



Wednesday, 25 September 1957,
 at 10.40 a. m.

NEW YORK

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Chairman: Mr. Thanat KHOMAN (Thailand).

Requests for hearings (A/C.4/354/Add.1, A/C.4/355) (continued)

REQUESTS CONCERNING AGENDA ITEM 37 (THE FUTURE OF TOGOLAND UNDER FRENCH ADMINISTRATION) (A/C.4/354/Add.1) (continued)

1. Mr. DE CAMERET (France) stated that the French delegation had no objection to the Committee's granting the hearing requested by Mr. Ben Apaloo on behalf of Juvento (A/C.4/354/Add.1).

The Committee decided to grant the hearing.

REQUESTS CONCERNING AGENDA ITEM 13 (REPORT OF THE TRUSTEESHIP COUNCIL) (A/C.4/355)

2. Mr. DE CAMARET (France) said that the French delegation had no objection to the Committee's granting the hearing requested by Mr. Ch. Assale, Chairman of the Groupe d'action nationale du Cameroun (A/C.4/355, para. 1).

The Committee decided to grant the hearing.

3. Mr. DE CAMARET (France) referred to the request for a hearing made by Mr. Ntumazah, President of One Kamerun, (A/C.4/355, para. 2) and recalled that Mr. Ntumazah had appeared before the Fourth Committee the previous year^{1/}. At that time, the French delegation had strongly opposed his request for a hearing,^{2/} for very specific reasons: Mr. Ntumazah had claimed to belong to a party which had been banned by the Decree of 13 July 1955. He was now appearing on behalf of a new party but he would undoubtedly seek to express opinions that were identical to those he had expressed at the previous

^{1/}See Official Records of the General Assembly, Eleventh Session, Fourth Committee, 640th and 641st meetings.

^{2/}Ibid., 638th meeting.

session. The French delegation was therefore opposed to the Committee's granting him a hearing and it asked that his request should be put to the vote.

4. In reply to a question by the CHAIRMAN, Sir Andrew COHEN (United Kingdom) said that the United Kingdom delegation had no comment to make on the request for a hearing.

The Committee decided by 42 votes to 8, with 10 abstentions, to grant the hearing requested by Mr. Ntumazah (A/C.4/355, para. 2).

AGENDA ITEM 38

Question of South West Africa:

(a) Report of the Committee on South West Africa (A/3626; A/AC.73/L.10);

(b) Study of legal action to ensure the fulfilment of the obligations assumed by the Mandatory Power under the Mandate for South West Africa: special report of the Committee on South West Africa (A/3625)

5. The CHAIRMAN, speaking as Chairman of the Committee on South West Africa, said that the question of South West Africa was before the General Assembly for the twelfth time. The Union of South Africa had so far refused to place the Territory under the International Trusteeship System, to submit reports to the United Nations on its administration of South West Africa or to transmit petitions from the inhabitants of the Territory, in spite of the 1950 advisory opinion of the International Court of Justice,^{3/} which affirmed that the Territory was still under the International Mandate. The Committee on South West Africa had for the last four years submitted reports to the Assembly on conditions in the Territory and had considered petitions concerning it.

6. In its report to the eleventh session of the General Assembly (A/3151), the Committee had stated that the administration of South West Africa was not in conformity with the standards laid down by the Mandates System and it had requested the Assembly to reconsider the situation. The Assembly had adopted resolution 1059 (XI) requesting the Secretary-General to explore ways and means of solving satisfactorily the question of South West Africa, and resolution 1060 (XI) requesting the Committee to study what legal action might be taken to ensure the fulfilment of the obligations assumed by the Mandatory Power under the Mandate for South West Africa and to present a special report on that subject.

^{3/}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.)

7. He invited Mr. Grieco, the Rapporteur of the Committee on South West Africa, to present the reports of that Committee.

8. Mr. GRIECO (Brazil), Rapporteur of the Committee on South West Africa, said that that Committee was presenting two reports to the General Assembly. The general report (A/3626) covered the work of the Committee's fourth session. It described the position concerning negotiations with the Government of the Union of South Africa: no solution had been found, for the Union Government had not responded to the Committee's efforts. The report went on to draw attention to the special report on the question of legal action open to United Nations organs to ensure that the Union of South Africa fulfilled the obligations assumed by it under the Mandate (A/3625).

9. With regard to section IV of the report in document A/3626, concerning the listing of the Territory in the Universal Postal Union, it would be recalled that during the General Assembly's tenth session the Committee on South West Africa had drawn the Assembly's attention to a change in the official listing of the Territory, on the initiative of the Union of South Africa, from a "Territory under Mandate" to a "Territory administered by the Union Government" (A/2913, annex II, para. 8). The Committee had taken advantage of the recent Universal Postal Congress to request the Secretary-General to bring to the attention of the Congress certain facts relating to the status of the Territory.

10. Section V of the report dealt with the examination of information and documentation concerning South West Africa and the preparation of the annual report to the General Assembly on conditions in the Territory. Since the Government of the Union of South Africa had again failed to submit a report to the United Nations on its administration, the Committee had asked the Secretary-General to provide it with the information available. The Secretariat had accordingly prepared a series of papers, which were now being issued as document A/AC.73/L.10, and as in previous years had compiled the documentation from official publications of the Territory and of the Union Government. Since the Committee on South West Africa had begun its work in 1954 the Secretariat had supplied it with over 2,000 pages of information about conditions in the Territory and the legislation in force there. Those data had been supplemented by hundreds of press extracts circulated to members of the Committee by the Secretariat, as well as by petitions from inhabitants of the Territory. While there were some gaps in the report - for example, trade statistics for the Territory had not been available owing to the merging of the Territory's statistics on trade with those of the Union of South Africa - it nevertheless gave a fairly comprehensive picture of the main aspects of the situation.

11. The Committee's observations regarding conditions in the Territory were set out in annex I to the report. The main period covered was the year 1956, but mention had also been made of several important developments in 1957. During that period there had been significant policy statements regarding the Territory's future status and the Union Government's intention of keeping the administration of the Territory in European hands; those statements were reproduced verbatim in the report. Recent developments in the application of apartheid were fully reported.

Paragraph 162 of annex I reflected the Committee's concern over the gravity of the present situation, and in paragraph 20 it recommended that the General Assembly should take into account, in considering possible further measures, its special report concerning legal action.

12. The final section of the Committee's report described the action taken on petitions and communications and made recommendations relating to the right of petition and the hearing of petitioners.

13. The Committee's special report (A/3625) concerned legal action to ensure the fulfilment of the obligations assumed by the Mandatory Power under the Mandate. The report began by outlining the Union's obligations and the position taken by the Union Government. Section IV reviewed the legal action open to United Nations organs, including the right to request from the International Court of Justice an advisory opinion, which, as stated in paragraph 18, might be a factor in influencing a State to fulfil its obligations. The Court's advisory opinions, however, were not binding, and since the Union of South Africa had refused to accept the Court's advisory opinion of 1950 relating to the status of South West Africa and the Union's continuing obligations under the Mandate, the possibility of its accepting a further advisory opinion of the Court was open to doubt. Apart from taking that course, United Nations organs could adopt resolutions or take decisions which were of a legal nature or which had legal consequences.

14. Sections V and VI of the special report dealt with the legal action open to Members of the United Nations or former Members of the League of Nations, acting either individually or jointly. Both sections dealt with the possibility of bringing cases before the International Court of Justice for its compulsory jurisdiction, and a distinction was made between cases dealt with under Article 36, paragraph 2, of the Statute of the Court, in which the terms of the declaration of acceptance of the Court's compulsory jurisdiction would be relevant, and cases brought under article 7 of the Mandate and Articles 37 and 38, paragraph 1, of the Statute. As was stated in section II, the Union Government was under an obligation to accept the compulsory jurisdiction of the Court under article 7 of the Mandate regarding disputes relating to the interpretation or the application of the provisions of the Mandate, if such disputes were not settled by negotiation. The Union's obligation in that regard was not dependent on the optional clause in Article 36, paragraph 2, of the Statute of the Court. In other words, the Union Government, in accepting the Mandate in 1920, had automatically become subject to the Court's compulsory jurisdiction in relation to the settlement of disputes under article 7 of the Mandate.

15. The study of legal action open to States to ensure that the Union of South Africa fulfilled its obligations under the Mandate presented many extremely complex problems. One such problem was the question what States might be parties to an action brought under article 7 of the Mandate. In the absence of any previous opinion of the Court on that issue and of any comparable precedent, the members of the Committee had been able only to express their own opinions on the question of what States not Members of the League of Nations at the time of the League's dissolution might be parties to such a case.

16. Mr. RODRIGUEZ FABREGAT (Uruguay), speaking as a member of the Committee on South West Africa, stressed the nature of the Mandate conferred upon the Union of South Africa by the League of Nations namely, the sacred mission of leading the population of South West Africa towards self-government. In its advisory opinion of 11 July 1950 the International Court of Justice had formally stated that the Union of South Africa was still subject to the obligations it had contracted on accepting the Mandate. The problem, however, was not a mere theoretical or legal one; the life of a people was at stake, as were human rights. The facts the Committee on South West Africa had managed to assemble showed that the situation was far from satisfactory with regard to economic conditions, education, political rights, the very right of the indigenous inhabitants to live on the land of their ancestors and their right to elect representatives.

17. It was deplorable that the Mandatory Power had again refused to co-operate with the Committee. In effect the Union of South Africa was denying the competence of the General Assembly and of the International Court of Justice. It regarded itself as the only entity capable of interpreting the decisions of the Permanent Mandates Commission of the League

of Nations, and by refusing to place the Territory under the Trusteeship System it was refusing to comply with the Charter, the new law of the world, the new commandment of the universal conscience. However, although its competence was challenged, the General Assembly should not consider itself disarmed; on the contrary, it should continue to keep watch, as had the League of Nations, over the destinies of the people of South West Africa.

18. Mr. ASARE (Ghana) thanked the members of the Fourth Committee for the words of welcome they had addressed to the delegation of Ghana at the previous meeting. The attainment of independence by his country and by the Federation of Malaya marked a step forward which could not but be a cause for rejoicing, for all peoples should enjoy the right to manage their own affairs. That position had not yet been achieved throughout Africa and the world at large and it was to be hoped that the colonial Powers would follow the United Kingdom's example. He was confident that the United Nations, which had been founded on the noble principles of freedom and justice, would be able to fulfil its mission.

The meeting rose at 11.30 a.m.