

**GENERAL
ASSEMBLY**

SIXTH SESSION

Official Records

FOURTH COMMITTEE 204th

MEETING



INDEX UNIT
MASIE
Friday, 16 November 1951, at 3 p.m.

JAN 1952
Palais de Chaillot, Paris

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Chairman: Mr. Max HENRÍQUEZ UREÑA (Dominican Republic).

In the absence of the Chairman, Mr. Inglés (Philippines, Vice-Chairman, presided.

**Requests for hearings (A/C.4/187, A/C.4/L.136)
(continued)**

1. The CHAIRMAN reminded the Committee of its decision (203rd meeting) to close the list of speakers on the item under consideration at 3 p.m., and declared the list now closed.
2. Mr. U TUN SHEIN (Burma) felt compelled to intervene in the debate in view of the opposition the joint draft resolution (A/C.4/L.136) had aroused. He would, however, confine himself to stating that simple justice demanded that representatives of the South West African tribes should be heard by the Committee, for even a criminal was not condemned without a hearing. His delegation would therefore wholeheartedly support the draft resolution.
3. Mr. ANDREN (Sweden) considered it of the greatest importance that all organs of the United Nations should be in possession of the most complete information in discussing major questions—a consideration which in no way conflicted with the principles laid down in the Charter. In the present instance, the Union of South Africa had failed to report to the United Nations on its administration of South West Africa; hence, it was highly desirable for the Committee to try to get the relevant information in some other way.
4. He agreed that the tribes applying for a hearing were minority groups in South West Africa. Should their representatives attempt to misrepresent the situation, however, there would be ample opportunity for the delegation of the Union of South Africa to correct the picture.
5. The Swedish delegation would vote for the joint draft resolution.

6. Mr. TANGE (Australia) said that, at the 202nd meeting, the Australian delegation had abstained in the vote on the question of giving a hearing to the representatives of the Ewe people, because it considered that the best allocation of functions was for such questions to be considered, and for petitions to be heard, by the Trusteeship Council rather than by the Fourth Committee. On the other hand, it did not see any constitutional objection to the hearing of petitions from the peoples of the Trust Territories by the Committee. In the case under discussion, however, the territory in question was not a Trust Territory. That being so, recourse should be had to the Charter in order to determine the rights and obligations of the Committee with regard to hearing a petition concerning a territory which did not fall within the scope of Chapter XII of the Charter. The procedure followed by the League of Nations should also be studied. It would be found that none of the relevant instruments conferred the right on any body to hear such petitions. The General Assembly had already instructed the *Ad Hoc* Committee on South West Africa to examine petitions in accordance with the procedure of the former Mandates System, and it had referred the question of the status of South West Africa to the International Court of Justice and had received an advisory opinion thereon. Moreover, by a resolution passed at its previous session (449(V)), the General Assembly had accepted that advisory opinion which dealt, *inter alia*, with the procedure to be followed in connexion with petitions. The Court had expressed the opinion that the degree of supervision to be exercised by the General Assembly should not exceed that which had applied under the mandates system and should conform as far as possible to the procedure laid down by the Council of the League. The General Assembly had established the *Ad Hoc* Committee on South West Africa in the hope that it would be able to persuade the South African Government to set up machinery to implement the Court's opinion. It had not included any provision which fell outside the advisory opinion of the Court.

7. In the opinion of the Australian delegation, if the Committee adopted the joint proposal under discussion, it would be following a procedure which had never been recognized under the Mandates System, which had not been suggested by the advisory opinion of the Court and was not followed by the *Ad Hoc* Committee on South West Africa set up by the General Assembly itself. On the one hand, the General Assembly had accepted the advisory opinion of the Court; on the other the Fourth Committee was envisaging an entirely different procedure. That was an important inconsistency.

8. Furthermore, the Australian delegation wondered whether the General Assembly would be wise, while negotiations were still in progress in the *Ad Hoc* Committee on South West Africa, to endeavour to examine details of the administration of the territory from information supplied by representatives of a section of the population.

9. For those reasons, his delegation would be unable to support the draft resolution. It considered that the correct procedure would be to inform the petitioners that their request could not be acceded to until procedures had been established for the hearing of oral petitions from the indigenous peoples of South West Africa.

Mr. Henriuez Urea (Dominican Republic) took the Chair.

10. Mr. SEVILLA SACASA (Nicaragua) believed that the joint draft resolution was firmly based on the right of a racial minority to be heard and the duty of the Fourth Committee to hear such a minority. Hence, he was unable to accept the South African view. But he fully agreed with the Venezuelan representative's contention that a distinction must be drawn between a racial and a political minority, and his delegation would vote in favour of the joint draft resolution.

11. Mr. DONGES (Union of South Africa) recalled that the representative of Uruguay had referred to the right of petition as a principle of democracy. That was undoubtedly true, but the democratic right was that of petition to the constituted national authority. That was why the South African Government had always advised the Herero peoples to submit their complaints to the Administration. The right of petition to an external authority, an international authority, did not exist unless specifically provided for in some international document. In the case in point, there was no such provision. Some representatives had claimed that the right of petition was enshrined in the Charter. True, the Charter did grant the right of petition to an international authority, but only in the case of Trust Territories. The very fact that that right was specifically authorized for that one category of territories implied that it did not apply outside that sphere. The Charter contained no provision for the hearing of oral petitions from Non-Self-Governing Territories.

12. The representative of the Philippines had challenged the South African representative's reference

to the *Ad Hoc* Committee on South West Africa, on the ground that the General Assembly was the supreme organ. That could not be denied, but for the time being the Assembly had given a mandate to one body alone, namely, the *Ad Hoc* Committee on South West Africa. Until it revoked that mandate and gave it to another body, the Fourth Committee had no right to usurp the functions of the *Ad Hoc* Committee or to vote what amounted to a motion of no confidence in its capacity to carry out its functions. To do so would be to override the General Assembly's resolution and to choose a different agent from the one the Assembly had appointed.

13. Certain allegations had been made concerning the peoples in question. Their grievances, whatever they might be, had already been ventilated before the United Nations on a number of occasions. No attempt had been made to suppress them. The fact that in the whole of Ovamboland, which contained over 60 per cent of the indigenous population, there were only three non-indigenous policemen should be a sufficient reply to the assertion that the Herero peoples were kept in a state of servitude.

14. He had already adduced three reasons why the draft resolution should be rejected. A further point had been raised: the omission in the Charter of any right to petition except in the case of Trust Territories. No refutation had been made of any of those four points of substance. All that had been said was that the Union of South Africa was inconsistent in quoting in support of its position authorities which it was not prepared to accept. Those who advanced that argument, however, were themselves inconsistent. They had accepted the advisory opinion of the International Court of Justice, the resolutions of the General Assembly and the statement that the Mandate was still in existence, while the Union of South Africa reserved the position it had hitherto taken up on those points. But their draft resolution was itself an explicit refusal to accept the Court's advisory opinion and the Assembly resolution and to admit that the Mandate subsisted.

15. Mr. Donges reiterated his Government's determination to continue to administer South West Africa in the spirit of the principles of the Mandate, although it affirmed that the Mandate no longer existed.

16. He pointed out that the cases of Palestine, the Italian colonies and Eritrea, which had been quoted as precedents for granting an oral hearing to petitioners, were false analogies.

17. The Committee would make its own decision; all he could do was to draw its attention to the implications involved in accepting the draft resolution. He had done so to the best of his ability and, whatever the outcome, the responsibility would rest on the shoulders of the Committee. Using an Afrikaans idiom, he said he washed his hands in innocence.

18. The CHAIRMAN proposed to put the joint draft resolution to the vote.

19. Mr. LANNUNG (Denmark), in explanation of the vote he would cast, said that, in the special circumstances obtaining in respect of South West Africa, and in particular for the reason that it was a territory *sui generis*, his delegation might have found it possible to support the proposal for granting hearings. His future attitude on similar questions concerning an ordinary Non-Self-Governing Territory or any territories under full sovereignty would not thereby be prejudiced, because he did not believe that in such case, constitutionally or otherwise, there was any provision, authorization or justification whatsoever entitling the Committee to grant hearings without the consent of the country concerned. He would, however, be loath to close the door on the possibility of agreement by further negotiation with regard to an implementation of the essential points of the Court's opinion. Hence, in the hope that the South African Government might eventually see its way to accept a solution based on the proposals of the *Ad Hoc* Committee on South West Africa, his delegation would abstain from voting.

20. Mr. SPITS (Netherlands) stated that, although his Government placed much weight on the right of petition, at the same time it felt that that right should be exercised within the bounds of certain rules of procedure. For the same reasons as those given at the 203rd meeting by the United Kingdom representative, his delegation would vote against the proposal.

21. Mr. DE MARCHENA (Dominican Republic) continued to maintain that the right of petition should prevail; moreover, the Dominican Republic upheld the competence of the General Assembly to discuss new aspects of the problem in the search for a solution. He would therefore vote in favour of the proposal.

22. He asked that the vote should be taken by roll-call.

23. Mr. WÖRM-MULLER (Norway) said that, while his delegation appreciated all the views that had been expressed, to force a decision on the issue at the moment might prove detrimental to the course of future negotiations. Norway had unreservedly accepted the Court's advisory opinion and would accordingly be unable to support the proposal, since the Mandates System did not include provision for oral hearings.

24. Mr. PIGNON (France) observed that no real answer to the legal issues raised at the 203rd meeting had been forthcoming; nor had the substance of the matter been fully debated. In those circumstances,

he would be unable to vote for a resolution establishing a procedure which was a departure from the rules.

25. Mr. SAYRE (United States of America) stated that, largely for the reasons put forward by the Danish representative and partly because the United States was a member of the *Ad Hoc* Committee on South West Africa which had already expressed its views on the question, his delegation would abstain from voting.

A vote was taken by roll-call.

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

In favour: India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Nicaragua, Pakistan, Philippines, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia, Afghanistan, Argentina, Bolivia, Brazil, Burma, Byelorussian Soviet Socialist Republic, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Ethiopia, Greece, Guatemala, Haiti.

Against: Netherlands, New Zealand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, Australia, Belgium, France.

Abstaining: Israel, Norway, Peru, United States of America, Canada, China, Denmark.

The joint draft resolution (A/C.4/L.136) was adopted by 37 votes to 7, with 7 abstentions.

Request of the Government of Italy to participate in the discussion of agenda items 1 and 5

26. Mr. BENSON (Secretary of the Committee) told the Committee that a letter from the Italian Government, dated 15 November 1951, had been received by the Secretary-General and transmitted to the Chairman of the Fourth Committee. The letter informed the Secretary-General of Italy's desire to participate in the work of Assembly Committees dealing with matters of direct concern to Italy. In the case of the Fourth Committee, Italy wished to be present during the discussion of item 1, the question of the full participation of Italy in the work of the Trusteeship Council, and of item 5, report of the Trusteeship Council, in view of its deep interest in those two problems.

27. There being no objection, the CHAIRMAN declared that Italy's wish to be represented in the Committee during discussion of those items was approved.

The meeting rose at 4.5 p.m.