeting.

The motion for adjournment was adopted by 25 votes to 14, with 19 abstentions.

The meeting rose at 5.5 p.m.