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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) (*continued*)

REQUEST FOR HEARING FROM THE REVEREND MICHAEL SCOTT (A/C.4/313 and Add.1) (*concluded*)

1. Mr. WIESCHHOFF (Secretary of the Committee), replying to a question raised by the Thai representative at the previous meeting, said that a further letter had been received from the Reverend Michael Scott outlining the matters on which he wished to be heard by the Committee. He read the letter.

*It was decided that the letter should be circulated as an official document.*¹

2. Mr. RIVAS (Venezuela) said that though his delegation had always voted in favour of hearings, the present request had been submitted at a very inopportune moment. The Committee had concluded its discussion of general conditions in South West Africa—the petitioner having, incidentally, been present throughout the debate—and had adopted certain draft resolutions. Had the petitioner sought a hearing during that discussion, the Venezuelan delegation would unhesitatingly have voted in favour of granting it. To do so now, however, might reopen the whole debate. He would therefore abstain. His vote applied only to the timeliness of the request under consideration and cast no doubt whatever on the Committee's competence to grant any hearings it saw fit.

3. Mr. HARARI (Israel) said that his delegation was concerned about two questions. First, it seemed strange that the admissibility of oral hearings should be questioned in the case of the Committee on South West Africa but recognized in the case of the Fourth Committee. That would imply that the injunction of the International Court of Justice to observe as far as possible the procedure followed under the Mandates System applied only to the Committee on South West Africa. Secondly, it was not clear what action the

Committee would take on the petitioner's statement, if the request for a hearing was granted. To adopt a resolution would be tantamount to reopening the debate, as the Venezuelan representative had said. On the other hand, the Committee could scarcely take no action at all.

4. Mr. CALLE Y CALLE (Peru), replying to the first point raised by the Israel representative, emphasized that his delegation understood that the advisory opinion to be given by the Court in response to the draft resolution adopted at the previous meeting would not in any way affect the Fourth Committee's right to grant hearings. The purpose of his delegation's amendment had been precisely to make that clear. As to the Court's 1950 opinion,² the General Assembly had granted a hearing to Mr. Scott at its sixth session after having adopted a resolution at its fifth session (449 A (V)) endorsing that opinion. With regard to the timeliness of the request, he pointed out that it had been submitted during the Committee's consideration of hearings in general. He would vote in favour of granting it.

5. Mr. SAAB (Lebanon) agreed that the draft resolution adopted at the previous meeting sought the Court's opinion on the admissibility of oral hearings before the Committee on South West Africa. It was not intended to restrict the Fourth Committee's right to hear petitioners from the Territory.

6. Miss BROOKS (Liberia) endorsed the previous speaker's remarks and drew attention to her statement at the previous meeting.

7. Mr. HARARI (Israel) felt that, if the question addressed to the Court applied only to the Committee on South West Africa, it was academic. Petitioners would hardly apply to the Committee on South West Africa in writing if they knew they could obtain an oral hearing in the Fourth Committee. The Committee's whole approach to the question of hearings with regard to South West Africa was wrong: the General Assembly was not bound by the Court's opinion in that respect and it need not follow the procedure established by the Permanent Mandates Commission in 1927 now that the whole situation had changed, especially with regard to oral hearings.

8. Mr. BOZOVIC (Yugoslavia) said that he had abstained from voting on the draft resolution adopted at the previous meeting because he felt that recourse to the International Court of Justice was unnecessary. The Committee on South West Africa had been established by the General Assembly with certain terms of reference and it had subsequently applied to its parent body to ask whether oral hearings were included in those terms of reference. The General Assembly itself could have answered yes or no. A distinction must be

² *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 by document A/1362).

¹ A/C.4/313/Add.1.

made between the General Assembly and the Committee on South West Africa. In giving the Committee restricted terms of reference, the General Assembly had not restricted its own actions. The Court's 1955 opinion³ bore out his contention, emphasizing as it did that the expression "as far as possible" in its earlier opinion was designed to allow for adjustments and modifications necessitated by legal or practical considerations, *inter alia*, the provisions of the Charter. He would vote in favour of granting the hearing.

9. Mr. SAAB (Lebanon) agreed that there was no justification for assimilating the position of the General Assembly or the Fourth Committee to that of the Committee on South West Africa. The Fourth Committee was certainly free to decide Mr. Scott's request on its own merits. He would vote in favour of granting it.

10. Mr. VERGARA (Chile) explained that the adoption of the Peruvian amendment (A/C.4/L.416) at the previous meeting had made it possible for his delegation to abstain on the draft resolution (A/C.4/L.415 and Add.1) rather than vote against it, for the General Assembly's right to hear petitioners had thereby been safeguarded. The Committee could not judge whether or not the petitioner's request for a hearing was timely without hearing the petitioner's statement. He would therefore vote in favour of granting the hearing.

11. Mr. RODRIGUEZ FABREGAT (Uruguay) said that his delegation considered that hearings were always useful, as they provided first-hand knowledge of conditions in the territories under consideration. Such information would be particularly welcome in the present instance, where no official information was available from the country which had assumed the trust of administering South West Africa. The petitioner had a fine record of devoted service to the cause of the African people and had appeared before the Committee on previous occasions. He would vote in favour of granting him a hearing.

12. Mr. BOROOAH (India) had no doubt that the Committee was entitled to grant a hearing to any person it considered fit. The present petitioner was certainly such a person. He could not agree with the Venezuelan representative that the request had been submitted too late. The Committee had a continuing responsibility towards South West Africa which did not end with the adoption of a resolution and was subject to no statute of limitations. He would vote in favour of granting the hearing under discussion.

13. Mr. JASPER (United Kingdom) said that his delegation's attitude was determined not only by what might appear to others legalistic considerations, but also by what it considered to be the wise and timely course of action at the present stage of the Committee's discussions. He had been struck by the general feeling that in the very special circumstances now obtaining the Committee should do nothing to lessen the general measure of agreement among its members. He feared that the introduction of a hearing of the kind proposed might indeed lessen that agreement. The petitioner's previous statement to the Committee at its 222nd meeting (sixth session) had not helped to promote general agreement. Furthermore, his delegation

believed that both in the general question of oral hearings on South West Africa and with regard to the particular case under discussion, the guiding consideration was not the functions of the Committee as a whole but the International Court's interpretation of the functions of the United Nations General Assembly with regard to the former Mandated Territory, an interpretation that had been accepted by the General Assembly. That was the sole legal issue of importance. In those circumstances, his delegation was unable to vote in favour of granting the petitioner a hearing.

14. Mr. McMILLAN (Australia) regretted that on grounds of principle he must oppose the application for an oral hearing. Since the questions of conditions in the Territory of South West Africa and the state of negotiations with the Government of the Union of South Africa, which would presumably be brought up again if the hearing were granted, had already been dealt with by the Fourth Committee, it would in any case have been more appropriate if the request for a hearing had been made at an earlier stage.

15. Both the Fourth Committee and the Committee on South West Africa were subordinate organs of the General Assembly, and were themselves bound by the provisions of resolution 749 A (VIII) in which the General Assembly undertook to implement the terms of the 1950 advisory opinion of the International Court of Justice. The Fourth Committee had decided at the previous meeting that it was unable to agree on the interpretation of the Court's advisory opinion in regard to oral hearings and would therefore refer the matter again to the International Court of Justice. If it was impossible to determine the powers of the Committee on South West Africa in regard to oral hearings, it was similarly impossible to determine the powers of the Fourth Committee, which was also an organ of the General Assembly. The question of granting an oral hearing should therefore be postponed until the Court had produced the advisory opinion which had been requested.

16. Mr. SERAPHIN (Haiti) said that his delegation had abstained from taking part in the discussion on the draft resolution adopted at the preceding meeting. It had, however, reserved the right to speak later on any requests for oral hearings which might be received. The Haitian delegation would vote in favour of granting Mr. Scott's request.

17. Mr. BELL (United States of America) said that his delegation did not hold the view that all oral hearings on South West Africa were inadmissible in the Fourth Committee or in the Committee on South West Africa. It considered that the advisory opinion of the International Court of Justice related only to the General Assembly's supervisory functions in respect of the administration of the Territory of South West Africa under the Mandate. The Court's advisory opinion referred to the General Assembly and therefore applied to its committees. However, if a petitioner wished to raise a matter which was not related to the United Nations supervisory functions, the advisory opinion of the International Court of Justice would not apply and the Committee would be free to decide on the merits of the request. The advisory opinion of the International Court had been that the General Assembly's procedure for the examination of reports and petitions should conform as far as possible to the procedure followed in that respect by the Council of the League of Nations. Since under the League's procedure there

³ *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).

was no provision for oral hearings, the General Assembly, in exercising its supervisory functions, should avoid granting oral hearings. It would appear that Mr. Scott's statement would relate to the administration of the Territory and hence to the supervisory functions of the General Assembly. To grant the request for a hearing would, therefore, compromise the General Assembly's efforts to implement the advisory opinion of the International Court of Justice and would hamper the negotiation of an agreement to place the Territory under United Nations trusteeship. The United States delegation would therefore be obliged to vote against granting the request for a hearing.

18. There was, however, no question of preventing the views and information which Mr. Scott would be able to present on behalf of the Herero and other tribes from being made available to the United Nations. The communication from Chief Hosea Kutako (A/2913/Add.2, annex III) would undoubtedly be considered further by the Committee on South West Africa. He suggested that Mr. Scott should communicate his views in writing to the Committee on South West Africa so that they could be taken into account in the Committee's examination of conditions in the Territory.

19. Mr. SCOTT (New Zealand) said that there were a number of considerations which the Fourth Committee should keep in mind in deciding the question of granting an oral hearing to the Reverend Michael Scott. Possibly the least important of those considerations, although it should not be forgotten, was the stage reached in the Committee's business. The last few meetings of the Committee had been devoted to the discussion of the items relating to South West Africa. In view of the Committee's decision at its previous meeting, the consideration of the item could be regarded as complete. The representative of Venezuela had already drawn attention to the unfortunate timing of Mr. Scott's request. As the United States representative had said, the matters to be raised by Mr. Scott would probably relate to the supervisory functions of the General Assembly over the former Mandated Territory. The opinion of the International Court of Justice had been that those functions should conform as far as possible to the procedures adopted by the Council of the League which did not admit oral hearings in the case of "C" mandates. He wondered whether the information which Mr. Scott would contribute would be of such first-hand importance as to justify the disruption of the work of the Fourth Committee at the present stage. The Committee would probably have to devote three or four meetings to the statement and to the discussions to which it would give rise. It would also have to consider whether it should take any decisions. Since it had already taken a decision (499th meeting) on the report on conditions in the Territory (A/2913, annex II), any further decision would amount to a reconsideration of the matter and would therefore require a two-thirds majority for adoption. Consequently, the New Zealand delegation was opposed to granting the request for a hearing.

20. His delegation would support the suggestion of the United States representative that the petitioner should be invited to submit his views in writing to the Committee on South West Africa.

21. There were also other matters which the Fourth Committee should consider before making its final deci-

sion. For example, special rule F. adopted by the General Assembly in resolution 844 (IX), whereby decisions on questions relating to petitions and annual reports were to be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter, should also be borne in mind. It would be advisable for the Fourth Committee to postpone any further consideration of the request.

22. Mr. GRUBYAKOV (Union of Soviet Socialist Republics) said that in principle the delegation of the USSR was always in favour of granting requests for oral hearings. During the discussion of the Reverend Michael Scott's request for a hearing, certain practical considerations had been raised, including the fact that the Fourth Committee was now ending its discussion of South West Africa and that it would therefore be inappropriate to hear the petitioner's statement. That argument did not appear to be well-founded. It had also been argued that granting the hearing would waste time, but from a purely practical point of view, the quickest course of action would be to hear Mr. Scott immediately and then to decide what course of action, if any, the Fourth Committee should take. If the Committee found that the petitioner's statement contained information already in its possession, it could act accordingly.

23. At the previous meeting the Soviet delegation had voted against the draft resolution asking the International Court of Justice for an advisory opinion on the question of oral hearings in the Committee on South West Africa (A/C.4/L.415 and Add.1) on the grounds that such a resolution was unnecessary. However, it had been agreed that the resolution did not cast any doubt on the right of the Fourth Committee to decide whether to grant hearings to petitioners or not. He did not agree that the topics to be raised in Mr. Scott's statement would have any bearing on deciding whether to grant the hearing or not. In principle, there was nothing in the Fourth Committee's procedure or in the special rules adopted by the General Assembly against granting the hearing. The Soviet delegation would therefore vote in favour of granting the request.

24. Mr. ESKEKUND (Denmark) said that his delegation would be obliged to vote against granting the request for a hearing. Among the considerations which prompted it to adopt that attitude was the poor timing of the request. The Fourth Committee had already been discussing questions relating to South West Africa for more than a week.

25. Mr. BENLER (Turkey) said that he would be unable to vote until he had had an opportunity of studying Mr. Scott's explanation in the light of the advisory opinion of the International Court of Justice and of the views expressed by other representatives.

26. The CHAIRMAN said that the meeting would be suspended to allow for the reproduction and distribution of document A/C.4/313/Add.1.

The meeting was suspended at 4.35 p.m. and resumed at 5.5 p.m.

27. The CHAIRMAN called upon the Committee to vote on the request for an oral hearing contained in document A/C.4/313.

28. Mr. SCOTT (New Zealand), on a point of order, asked whether the decision which the Committee was being called upon to take was a motion of the Fourth

Committee or a recommendation to the General Assembly.

29. Mr. CALLE Y CALLE (Peru) said that it was clear that the decision would be a decision of the Fourth Committee, and would therefore be subject to a vote by simple majority.

At the request of the Liberian representative a vote was taken by roll call.

Cuba, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Cuba, Czechoslovakia, Ecuador, Egypt, El Salvador, Greece, Guatemala, Haiti, India, Indonesia, Iraq, Lebanon, Liberia, Pakistan, Peru, Philippines, Poland, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia, Afghanistan, Argentina, Byelorussian Soviet Socialist Republic, Chile, Costa Rica.

Against: Denmark, Luxembourg, Netherlands, New Zealand, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, Canada.

Abstaining: Dominican Republic, Ethiopia, Israel, Mexico, Turkey, Venezuela, Brazil, Burma, China, Colombia.

The request was granted by 29 votes to 11, with 10 abstentions.

HEARING OF THE REVEREND MICHAEL SCOTT

At the invitation of the Chairman, the Reverend Michael Scott took a place at the Committee table.

30. The Reverend Michael SCOTT said that he had asked to be heard by the Fourth Committee in view of the importance of making clear to the people of South West Africa what their rights and privileges were, particularly with regard to the question whether or not they could claim the right of personal access to the organ of the United Nations which dealt with their problems. He had made that request only because the African people themselves had been physically prevented from leaving the Territory of South West Africa by the refusal of the South African Government to grant them passports.

31. Under the Mandates System the inhabitants of South West Africa had had the right of petition to the League of Nations. At that time the form of petition had normally been in writing and the procedure had been laid down accordingly. Since then methods and techniques of communication had improved and it was now possible for representation to be made in many other forms, for example by means of recording, films, radio and even television. If such techniques could be employed the physical presence of the petitioners in New York would not be essential. It therefore seemed that a realistic consideration of the right to petition should take into account on the one hand those new techniques and on the other hand the political limitations and barriers designed to prevent communication by the petitioners with the United Nations.

32. He had asked for permission to appear before the Committee in order that the African people should be assured that their right to petition had not been impaired by what had happened during the current

session, by the decisions that had been taken or by the action of the Mandatory Power in absenting itself from the General Assembly. The vote taken at the present session would give them that reassurance. It would seem all the more important that the voices of the African people should be heard inasmuch as the administering Power had departed from the United Nations and did not consider itself answerable to the conscience of the international community expressed through the General Assembly.

33. He recalled that at the sixth session of the General Assembly, held in Paris, the Fourth Committee had expressed its willingness to hear the representatives of the people of South West Africa (A/C.4/190) and a cable had been sent to them to that effect. However, Chief Hosea Kutako and the other representatives had been refused passports and Mr. Scott himself, while in Paris, had received an order prohibiting his return to South Africa. That order had not since been rescinded.

34. Those African people had much to tell the United Nations, and he would be unfaithful to his trust if he did do his utmost to keep the way open for them, when proper procedures had been devised, to come before the Fourth Committee, unburden themselves of their fears and troubles and express the hopes they still had in the United Nations, which sustained them in all their difficulties and dangers. He had already made a written submission (A/2913, annex IV) attempting to show some of the various positive and constructive ways in which the United Nations could assist both the Government and people of South Africa and the inhabitants of the Territory of South West Africa. For the time being he could only illustrate their needs by some of the things they themselves had said and show how some of those needs could be met by the specialized agencies of the United Nations.

35. No one had denied or could deny the poverty of the people or their need of medical care and attention and of education. He had recently received a letter from Chief Hosea Kutako stating that the Herero people had read with interest the report of the Committee on South West Africa (A/2913 and Add.1 and 2) and had found that most important things had been dealt with.

36. He drew attention to two letters, dated 2 September 1954 and 12 October 1954, from Hosea Kutako, David Roos and Erastus Amgabeb, representing the Herero, Nama and Bergdamara tribes respectively, which were reproduced in annex VII to the report of the Committee on South West Africa, and to a letter from the Reverend T. H. Hamtumbangela, dated 5 October 1954, reproduced in annex VIII to the report.

37. He had received a further letter from Chief Hosea Kutako stating that there had been no change for the better as far as the indigenous population was concerned but that instead the pass laws had been made more oppressive. As from 1 April 1955, he said, non-European visitors from Native Reserves and rural areas in the towns were allowed to stay fourteen days only unless they could produce proof that they needed medical treatment. Although there were no hospitals or doctors in the Native Reserves, an indigenous resident there must obtain permission from a magistrate to enter a town to receive treatment and unless he left the town on the date stamped on his pass he would be

punished. A non-European visitor to a town must report to a magistrate within twenty-four hours of his arrival or he would be arrested. The police were constantly on the watch for indigenous inhabitants who had no service contracts and they were liable to fines and imprisonment. The people lived in a state of fear and many of them spent much time in hiding. Non-European residents in towns were given fourteen days in which to seek work and if they could not find it they were obliged to leave, whether or not they had a house and family there. Non-Europeans could work only as labourers and were paid at a very low rate. When the people had complained to the Government they had been told that the matter rested between employers and employees and that the Government could do nothing. As a result of the low wages the people were undernourished, ill-clad and lived in miserable shacks. Lastly the writer expressed the hope that the year 1955 would see the end of the administration of South West Africa by the Union of South Africa and that the Territory would be taken over by the United Nations.

38. It could be seen from those statements and the Committee's report that the needs were great and that there was scope in many directions for positive work by the specialized agencies. There was urgent need in South West Africa for such help as had been provided to Burma, Colombia, Panama and other countries by the World Health Organization and the United Nations Children's Fund. The work done by UNICEF in aiding milk processing and drying plants could vitalize the agricultural economy of the Territory. The outbreak of foot-and-mouth disease in the northern areas of the Territory might be alleviated with the assistance of experienced international experts. The United Nations Educational, Scientific and Cultural Organization could give much needed help in the establishment of new educational programmes suited to the needs of the country. The shortage of food in South West Africa was linked to the shortage of water; owing to the generally low rainfall it was impossible to carry out agriculture on any considerable scale. However, Pakistan, with a similar problem, had enlisted the aid of the Technical Assistance Programme and with the help of experts from the Food and Agriculture Organization multi-purpose development plans had been drawn up for irrigating some 10 million acres of land.

39. It was difficult to see how there could be anything offensive in the plea that some of the technical resources so generously offered by the Members of the United Nations should be used to supply those human needs. A State would surely not impair its dignity by accepting such help for the purpose of alleviating the distress and improving the material and cultural standards of a people entrusted to its care.

40. It had been on account of the treatment meted out by Germany to the Herero, the Nama, the Bergdamara and other African peoples at the beginning of the century that, after the First World War, the Principal Allied and Associated Powers had enunciated the principle of international accountability and devised a system of international supervision. If at the beginning of the century the great nations of Europe had realized the dangerous consequences of the false racial theories applied in South West Africa, Europe itself might have been spared the havoc and destruction it had suffered twice in one generation.

41. Those considerations were particularly relevant at the present moment, when the Union of South Africa had withdrawn from the United Nations when its policy towards the African people was being discussed. It would not be right for the United Nations to refuse to hear the voice of the African people, and he trusted that their right of access to the General Assembly would be reiterated. The failure of the Mandatory Power to fulfil the sacred trust reposed in it placed upon the United Nations the moral and constitutional obligation to devise ways and means to enable the people placed under its care to articulate their own wants and fears themselves.

42. Miss ROESAD (Indonesia) said she had listened with great care and interest to Mr. Scott's statement and would like to assure him and the people of South West Africa that in her delegation's belief the Fourth Committee would always be willing to hear them and persons duly accredited to represent them.

43. She asked the Chairman to have Mr. Scott's statement circulated as an official document.

44. Miss BROOKS (Liberia) reiterated her delegation's deep sympathy with the people of South West Africa and hoped that some means would be found to help them to free themselves from the yoke under which they were struggling.

45. Mr. SERAPHIN (Haiti) seconded the request made by the Indonesian representative that Mr. Scott's statement should be circulated to the members of the Committee.

46. The CHAIRMAN said that the Secretariat had taken note of the request.⁴

47. Mr. RODRIGUEZ FABREGAT (Uruguay) proposed that in view of the lateness of the hour any questions members of the Committee might wish to ask Mr. Scott should be postponed until the next meeting.

It was so decided.

The meeting rose at 6 p.m.

⁴ The complete text of the Reverend Michael Scott's statement was subsequently circulated as document A/C.4/314.