United Nations
GENERAL ASSEMBLY
TENTH SESSION
Official Records

FOURTH COMMITTEE, 497th MEETING

Friday, 4 November 1955, at 3.20 p.m.

New York

CONTENTS

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; A/C.4/308) (*continued*)

1. Mr. RODRIGUEZ FABREGAT (Uruguay), observing that his country was a member of the Committee on South West Africa, said that the consequences of the refusal of the Union of South Africa to place South West Africa under the Trusteeship System, were set out in the Committee's report (A/2913 and Add.1 and 2). South West Africa had been placed under mandate immediately after the First World War in order that the Union of South Africa might help the Territory to develop and eventually to become independent. Under the Charter, the Trusteeship System, which the United Nations had established while fighting for freedom, should have been applied to South West Africa; but the Union of South Africa had refused to comply, just as it had refused to co-operate with the Committee and to carry out the General Assembly's resolutions and even the two advisory opinions of the International Court of Justice.[1]

2. South West Africa had been under the administration of the Union of South Africa for over thirty years. The question was whether it had made enough progress for independence. That was a question for the General Assembly to decide on the basis of information from the South African Government. Unfortunately, that Government had not given the Committee any information, and consequently the Committee's report might contain some errors. If he himself interpreted certain facts incorrectly, he hoped that the South African delegation would correct him and thus provide the United Nations with the first-hand information it had lacked for so long. The General Assembly, the International Court of Justice and world public opinion had suffered from the Union's negative attitude, which was difficult to understand.

3. The Committee on South West Africa had sought to determine what progress the inhabitants of the Territory had achieved. That was an important question since it involved human beings, whose future and whose rights should be respected. However, he had been compelled to note the absence of any law defining the status of the non-European inhabitants (A/2913, annex II, para. 16). He felt, as did the Committee on South West Africa, that the status of those inhabitants should be at least equal to that of the immigrants.

4. While he would not dwell on such other questions dealt with in the Committee's report as the cultural level of the inhabitants or their participation in public life, he pointed out that, according to paragraph 183 of the report on conditions in the Territory (A/2913, annex II), approximately 67 per cent of the total expenditure on education was for European pupils and 17 per cent for Coloured and Native pupils. It was inconceivable that children should be placed in different kinds of schools according to the colour of their skin. Such discrimination was contrary to the principles of the Charter.

5. With regard to land settlement, he pointed out that in the South African Government's view "the Natives generally have not yet reached a stage of development where they would benefit from individual land ownership, particularly of farms" (A/2913, annex II, para. 96). Why a Native should have reached a sufficient stage of development to work the land, but not to own it, was not easy to understand. It would be noted, moreover, that the Administrator could in no case consent to any hypothecation, assignment, transfer, sub-lease or sub-letting to non-Europeans. If a lessee married or cohabitated with a Native or Coloured person, his lease was subject to cancellation forthwith. It was inconceivable that such a situation should obtain today. The Europeans who governed the country had all the rights and all the privileges.

6. The Union of South Africa had admittedly sought to settle the problem—a solution being essential—in concert with other administering Powers which had been members of the League of Nations. But the course of history could not be reversed. The problem of South West Africa was not a national problem. The League of Nations, in other words the international community, had entrusted South West Africa to the Union of South Africa. Moreover, the signatories to the Charter were compelled to observe human rights. While the problem was delicate, he sincerely hoped that the Union of South Africa would

[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 by document A/1362); and *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).

co-operate with the United Nations in settling it. The United Nations was in no way seeking to impose an arbitrary solution on the Union.

7. Mr. RIFAI (Syria) observed that for years there had been divergent views as to the competence of the General Assembly and the duties and obligations of the United Nations and of the Government of the Union of South Africa with regard to the question before the Committee. Unfortunately, the opinions expressed by the highest international judicial authority had not solved the problem. The moral issues the problem raised made the present situation the more regrettable and could not but have harmful results.

8. Since the arguments in the case had been adduced on several occasions by other delegations, he would merely state that the Syrian delegation unreservedly supported the Thai representative's masterly statement at the 493rd meeting on the various legal and moral aspects of the question.

9. As Syria was a member of the Committee on South West Africa, it was unnecessary for him to comment in detail on the Committee's report. He had had many opportunities to state his Government's position on the various aspects of life in the Territory of South West Africa. The Syrian delegation's views were reflected in the Committee's report, which he hoped the Fourth Committee would adopt.

10. Once again he hoped that the South African Government would not persist in its intransigence. Its attitude had caused it to disregard its legal obligations, which were made still clearer by the two advisory opinions of the International Court of Justice and by the practical wisdom of avoiding the unanimous disapproval of the United Nations. By placing the Territory under the Trusteeship System, the South African Government would serve its own interests and those of the people of South West Africa, and would put an end to an abnormal situation and to the legal ambiguities which it entailed.

11. Mr. SOLE (Union of South Africa) said that he wished to comment on what might be termed the constitutional aspects of the question.

12. The suggestion had been made in the course of the debate that, by submitting the question of South West Africa's incorporation into the Union to the General Assembly in 1946, at the second part of the first session, the Union of South Africa had recognized United Nations competence in the matter. He wished to say that the submission of the question to the United Nations had not flowed from any recognition by his country that United Nations approval was legally required in order to justify incorporation of the Territory into the Union. Field Marshal Smut's intention in 1946 had been to consult the international community, and if possible to secure its blessing for a step which he firmly believed would be in the best interests of all the inhabitants of South West Africa. That step had been envisaged as far back as 1920 as the destiny of South West Africa, and Field Marshal Smuts had always thought that it would be in accordance with the spirit of the Mandate. At no time had he had in mind seeking the legal approbation of the United Nations. He had regarded the right of legal approbation as being vested solely in the Council of the League of Nations, which had ceased to exist.

13. A member of the Committee had quoted from Professor Lauterpacht's opinion that an administering State which persistently disregarded the articulate opinion of the Organization might expose itself to consequences legitimately following as a legal sanction (1955 advisory opinion, p. 57); in other words, that repeated recommendations of the General Assembly, if adopted by a large enough majority, had a legal effect, and their disregard might result in the application of legal sanctions. There would be a danger to the stability, and even the existence, of the Organization if it were accepted that recommendations of the General Assembly had only to be made often enough and with sufficiently large majorities to acquire legally binding force.

14. In the view of South African legal experts, the authority attaching to a General Assembly recommendation had been set out correctly by Judge Klaestad when he had stated, on page 88 of the 1955 advisory opinion, that as a Member of the United Nations, the Union of South Africa was in duty bound to consider in good faith a recommendation adopted by the General Assembly under Article 10 of the Charter and to inform the General Assembly with regard to the attitude it had decided to take in respect of the matter referred to in the recommendation. But, Judge Klaestad had continued, a duty of such a nature, however real or serious it might be, could hardly be considered as involving a true legal obligation and it did not in any case involve a legal obligation to comply with the recommendation. Although Judge Klaestad had acted on the assumption —an erroneous assumption in the South African view—that South West Africa was a mandated territory falling within the scope of the Charter, his remarks were valid for all recommendations which the General Assembly might adopt under the Charter's provisions.

15. If a recommendation had no binding legal force, it was obvious that its repetition could not imbue it with any such force. Recommendations of the General Assembly were made in accordance with the Organization's constitution, which had resulted from agreement. That constitution distinguished fundamentally between an organ which had recommendatory functions, such as the General Assembly, and an organ which was designed to take binding decisions, such as the Security Council. Article 25 of the Charter provided that Members of the United Nations agreed to accept and carry out the Security Council's decisions. There was no similar provision with regard to recommendations of the General Assembly. Whatever moral force they might possess, or acquire by repetition, they were not legal in nature. Any attempt to interpret and apply them as if they were legal in nature would be most dangerous for the stability of the Organization. He could cite many examples of recommendations of the General Assembly which had not been implemented by Members. He could also quote from many speeches denying the legal effect of such recommendations. However, he would confine himself to reminding the Committee of the importance of treating with the utmost caution the part of Professor Lauterpacht's opinion that had been quoted in the debate.

16. He wished to make it clear that his failure to reply with respect to comments on the report of the Committee on South West Africa derived from his

Government's views as to the constitutionality of that Committee.

CONSIDERATION OF DRAFT RESOLUTIONS (A/2913, ANNEXES VI, VII, VIII; A/C.4/308, A/C.4/L.408)

17. The CHAIRMAN invited the Committee to consider the draft resolutions proposed in annexes VI, VII and VIII of the report of the Committee on South West Africa (A/2913).

18. Mr. RIVAS (Venezuela) said that the Committee's recommendations coincided with his delegation's views on the question. So far as his country was concerned, South West Africa had been under the supervision and responsibility of the international community since the end of the First World War, which could not have been followed by a distribution of booty without injury to the principles for which the victors had fought. To be sure, there were differences between the Mandates and the Trusteeship Systems, but they were differences of form and not of substance: in both there was the recognition that the future of a territory should be determined by its people, which had been placed in the care of a more advanced country for the purpose of preparing it for that most important of decisions.

19. With that in view and in that spirit the Committee on South West Africa had devoted itself to a study of the facts and had avoided superficial problems. It had rightly felt that a people could hardly prepare itself for self-determination if its various sectors did not have a legal status that enabled them to give expression to their individual and collective aspirations. That was the reason for the opinion the Committee expressed in its report, annex II, paragraph 18, which was identical with the resolution adopted on the subject by the Council of the League of Nations on 23 April 1923, and quoted in paragraph 17 of annex II.

20. As regards the representation of South West Africa in the South African Parliament, the reservations made by the South African delegation seemed somewhat ill-founded. The right of international institutions to intervene in the legislative activity of a State was debatable, especially in a field governed by constitutional laws, and that was doubtless the reason why the Committee, in paragraph 33 of annex II of its report, proposed that the General Assembly should consider the advisability of clarifying the legal aspects involved, having in mind the status of South West Africa as an international mandate. Another matter which the Committee viewed with concern was the fact that the Territory was represented exclusively by inhabitants of European origin. The Committee had very properly raised those two questions because it was anxious to see the Mandate serve the purpose for which it had been established, namely, to prepare the populations concerned to stand by themselves in the contemporary world.

21. He then turned to the draft resolutions in annexes VI, VII and VIII of the Committee's report, which he considered to be entirely within the jurisdiction of the international community as recognized by the Mandates System. With regard to the draft resolution in annex VI, it was difficult to maintain that the legal status and the claims of the Rehoboth Community were not an international concern, because the situation had been created by an agreement between the Union of South Africa and a community which could not possibly be considered as an integral part of a State; it could not therefore be claimed that the situation was exclusively within national jurisdiction. The very fact that the community in question could exercise its sovereignty by appealing to the International Court of Justice compelled the United Nations to come to its aid.

22. Similar considerations applied also in the case of the draft resolutions contained in annexes VII and VIII of the report. In those draft resolutions, the Committee merely proposed to inform the petitioners of a fact recognized not only by the International Court of Justice, but also by the great majority of the Members of the General Assembly, namely, that the Territory continued to be subject to the Mandate assumed by the Union of South Africa in 1920.

23. The Committee, it was true, had reached its decisions by a method somewhat different from that employed by the League of Nations in dealing with petitions, but that intermediate method, instituted by the Committee, clearly showed with what legal and political circumspection it had attempted to reconcile the rules of the Mandate with the necessities and realities deriving from the existence of the United Nations. The inhabitants of former mandated territories must be able to settle their disputes with the administering Power through the intermediary of the community of nations, so as to prevent disorders from spreading.

24. His delegation would also vote for the draft resolution contained in document A/C.4/L.408 as well as the draft resolution in document A/C.4/L.409, which recommended the only solution that seemed normal to him, namely, that the Territory should be placed under the Trusteeship System.

25. Mr. JASPER (United Kingdom), explaining the vote his delegation was going to cast on the draft resolutions proposed in annexes VI, VII and VIII of the report of the Committee on South West Africa, recalled its attitude to the examination of written petitions received from former mandated territories without the co-operation of the Mandatory Power. It noted that the rules of the Permanent Mandates Commission did not admit examination of petitions in such conditions. Those rules were still in force for South West Africa, so far as that was possible in the changed circumstances.

26. His delegation would therefore abstain from voting on the recommendations relating to the two petitions. It would vote against the draft resolution in annex VI concerning the petition from the Rehoboth Community, because in its opinion it would be inadvisable to adopt the solution proposed. The conclusions which the Committee had reached in that particular case were based on incomplete information owing to the non-co-operation of the South African authorities. The General Assembly would therefore be well advised to reject the draft resolution.

27. Mr. ESKELUND (Denmark) said that his delegation would abstain from voting on the draft resolution proposed by the Committee on South West Africa in annex VI of its report concerning the petition and communications relating to the Rehoboth

Community. It considered that the Committee had not enough information in the matter, which was very obscure from the legal standpoint.

28. The CHAIRMAN put to the vote the draft resolution proposed by the Committee on South West Africa, in annex VI (*d*) of its report (A/2913), on the petition and communications relating to the Rehoboth Community.

The draft resolution was adopted by 32 votes to 3, with 9 abstentions.

29. Mr. McMILLAN (Australia) said that his delegation had voted against the draft resolution, because it considered the main question dealt with in the text was so delicate and so complex that the General Assembly should take no action in the matter for the present.

30. Mr. S. S. LIU (China) recalled that his delegation had abstained from voting on the rules adopted by the General Assembly at its previous session, (resolution 844 (IX)), because it doubted their efficacy. It was therefore unable to vote for any measure proposed under those rules. That was why it had abstained from voting on the draft resolution which had just been adopted, and would also abstain on the remaining draft resolutions.

31. Mr. JAIPAL (India) said that his delegation had voted for the draft resolution and would vote for the other two. In doing so it was acting in conformity with the special rules C and D of General Assembly resolution 844 (IX). In his opinion, the Committee on South West Africa had carefully studied the petitions concerned in the light of all the information available to it.

32. Mr. TAZHIBAYEV (Union of Soviet Socialist Republics) explained that though certain parts of the text might have been improved, he had voted for the draft resolution with the understanding that the advisory opinion of the International Court of Justice, mentioned in the first paragraph of the preamble, was the advisory opinion of 7 June 1955, which related to the voting procedure applicable in questions concerning reports and petitions relating to the Territory of South West Africa, and not the advisory opinion given by the Court in 1950 on the international status of South West Africa.

33. The CHAIRMAN put to the vote the draft resolution contained in annex VII (*c*) of the Committee's report (A/2913).

The draft resolution was adopted by 38 votes to 1, with 7 abstentions.

34. Mr. ESKELUND (Denmark) explained that he had voted for the draft resolution because, as he had recalled a few days earlier, his country recognized the right of petition. He would therefore also vote for the next draft resolution.

35. The CHAIRMAN put to the vote the draft resolution contained in annex VIII (*e*) of the Committee's report (A/2913).

The draft resolution was adopted by 39 votes to 1, with 7 abstentions.

36. The CHAIRMAN asked members of the Committee whether they were now ready to discuss the draft resolution contained in document A/C.4/L.408.

37. Mr. JAIPAL (India) asked that examination of that document, which had only recently been distributed to the Committee, should be deferred to the next meeting.

38. Replying to Mr. RIVAS (Venezuela), the CHAIRMAN explained that the Fourth Committee had already voted, at the ninth session (402nd meeting) on the two draft resolutions contained in document A/C.4/308. The General Assembly would now have to take a decision on them. To enable it to do so, the Fourth Committee would have to attach them to its report as an annex.

It was so agreed.

The meeting rose at 5 p.m.

Printed in Canada A—77401—December 1955—2,325