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 ASSEMBLY**

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**FOURTH COMMITTEE, 1083rd  
 MEETING**

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 at 3.55 p.m.

**NEW YORK**

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Chairman: Mr. Adnan M. PACHACHI (Iraq).

*In the absence of the Chairman, Mr. Ortiz de Rozas (Argentina), Vice-Chairman, took the Chair.*

AGENDA ITEM 44

Question of the future of Western Samoa (A/4404, part I, chap. VI, sect. I and part II, chap. V; A/C.4/454 and Add. 1) (continued)

1. The CHAIRMAN invited members of the Committee to put questions to the Prime Minister of Western Samoa and to the New Zealand representative on the statements they had made at the 1081st meeting.

2. U TIN MAUNG (Burma) recalled that at its twenty-fourth session, the Trusteeship Council had noted the statement of the United Nations Visiting Mission to the Trust Territory of Western Samoa, 1959, that there was a need for agreed arrangements covering the method whereby future joint Heads of State would exercise their constitutional functions, and the Administering Authority had stated that the Council's recommendation would be provided for in the drafting of the constitution. He asked what constitutional provisions governed the election of the Head of State.

3. Mr. FIAME (New Zealand) referred the Burmese representative to part III of the Constitution adopted by the Constitutional Convention of Western Samoa (A/C.4/454). The words "O le Ao o le Malo" meant "Head of State".

4. U TIN MAUNG (Burma) asked how the office of Head of State would be filled on the death or resignation of one of the two "Fautua"; he also asked whether the two "Fautua" at present in office would be replaced by one or more Heads of State on the expiry of their terms of office, and whether, as appeared to be the case under article 19, paragraph (2), of the Constitution, one of the two "Fautua" at present in office would be eligible for re-election.

5. Mr. FIAME (New Zealand) drew attention to article 18, which described the method of election of the Head of State. After the death of the two "Fautua" at present in office, a single Head of State would be elected. On the death of one of the "Fautua", the other would be Head of State for life; later Heads of State would be elected for five years and eligible for re-election at the end of each term.

6. With reference to article 20, he explained that the world "pule" meant "control". Under the provisions of article 20, the Head of State could not own any business, but might possess or control land.

*Mr. Pachachi (Iraq) took the Chair.*

7. U TIN MAUNG (Burma) asked how the Head of the State would exercise the executive power vested in him by article 31 of the Constitution, if the Territory's Constitution was to be democratic.

8. Mr. FIAME (New Zealand) explained that the Head of the State would act on the advice of the Prime Minister and the Cabinet.

9. Mr. SALAMANCA (Bolivia) drew attention to the resolution on external relations adopted by the Constitutional Convention of the Territory, which was reproduced in document A/C.4/454/Add.1. He recalled that the Bolivian delegation had stated its position in the Trusteeship Council regarding the future of the Territory: the possibility existed that the Territory might become an autonomous protectorate; any treaty of friendship should be negotiated after the Samoan Government had been duly established. In other words, Western Samoa could not sign a treaty with New Zealand until it had become a fully sovereign State; for that reason, he did not understand paragraph 5 of the resolution on external relations. He would like to know whether the resolution had already been approved or whether it was to be discussed.

10. Mr. CORNER (New Zealand) said that he did not know exactly why the Constitutional Convention had adopted that resolution, as New Zealand had not participated in the work of the Convention. The Convention, which had been the most representative assembly that the Territory had ever had, had considered all the questions which might concern the Territory once it became independent and it had realized that the Territory would continue to need some assistance. The only opposition to independence which the Visiting Mission had encountered had come from a district where it had been felt that, although independence was desirable in principle, it would be premature if it meant that New Zealand would not grant any more assistance after 1 January 1962. It was for that reason that the New Zealand authorities had given a further assurance that they would continue to provide the assistance requested of them after independence. He assumed that the resolution adopted by the Constitutional Convention was intended to take that situation into account.

11. It was clear that the treaty of friendship would have to be concluded between equally sovereign parties and there was no question of initiating negotiations on that subject until a new Samoan Government had duly made known its desire to negotiate with New Zealand. There again, he felt that the Constitutional Convention had not intended paragraph 5 of the resolution to have binding force but had merely wished to place on record its position on that point at the time of the meeting.

12. Mr. SALAMANCA (Bolivia) said that he was stressing the point because he assumed that, as the resolutions adopted by the Constitutional Convention had been submitted to the Fourth Committee, the Committee was entitled to express its opinion on them. In his delegation's view, the conclusion of a treaty was an act of independence. To say, before the Territory became independent, that a treaty of friendship might be signed was to give an undertaking that its signature would be approved at a later date. The Fourth Committee could not take such a position as it did not know the people's views on the subject. The people might wish, of course, to limit its independence as it was entitled to do under Article 76 of the Charter but any decision to that effect would have to be taken in complete freedom and on terms of full equality, i.e., after independence. For that reason his delegation intended to ask the Fourth Committee to disregard the resolution completely.

13. Mr. CORNER (New Zealand) said that this Government had in fact wondered whether the resolution on the external relations of Western Samoa should be communicated to the Fourth Committee in view of the fact that the General Assembly would not be competent to deal with any question relating to the external relations of the country once Western Samoa became independent. However, the New Zealand Government had felt that it was preferable fully to inform the Committee of the present views of the inhabitants, who might, of course, change their minds at a later date. The point was only one among many and the Fourth Committee was not called upon to express approval or disapproval. The Bolivian representative had appeared to take the view that the conclusion of a treaty of friendship would limit Western Samoa's independence. That was not the case. The New Zealand Government had no wish to abridge Samoa's independence or to make the Territory a protectorate. As New Zealand did not wish to make Western Samoa a protectorate, it was unnecessary to consider whether such a course was permissible under the Charter.

14. Mr. SALAMANCA (Bolivia) said that he could not fully accept that view. According to the definition given in Oppenheim's International Law as edited by Professor Lauterpacht,<sup>1/</sup> which he had quoted in the Trusteeship Council, a country was a protectorate if it was represented by another Power in its international relations. It was therefore relevant to consider whether the Territory would be a protectorate.

15. In reply to a further question from Mr. SALAMANCA (Bolivia), Mr. FLAME (New Zealand) explained, with reference to article 44 of the Constitution that "nu'u" were the main villages, which might be situated on the coast, and that "pionu'u" were the sub-villages usually in the hinterland.

16. Mr. SALAMANCA (Bolivia), referring to paragraph 3 (a) of the Second Schedule annexed to the Constitution, asked why the number of persons on the voters' roll was to be multiplied by three.

17. Mr. CORNER (New Zealand) said that he hoped to be able to answer that question fully at a later meeting.

#### AGENDA ITEM 43

Question of South West Africa (A/C.4/L.662 and Add.1)  
(continued):

- (a) Report of the Committee on South West Africa (A/4464);
- (b) Report on negotiations with the Government of the Union of South Africa in accordance with General Assembly resolution 1360 (XIV);
- (c) Election of three members of the Committee on South West Africa

#### DRAFT REPORT OF THE FOURTH COMMITTEE (A/C.4/L.662 AND ADD.1)

18. Mr. BOEG (Denmark), Rapporteur, introducing the Committee's draft report on the question of South West Africa (A/C.4/L.662 and Add.1), said that he wished to thank the Secretariat for its valuable assistance. While he believed that the Secretariat should get credit for any merits the report and the other reports he would present to the Committee might possess, he wished to assume sole responsibility for any shortcomings representatives might find in them. In preparing the report he had made no innovations and had been content to follow the precedents set by his distinguished predecessors.

19. The report was simply a concrete and succinct account of the Committee's discussions. The most important paragraphs in the first part were no doubt paragraphs 7 and 8, which dealt with the question of the sub judice rule. Paragraphs 14 to 46 gave an account of the consideration of the draft resolutions listed in paragraph 13. The texts of the draft resolutions adopted by the Committee were given in paragraph 46. Document A/C.4/L.662/Add.1 recorded the results of the election held in the Committee.

20. He drew attention to two factual errors: first, the name of the Union of Soviet Socialist Republics should be added to the list of countries which had voted in favour of granting the hearing referred to in paragraph 4 (a); secondly, in paragraph 42, in the record of the roll-call vote on operative paragraph 4 of the draft resolution, the name of Chile should be replaced by that of China in the list of countries abstaining.

21. He hoped that the draft report would receive the Committee's unanimous approval.

22. Mr. RASGOTRA (India) asked that a short paragraph should be inserted after paragraph 40 stating that the Indian delegation had decided not to press its amendment to the draft resolution (A/C.4/L.653/Rev.2) and to vote for the word "security" in the fifth preambular paragraph on the understanding that the word was to be construed in the sense of the French word "sécurité", as explained by the Tunisian representative. It was essential that the word should not be interpreted as referring to the maintenance of order or the need for police measures since such an inter-

<sup>1/</sup> Vol. I, Peace, 8th ed. (London, New York and Toronto, Longmans, Green and Co., 1955), p. 189.

pretation would be contrary to the interests of the Territory's inhabitants.

23. The CHAIRMAN said that the Rapporteur would take the request into account.

*The Committee's draft report (A/C.4/L.662 and Add.1) was adopted.*

24. The CHAIRMAN noted that the Committee had completed its consideration of the agenda item on the question of South West Africa, but would still have to examine the preliminary report referred to in draft resolution VI, operative paragraph 6, (A/C.4/L.662).

The meeting rose at 5 p.m.