United Nations

GENERAL ASSEMBLY

SIXTH SESSION

Official Records

FOURTH COMMITTEE 203rd

MEETING

Friday, 16 November 1951, at 10.30 a.m.

Palais de Chaillot, Paris

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

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

1. Mr. MENDOZA (Guatemala) presented the draft resolution submitted jointly by the delegations of Brazil, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Pakistan and the Philippines (A/C.4/L.136). The purpose of that very simple draft resolution was to grant the requests for hearings submitted by the chiefs of the indigenous peoples of South West Africa who wished to express their views before the Fourth Committee. The second part of the draft invited the Government of the Union of South Africa to accord the representatives of those peoples all the necessary facilities to enable them to proceed to Paris in good time in order to provide the Committee with the additional information it would need in the consideration of a difficult problem.

2. Sir Alan BURNS (United Kingdom) explained that his delegation's attitude to the examination of petitions by United Nations organs was conditioned by its desire to see the United Nations obtain all the relevant information, from whatever source. Accordingly, the United Kingdom delegation was in no way opposed—on the contrary—to the Fourth Committee's hearing the petitioners from Togoland under British administration if it so desired.

3. In the present case, however, the United Kingdom delegation felt obliged to take a different view. The provisions of the Charter on the examination of petitions by the United Nations applied only to Trust Territories, and South West Africa was not in that category. It was true that the International Court of Justice had stated in its advisory opinion[1] that the peoples of South West Africa retained the right of petition which they had enjoyed under the former Mandate, and that the United Nations was legally qualified to deal with petitions from the Territory. But it had added that the United Nations should conform as far as possible to the procedure followed under the former mandates system. That procedure laid down that petitions must be transmitted to the League of Nations by the Mandatory Power itself and it made no provision for oral petitions.

4. Moreover, the procedure to be followed for petitions from the Territory would be within the purview of the conversations initiated between the *Ad Hoc* Committee on South West Africa and the Government of the Union of South Africa. The Fourth Committee should not prejudge any decision which might be taken in the matter ; yet that was what it would be doing if it invited the petitioners forthwith to state their views. The question of South West Africa had already led to considerable disagreement within the Fourth Committee, and that body should be careful not to do anything which might endanger the success of the efforts being made to settle the question in a satisfactory manner.

5. The Fourth Committee would therefore be well advised to take no immediate decision on the question whether it would be just and equitable to allow the petitioners to state their views, and to advise the petitioners to be patient a little longer pending the results of the negotiations in progress on the subject. The Committee should confine itself to taking note of the requests for hearings submitted by the petitioners and state that, as the appropriate procedure had not yet been laid down, it was unable to grant them. Such a course would certainly contribute to a solution of the problem.

6. Mr. DONGES (Union of South Africa) said that he was obliged, for several reasons, to oppose the joint draft resolution. Before setting forth his reasons, he desired to draw the Committee's attention to a number of facts which would enable it to see the matter in a clearer light.

[1] See *International status of South West Africa, Advisory Opinion : I.C.J. Reports 1950*, p. 128.

7. In the first place, the tribes requesting hearings, according to the draft resolution before the Committee, constituted only a small proportion of the total indigenous population of South West Africa. According to the census of 1946, they numbered less than 86,000 out of a total of 340,000 indigenous inhabitants.

8. Secondly, it would be noted from the petitions on which the draft resolution was based (A/C/4/187) that with one exception they all came from the Herero tribe the exception being a petition sent to the Secretary-General on 25 November 1950 by one of the chiefs of a very small section of the Nama people, comprising barely 400 persons. Even if it were accepted, therefore, that the chiefs and notables really represented the tribes concerned, the requests for hearings were submitted by no more than 33,000 Hereros and 400 Namas. It should be noted in passing that the grievances of the Hereros went back several decades, and that the Government of the Union of South Africa had never attempted to conceal those grievances from the United Nations.

9. Lastly, the truth was that in spite of the very active propaganda carried on by certain elements outside the territory in order to sow disaffection among the indigenous people, what was happening was precisely the opposite, and South West Africa was today one of the most peaceful regions in the world. The proof was that the peoples of South West Africa had been consulted on several occasions in 1946, before and after the General Assembly's adoption of resolution 65 (I) the contents of which had been made known to the indigenous peoples, and again in 1949—on the question of the incorporation of South West Africa in the Union of South Africa, and the numbers of persons opposed to incorporation had fallen from 33,520 to 31,800 and, finally, to 12,184.

10. The reasons for the opposition of the Union of South Africa to the joint draft resolution were based primarily on the fact that the proposal was incompatible with General Assembly resolution 449 (V). That resolution, whether rightly or wrongly, appointed a definite body—the *Ad Hoc* Committee on South West Africa—to examine petitions from South West Africa, as an interim measure and in addition laid down that they should as far as possible be examined in accordance with the procedure followed under the former Mandates System. But the joint draft resolution called upon the Fourth Committee itself to examine the petitions, and to examine them under a different procedure.

11. Furthermore, the *Ad Hoc* Committee on South West Africa, in accordance with the terms of reference given it by the General Assembly under paragraph 3 of resolution 449 (V), had submitted in its report (A/1901) a number of proposals regarding the appropriate body to deal with petitions from South West Africa. That document was on the Fourth Committee's agenda, and the Committee should therefore not prejudge any decision which it might wish to take on the subject of the *Ad Hoc* Committee's report, or usurp that Committee's functions. The Fourth Committee should be careful to avoid any such hasty decision, which could only endanger the success of the *Ad Hoc* Committee's work.

12. In addition, the joint draft resolution was at variance with the advisory opinion handed down by the International Court of Justice, which read (p. 138): " The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. These observations are particularly applicable to annual reports and petitions ". The rules laid down in 1923 by the Council of the League of Nations in respect of the examination of petitions made a distinction between petitions from actual inhabitants of the mandated territory, which were to be transmitted to the League of Nations through the Mandatory Power, and petitions from sources outside the territory, which were sent direct to the Secretary-General, who forwarded them to the Chairman of the Permanent Mandates Commission. The latter, if he thought them worthy of attention, had to send such petitions to the Mandatory Power concerned, which was required to enter its observations within a period of not more than six months. There was therefore no provision under that procedure for the examination of oral petitions.

13. Furthermore, the petitions with which the Fourth Committee was invited to deal under the terms of the joint draft resolution were precisely those which had already been before the *Ad Hoc* Committee on South West Africa ; that Committee, in accordance with the recommendation of the International Court of Justice and the instructions of the General Assembly, had followed the procedure under the former mandates system and transmitted the petitions to the Government of the Union of South Africa in a letter dated 2 October 1951. It would therefore be quite improper for the Fourth Committee to intervene in the negotiations between the South African Government and the *Ad Hoc* Committee.

14. The South African delegation had thought it proper to make those points clear to the Fourth Committee because it was convinced that, if the authors of the draft resolution had been in possession of all the relevant facts, they would never have submitted to the Committee a proposal which might have regrettable consequences. The South African delegation could barely conceive of any proposal which more directly and specifically flouted so many United Nations organs and agents. It must therefore inform the Committee that, should the draft resolution be adopted, the Government of the Union of South Africa would be obliged to reconsider its whole attitude on agenda item 2.

15. Moreover, it must be emphasized that the adoption of a draft resolution of that kind would reveal a serious lack of respect towards the South African Government. It must not be forgotten that the Mandate had provided that South West Africa could be administered as an integral part of the territory of the Union of South

Africa. What would happen if a part of the population of a Member State which had a grievance were authorized to appeal directly to the United Nations ? Would not the result be a situation intolerable to the State concerned ? And, in the case of South West Africa, would not such a decision by the Organization be likely to make the settlement of the matter still more difficult ? No nation, great or small, could allow its rights or dignity to be attacked. That fundamental truth could not be ignored without threatening international solidarity, which, today more than ever, it was essential to preserve.

16. Lastly, as the representative of the United Kingdom had said, the Charter made no provision for the hearing of petitioners from territories other than those under the Trusteeship System.

17. Mr. PIGNON (France) said he would make only a few brief remarks, while reserving the right to speak again during the debate.

18. At the 202nd meeting, the French delegation had not voted against the draft resolution submitted by Cuba and various other delegations (A/C.4/L.135), and modified by the Pakistani amendment. It had merely abstained, because it had not wished to oppose the Committee's hearing the Ewe petitioners.

19. On the other hand, it would take quite a different attitude towards the request submitted by the petitioners from South West Africa. On that point it shared the United Kingdom representative's view ; it noted that the Permanent Mandates Commission of the League of Nations had made no provision for the hearing of petitioners from mandated territories, and considered that, if the Committee decided to grant the petitioners' request before reaching a decision on the implementation of the opinion of the International Court of Justice, it would be prejudging its decision on that matter.

20. Mr. MATTOS (Uruguay) recalled that his delegation had always attached the greatest importance to the right of petition, which appeared in democratic constitutions as well as in the United Nations Charter, and he considered that the Organization would be taking a dangerous course if it impeded the free exercise of that fundamental right.

21. In the particular case of South West Africa, it was essential to hear the peoples of the territory before voting on a resolution which was bound to have a very far-reaching effect, fortunate or otherwise, on their future. The Uruguayan delegation had listened very carefully to the statement of the representative of the Union of South Africa, and it could not understand how a State which had such lofty traditions could refuse to accede to so reasonable a request. The South African representative had spoken of the size of the tribes, and, in the first part of his statement, had taken up various other matters of substance, although what was at issue was merely whether the Committee should give peoples which had expressed the desire to exercise their legitimate right of petition an opportunity to do so. The Uruguayan delegation would vote for the joint draft resolution (A/C.4/L.136).

22. Mr. MENDOZA (Guatemala) asked whether the Union of South Africa had transmitted to the *Ad Hoc* Committee on South West Africa any petitions from a part of the population of that territory.

23. Mr. BUNCHE (Acting Assistant Secretary-General) replied that no communication of that kind had been addressed either to the *Ad Hoc* Committee or to the Secretary-General.

24. Mr. MENDOZA (Guatemala) thought that that reply invalidated the South African representative's argument as to the procedure for transmitting petitions. He was astonished that the Union of South Africa should invoke the authority of the International Court of Justice and the General Assembly, as well as the obligatory nature of the Mandate, when it had systematically refused to submit to that authority and comply with the obligations of the Mandate.

25. It could not be claimed that to accede to the request for a hearing would be to prejudge the substance of the problem. Besides, it might he asked what the allegedly disastrous consequences of such a hearing might be ; on the contrary, to grant the hearing would undoubtedly be an essentially constructive step. Moreover, even if it was true that the petitions came from only 36,000 persons, it must be admitted that they represented a large proportion of the population. Furthermore, it was impossible to believe that all the other inhabitants of the territory were satisfied with their situation and willingly accepted the discriminatory treatment to which they were subjected. Besides, if the inhabitants of the territory were really satisfied, it was difficult to see why the Union of South Africa should object to their representatives informing the United Nations to that effect.

26. Mr. INGLES (Philippines) regarded it as fundamental that any people should have the right to express its point of view to the United Nations on any matter which was of vital interest to it and which the United Nations was considering. There was no need for the right to be explicitly recognized by the Charter because it derived quite naturally from the basic purposes and principles of the United Nations, and particularly from the equal rights of peoples to self-determination. The League of Nations had already recognized the inherent right of the populations of mandated territories to submit petitions in spite of the absence of an express provision to that effect in the mandate agreements. That right had in turn been recognized by the International Court of Justice, and the General Assembly of the United Nations could not but accept the Court's opinion as a correct statement of law and and of fact.

27. The representatives of the United Kingdom and the Union of South Africa had raised a question of procedure : they claimed that the right of petition could be exercised only in accordance with the procedure followed by the League of Nations. There was, however,

a difference between petitions, the purpose of which was to express grievances, and requests for hearings. It seemed logical, therefore, first to give the petitioners a hearing so as to ascertain whether their purpose was to express grievances or merely to communicate certain information relating to their territory to the General Assembly. If it appeared that the petitioners desired to place certain grievances before the Organization, it would naturally be for the General Assembly to request the Union of South Africa to make its observations. If, on the other hand, it was only a matter of communicating information, the consent of the Mandatory Power would in no way be required. It was essential that the United Nations should have all the information necessary for a constructive solution of the problem of South West Africa.

28. Moreover, even in the case of petitions concerning grievances, all the Mandatory Power could do was to make its observations thereon ; it could not prevent their transmission to the United Nations. It had, however, been observed that up to the present no petition from South West Africa had been transmitted by the Union of South Africa to the United Nations. The Organization must see to it that nothing impeded the exercise of the right of petition which the peoples of the territory were admitted to possess. That would be permissible under the text of the Court's opinion, which required adherence to the mandate procedure only " as far as possible ".

29. The South African representative had stated that the Herero, Nama and Berg Damara tribes were only a small part of the population. But the exercise of the right of petition was not confined to the whole of the population ; it could be exercised by any group, and even by an individual. Reference to the procedure followed by the Permanent Mandates Commission showed that that was so.

30. The representative of the Union of South Africa that stated that consultations held in 1946 showed that the majority of the indigenous population favoured incorporation of their territory into the Union. According to documents submitted by the Reverend Michael Scott, the peoples of South West Africa had not been asked about the incorporation of the territory within the Union of South Africa. They had morely been asked whether they wished to remain under the British Crown.

31. The Union of South Africa had invoked the General Assembly resolution establishing the *Ad Hoc* Committee on South West Africa to support its claim that the matter was within the competence of the *Ad Hoc* Committee alone. It must not be forgotten, however, that that Committee derived its authority from the General Assembly, which was therefore perfectly at liberty to deal with all aspects of the problem of South West Africa. An authority which had delegated its powers still retained the right to exercise them itself.

32. It was strange that the Union of South Africa, which had systematically refused to recognize the authority of the International Court of Justice and the General Assembly, should invoke that authority when convenient to itself. If the Union of South Africa really wished unreservedly to recognize that authority, the whole problem would be easily solved.

33. Such were the legal and moral reasons why the request for a hearing should be favourably received.

34. Mr. TARAZI (Syria) noted with surprise that, at the preceding sessions of the General Assembly, the Union of South Africa had refused to recognize either the authority of the International Court of Justice and the General Assembly or the validity of the Mandate, whereas it was now invoking them to support its own case. Furthermore, although it had not supplied information to the *Ad Hoc* Committee or the General Assembly, it now wanted the Fourth Committee to be satisfied with such information as it supplied.

35. When the questions of Palestine and the former Italian colonies had been discussed, the General Assembly had heard representatives of the local population. It could not, therefore, refuse to hear the representatives of the population of a mandated territory, in view of the fact that the League of Nations Covenant itself provided that such a territory already enjoyed a limited sovereignty. For those reasons, he would vote for the joint draft resolution (A/C.4/L.136).

36. Mrs. COELHO LISBOA DE LARRAGOITI (Brazil) was surprised at the position of the French and United Kingdom representatives on the question. She was equally surprised that the South African representative should quote certain texts when they suited his purpose and reject them when they did not.

37. It was the duty of the United Nations to ensure respect for the dignity of the human person and it could not therefore refuse to hear petitioners without failing in its moral obligations, which were just as binding as any written obligations. There was nothing in such a course of action which could have the disastrous consequences to which a number of speakers had referred. True, certain populations could not be treated as minors. If, however, their requests were rejected, the populations concerned, who based all their hopes on the United Nations, would get the impression that procedural arguments had triumphed over their most elementary rights. Their representatives should therefore be permitted to make their point of view known and perhaps obtain the support of the United Nations. They should also be given sufficient time to travel to Paris.

38. Mr. TREBINJAC (Yugoslavia) recalled that throughout the previous session his delegation had supported requests from petitioners for a hearing. The right of the representatives of indigenous populations to be heard in the United Nations derived naturally from the spirit of the Charter and it was the duty of United Nations Members to respect that right.

39. It was true that South West Africa was not a Trust Territory, but precisely because it was a special case, it would be all the more dangerous for the Committee to become involved in interminable procedural discussions on the question. A just solution must be

found to a problem of such weighty consequence to the peoples of the territory. Statements made by their representatives could not in any way be detrimental to the Committee's work. On the contrary, they would undoubtedly provide useful information, which could not fail to facilitate the solution of the problem.

40. It would clearly be better if the Fourth Committee gave a hearing to representatives of all the peoples of the territory, but the fact that only representatives of the Herero and certain other tribes had asked for a hearing was no justification for refusing their request, as some wished to do. The Yugoslav delegation considered it its duty to support the draft resolution put forward by the nine delegations (A/C.4/L.136).

41. Mr. STEYAERT (Belgium) recalled that at the previous meeting his delegation had not opposed the grant of a hearing to the representatives of the Ewe tribe, since the latter inhabited Trust Territories. It had nevertheless abstained from voting, as it considered that the Trusteeship Council was the body best qualified to hear statements by representatives of indigenous peoples and that the Fourth Committee's primary duty in that sphere was to review the work of the Trusteeship Council and to pass upon it.

42. In the case of South West Africa, however, the position was entirely different. Since the Territory was not a Trust Territory, the provisions of the Charter concerning Trust Territories could not be applied to it. Moreover, as the United Kingdom representative had already pointed out, consideration of the report of the *Ad Hoc* Committee on South West Africa was already included in the Committee's agenda. Hence, to adopt the draft resolution at that stage would be to prejudge the outcome of the debate on the *Ad Hoc* Committee's report. His delegation would therefore vote against the draft resolution, without thereby deciding upon the justice of the Herero claims or passing adverse judgment on the personal qualities of the Herero representatives.

43. Mr. Steyaert then referred to the Iraqi amendment (A/C.4/L.137), which expressed the hope that the French Government would facilitate the granting of the necessary visas to the representatives of the indigenous tribes. His delegation would vote against that amendment, as it was convinced that the French Government would in fact facilitate the granting of such visas if it were decided to give the claimants a hearing.

44. Mr. TARCICI (Yemen) gave a brief outline of the actual situation. On the one hand, there was a weak and poor people governed by a foreign Power. Despite difficulties, the extent of which could only be appreciated by peoples who had been held in subjection or had experienced foreign occupation, the people of South West Africa, who still believed that the United Nations wished to enforce respect for its professed principles, sought to obtain a hearing. On the other hand, several delegations—the South African delegation, in particular—were using the eloquence of their representatives, procedural devices and the strength of a well-established position in an endeavour to prevent the representatives of the indigenous peoples of the territory from being heard by the United Nations.

45. However, the greater the efforts of the Union of South Africa to silence those peoples, the more desirable it was for the Committee to hear their representatives. Even if the Committee were unwilling to invite such representatives on the basis of the principles of the United Nations or the dictates of common sense, it could do so as a courtesy.

46. For those reasons he felt that the representatives of the peoples of South West Africa should be given a hearing and he would therefore support any proposal to that effect.

47. Mr. PIGNON (France) expressed surprise at the Iraqi amendment to the draft resolution under consideration, since it went without saying that the French Government would make no difficulties about issuing the necessary visas to any person invited to participate in the work of the General Assembly; there was, moreover, a provision to that effect in the Headquarters agreement for the sixth session. If the Iraqi representative insisted on discussion of his amendment, the French delegation would propose amending it so as to make it apply equally to all the countries through which the representatives in question would have to pass on their way to France.

48. Mr. KHALIDY (Iraq) regretted that the French representative should be so sensitive on what was a very simple matter. No offence was intended in the Iraqi amendment, nor was it intended as a criticism. If, however, the French representative maintained his attitude, he himself would have no difficulty in citing precedents to show that in some cases persons proceeding to a General Assembly had met with difficulties with regard to their visas. The Iraqi amendment was in no way designed to discredit the French Government.

49. Mr. PIGNON (France) thought that it was sufficient for him to repeat the assurance that France would respect the Headquarters agreement, as it respected all the agreements to which it was a party, and he considered that the Iraqi amendment had no practical value.

50. Mr. RIVAS (Venezuela) thought the question had been amply clarified by the excellent statements made by the preceding speakers. He would like to point out, however, that the matter under discussion was a request from representatives of the peoples of a territory who wished to make known their views in a discussion which concerned their very future. The right to do so had already been recognized by the League of Nations and Field-Marshal Smuts had been one of its most vigorous champions. The Mandatory Powers had objected to an unlimited right of petition, but the principle that indigenous peoples should have an opportunity to appeal directly to the higher international authorities had nevertheless been maintained.

51. As the Syrian representative had pointed out, a distinction had to be made between complete sovereignty over a territory and supervisory authority

exercised over a territory in virtue of a system such as the Mandates System. Article 2, paragraph 7, of the Charter could therefore not be invoked in the case of South West Africa. His delegation would accordingly vote in favour of the draft resolution.

52. Mr. CASELLAS (Mexico) said that his country remained true to its tradition of supporting weak and non-self-governing peoples. His delegation would therefore vote in favour of the draft resolution.

53. Mr. MARTINEZ MORENO (Costa Rica) thought that the exchange of views which had taken place made it possible to form an impartial opinion on the question. He himself would merely state that his delegation would support the draft resolution unreservedly. He also thanked the French representative for his explanatory statement on the Iraqi amendment, which proved that France remained loyal to its liberal traditions.

54. Mr. DORSINVILLE (Haiti) said that the question of South West Africa was of particular interest to his country. Haiti had always defended the rights of the peoples of that territory, knowing the conditions in which they lived. It would be most desirable for the Fourth Committee to hear the representatives of those peoples before taking a decision with regard to the South African Government's attitude. He therefore fully supported the draft resolution.

55. As regards the Iraqi amendment (A/C.4/L.137), he wished to know whether the French representative formally maintained his proposal.

56. Mr. PIGNON (France) said that he would maintain his proposal only if the Iraqi representative maintained his amendment.

57. Mr. KHALIDY (Iraq) said that he would have no difficulty in accepting the amendment proposed by the French representative. In view, however, of the assurances given by the latter, he would withdraw his amendment.

58. Mr. LAWRENCE (Liberia) said that the right of petition was so fundamental for all people that it was idle even to discuss it. If the majority of the people of South West Africa had expressed satisfaction with the present régime, there could be no objection to their representatives saying so to the Fourth Committee, which would of course be only too pleased to hear it. He had, moreover, been gratified to note that the South African representative was now invoking the resolutions of the General Assembly and the advisory opinion of the International Court of Justice. The principle of national honour, which the South African representative had sought to invoke, should never be permitted to deprive the indigenous inhabitants of their inherent rights.

59. Mr. PEREZ CISNEROS (Cuba), on a point of order, pointed out that there had been ample discussion of the question, and that it would perhaps be appropriate to close the list of speakers.

60. The CHAIRMAN agreed with the Cuban representative and proposed that the list of speakers would be closed at the beginning of the following meeting.

It was so decided.

The meeting rose at 12.55 p.m.

Printed in France D—93355—December 1951—3,600