

INTERNATIONAL COURT OF JUSTICE

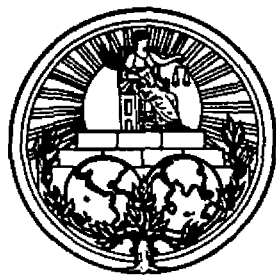
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

VOTING PROCEDURE ON QUESTIONS
RELATING TO REPORTS AND PETITIONS
CONCERNING
THE TERRITORY OF SOUTH-WEST AFRICA
(ADVISORY OPINION OF JUNE 7TH, 1955)

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

PROCÉDURE DE VOTE APPLICABLE AUX
QUESTIONS TOUCHANT LES RAPPORTS
ET PÉTITIONS RELATIFS AU TERRITOIRE
DU SUD-OUEST AFRICAIN
(AVIS CONSULTATIF DU 7 JUIN 1955)



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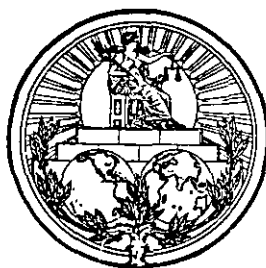
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PART I

REQUEST FOR ADVISORY OPINION
AND WRITTEN PROCEEDINGS

PREMIÈRE PARTIE

REQUÊTE POUR AVIS CONSULTATIF
ET PIÈCES DE LA PROCÉDURE ÉCRITE

SECTION A.—REQUEST FOR ADVISORY OPINION

I.—THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

New York, 2 December 1954.

Sir,

I have the honour to inform you that the General Assembly of the United Nations, by a resolution adopted at its 501st plenary meeting held on 23 November 1954 in connexion with its consideration of the question of South-West Africa, decided to request the International Court of Justice to give an advisory opinion on the following questions :

- (a) Is the following rule on the voting procedure to be followed by the General Assembly a correct interpretation of the Advisory Opinion of the International Court of Justice of 11 July 1950 :

“Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations.” ?

- (b) If this interpretation of the Advisory Opinion of the Court is not correct, what voting procedure should be followed by the General Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South-West Africa ?

One copy each of the English and French texts of the aforementioned resolution of the General Assembly, both duly certified, are herein enclosed.

In accordance with Article 65 of the Statute of the International Court of Justice, I shall transmit to the Court all documents likely to throw light upon the question, including the relevant records of proceedings of the General Assembly as soon as the official records are available.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) DAG HAMMARSKJOLD,
Secretary-General.

II.—RESOLUTION ADOPTED BY THE GENERAL
ASSEMBLY AT ITS 501ST PLENARY MEETING ON
23 NOVEMBER 1954

[ADOPTED WITHOUT REFERENCE TO A COMMITTEE¹ (A/L.178)]

The General Assembly,

Having accepted, by resolution 449 A (V) of 13 December 1950, the Advisory Opinion of the International Court of Justice of 11 July 1950 with respect to South-West Africa,

Having regard, in particular, to the Court's opinion on the general question, namely, "that South-West Africa is a territory under the international Mandate assumed by the Union of South Africa on 17 December 1920", and to the Court's opinion on question (a), namely, "that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South-West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted, and the reference to the Permanent Court of International Justice to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court";

Having expressed, in resolution 749 A (VIII) of 28 November 1953, its opinion "that without United Nations supervision the inhabitants of the Territory are deprived of the international supervision envisaged by the Covenant of the League of Nations" and its belief "that it would not fulfil its obligation towards the inhabitants of South-West Africa if it were not to assume the supervisory responsibilities with regard to the Territory of South-West Africa which were formerly exercised by the League of Nations",

Having regard to the opinion of the International Court of Justice that "the degree of supervision to be exercised by the General Assembly should not ... 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" and that "these observations are particularly applicable to annual reports and petitions",

Having adopted, by resolution 844 (IX) of 11 October 1954², a special rule F on the voting procedure to be followed by the

¹ Adopted during the discussion in plenary meeting of part II of the report of the Fourth Committee on the question of South-West Africa (A/2747/Add.1).

² See A/RESOLUTION/201.

General Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South-West Africa,

Having adopted this rule in a desire "to apply, as far as possible, and pending the conclusion of an agreement between the United Nations and the Union of South Africa, the procedure followed in that respect by the Council of the League of Nations",

Considering that some elucidation of the advisory opinion is desirable,

Requests the International Court of Justice to give an advisory opinion on the following questions :

- (a) Is the following rule on the voting procedure to be followed by the General Assembly a correct interpretation of the Advisory Opinion of the International Court of Justice of 11 July 1950 :

"Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations." ?

- (b) If this interpretation of the Advisory Opinion of the Court is not correct, what voting procedure should be followed by the General Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South-West Africa ?

Certified true copy :

(Signed) C. A. STAVROPOULOS,
Principal Director in charge
of the Legal Department.

1 December 1954.

SECTION B.—DOSSIER TRANSMITTED BY THE
SECRETARY-GENERAL OF THE UNITED
NATIONS (ART. 65, PARA. 2, OF THE STATUTE)

PART I.—INTRODUCTORY NOTE

I

1. On 2 December 1954, the Secretary-General informed the President of the International Court of Justice that, by a resolution adopted at its 501st plenary meeting held on 23 November 1954, the General Assembly decided to request the International Court of Justice to give an advisory opinion regarding the voting procedure on questions relating to reports and petitions concerning the Territory of South-West Africa.

2. The full text of General Assembly resolution 904 (IX) containing the request, is as follows :

“The General Assembly,

Having accepted, by resolution 449 A (V) of 13 December 1950, the Advisory Opinion of the International Court of Justice of 11 July 1950 with respect to South-West Africa,

Having regard, in particular, to the Court's opinion on the general question, namely, 'that South-West Africa is a territory under the international Mandate assumed by the Union of South Africa on December 17th, 1920', and to the Court's opinion on question (a), namely, 'that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South-West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted, and the reference to the Permanent Court of International Justice to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court',

Having expressed, in resolution 749 A (VIII) of 28 November 1953, its opinion 'that without United Nations supervision the inhabitants of the Territory are deprived of the international supervision envisaged by the Covenant of the League of Nations' and its belief 'that it would not fulfil its obligation towards the inhabitants of South-West Africa if it were not to assume the supervisory responsibilities with regard to the Territory of South-West Africa which were formerly exercised by the League of Nations',

Having regard to the opinion of the International Court of Justice that 'the degree of supervision to be exercised by the

General Assembly should not 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' and that 'these observations are particularly applicable to annual reports and petitions',

Having adopted, by resolution 844 (IX) of 11 October 1954, a special rule F on the voting procedure to be followed by the General Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South-West Africa,

Having adopted this rule in a desire 'to apply, as far as possible, and pending the conclusion of an agreement between the United Nations and the Union of South Africa, the procedure followed in that respect by the Council of the League of Nations',

Considering that some elucidation of the advisory opinion is desirable,

Requests the International Court of Justice to give an advisory opinion on the following questions :

(a) Is the following rule on the voting procedure to be followed by the General Assembly a correct interpretation of the Advisory Opinion of the International Court of Justice of 11 July 1950 :

'Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations.'

(b) If this interpretation of the Advisory Opinion of the Court is not correct, what voting procedure should be followed by the General Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South-West Africa ?"

3. The present dossier contains the documents likely, in the opinion of the Secretary-General, to throw light upon the questions upon which an opinion is requested. These documents have been certified to be final official records of the United Nations or true copies therefrom and are transmitted to the Court by the Secretary-General of the United Nations in accordance with Article 65 of the Statute of the Court.

4. Each document or extract therefrom is identified by title and, where applicable, official United Nations symbol. Wherever possible, a citation is also given to the volume and page where the document may be found in the official records of the United Nations. In addition to the official identification, the documents, for convenience in use, have been numbered consecutively in the order in which they appear in the dossier¹. A complete list of the documents may be found in the table of contents.

¹ References to documents in this Introductory Note are based on this system of numbering.

5. The dossier consists of nine sections which contain, respectively, relevant extracts from :

- I. Records of the General Assembly, Fifth Session, 1950.
- II. Records of the *Ad Hoc* Committee on South-West Africa, 1951.
- III. Records of the General Assembly, Sixth Session, 1951-1952.
- IV. Records of the *Ad Hoc* Committee on South-West Africa, 1952.
- V. Records of the General Assembly, Seventh Session, 1952.
- VI. Records of the *Ad Hoc* Committee on South-West Africa, 1953.
- VII. Records of the General Assembly, Eighth Session, 1953.
- VIII. Records of the Committee on South-West Africa, 1954.
- IX. Records of the General Assembly, Ninth Session, 1954.

6. Part II of this Introductory Note surveys the documentation included in the dossier relating to the action taken by the General Assembly and its subsidiary bodies with respect to the question of South-West Africa since the Assembly's fifth session in 1950. Part III refers in greater detail to the documentation bearing on the discussions and decisions taken by the General Assembly and its committees on South-West Africa since 1950, with respect to the question of the voting procedure to be applied by the General Assembly in considering reports and petitions concerning the Territory of South-West Africa.

II

7. Acting in pursuance of a request from the General Assembly contained in resolution 338 (IV) of 6 December 1949, the International Court of Justice gave, on 11 July 1950, its Advisory Opinion on the International Status of South-West Africa. In connexion with the Assembly's request, the Secretary-General transmitted to the Court extensive documentation relating to the setting up and the functioning of the Mandates System of the League of Nations, the establishment of the International Trusteeship System at the United Nations Conference on International Organization held in San Francisco in 1945, and the deliberations of United Nations organs on the question of South-West Africa, up to and including the fourth regular session of the General Assembly.

8. In an oral statement made at the public sittings of the Court of 16 and 17 May 1950 (*I. C. J. Pleadings*, International Status

of South-West Africa, pp. 160-238), the representative of the Secretary-General outlined the origin and the development of the question of South-West Africa before the organs of the United Nations. He analysed some of the legal issues raised by the General Assembly's request for an advisory opinion, in the light, particularly, of the international status of the Territory of South-West Africa prior to the dissolution of the League of Nations, the obligations of the mandatory Powers under the League's Mandates System and the dissolution of the League. He also commented on the relevant provisions of the Charter of the United Nations and on the question of the competence to determine and modify the international status of the Territory.

9. The Advisory Opinion of the International Court of Justice of 11 July 1950 was accepted by the General Assembly by resolution 449 A (V) of 13 December 1950 (document number 11). By the same resolution the General Assembly urged the Government of the Union of South Africa to take the necessary steps to give effect to the Court's opinion, "including the transmission of reports on the administration of the Territory of South-West Africa and of petitions from communities or sections of the population of the Territory", and established an *Ad Hoc* Committee on South-West Africa, comprising five Members of the United Nations, to confer with the Union of South Africa concerning the procedural measures necessary for implementing the advisory opinion. The *Ad Hoc* Committee was authorized "as an interim measure, pending the completion of its task...., and as far as possible in accordance with the procedure of the former Mandates System, to examine the report on the administration of the Territory of South-West Africa covering the period since the last report, as well as petitions and any other matters relating to the Territory that may be transmitted to the Secretary-General, and to submit a report thereon to the General Assembly"¹.

10. Section I of the dossier contains documents (including reports, records of discussions, proposals and decisions) of the fifth session of the General Assembly which relate to the adoption of resolution 449 (V).

11. During the period between the adoption of resolution 449 (V) and the opening of the sixth session of the General Assembly, the *Ad Hoc* Committee on South-West Africa discussed with repre-

¹ In another part of the resolution (449 B (V)), the General Assembly reiterated its previous resolutions relating to the placing of the Territory of South-West Africa under the International Trusteeship System and stated "that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a Trusteeship Agreement in accordance with the provisions of Chapter XII of the Charter" Similar provisions were adopted by the General Assembly as parts of its resolutions on South-West Africa at each of its regular sessions up to and including the ninth session.

representatives of the Union of South Africa various aspects of the procedural measures necessary for implementing the advisory opinion of the International Court of Justice. A proposal of the Government of the Union was found unacceptable by the *Ad Hoc* Committee because it did not allow for the full implementation of the advisory opinion which had been accepted by the General Assembly, the South African proposal containing, in particular, no provision for the supervision of the administration of the Territory of South-West Africa by the United Nations. A counter-proposal of the *Ad Hoc* Committee was not accepted by the Union of South Africa as a basis of further discussion as, in the opinion of the Government of the Union, it would have *inter alia* the effect of imposing on the Union obligations even more extensive than those implicit in the Mandates System (document number 16, pp. 2 and following). The Government of the Union stated in particular that in the circumstances it was unable to accept the principle of submission of reports to the United Nations on the administration of the Territory (document 15).

12. The report of the *Ad Hoc* Committee on South-West Africa to the sixth session of the General Assembly and the summary records of several of the meetings of the Committee are contained in Section II of the dossier.

13. By resolution 570 (VI) adopted by the General Assembly on 19 January 1952 (document number 17), the Assembly *inter alia* reconstituted the *Ad Hoc* Committee on South-West Africa until the following session with terms of reference similar to its previous ones¹. The Assembly solemnly appealed to the Government of South Africa to reconsider its position and urged it to resume negotiations with the *Ad Hoc* Committee for the purpose of concluding an agreement providing for the full implementation of the advisory opinion of the International Court of Justice, and to submit to the United Nations reports on the administration of the Territory of South-West Africa and petitions from communities or sections of the population of the Territory. The Assembly also declared that, since the Government of the Union of South Africa could not avoid its international obligations by unilateral action, the United Nations could not recognize as valid any measures taken unilaterally by the Union which would modify the international status of the Territory of South-West Africa.

14. Section III of the dossier contains the report of the Fourth Committee to the General Assembly on the consideration of this item and the text of resolution 570 (VI).

¹ The representative of the Government of the Union of South Africa expressed later the opinion that the terms of reference gave to the Committee a greater latitude than previously (see document No. 32, page 3, paragraph 15).

15. Pursuant to resolution 570 (VI), the *Ad Hoc* Committee continued, in the course of 1952, to confer with the Government of the Union of South Africa on the means of implementing the advisory opinion of the International Court of Justice. While the consultations revealed that there was agreement on some points, the Committee reported to the General Assembly that the consultations had not been conclusive and that the fundamental divergences that precluded an agreement in 1951 still remained unresolved (document number 19).

16. The General Assembly at its seventh session, by resolution 651 (VII), decided to postpone the consideration of the question until the eighth session, and requested the *Ad Hoc* Committee to continue its activities on the same basis as before (document number 20).

17. Sections IV and V of the dossier contain the report of the *Ad Hoc* Committee and the summary record of its 30th meeting as well as the text of resolution 651 (VII) of the General Assembly.

18. In its report to the eighth session of the General Assembly (document number 22), the *Ad Hoc* Committee referred to further consultations which it held with the representatives of the Government of the Union, without progress having been achieved. The Government of the Union indicated that it had not accepted the opinion of the Court, which was merely advisory, and took the position, in particular, that it was impossible to devise any arrangement whereby the Government of the Union of South Africa would be accountable to the United Nations for its administration of South-West Africa without extending its obligations. The *Ad Hoc* Committee stated that it had to abide by its terms of reference and seek means of implementing the Court's opinion, with which the proposals made by the Union Government were inconsistent.

19. The report of the *Ad Hoc* Committee on South-West Africa to the eighth session of the General Assembly, as well as the summary records of its 38th meeting, are contained in Section VI of the dossier.

20. In the light of the reports which the *Ad Hoc* Committee submitted to it in 1951 and 1952, the General Assembly adopted at its eighth session a resolution which initiated a somewhat different approach to the question. Expressing in resolution 749 (VIII) (document number 33) its deep regret at the continuing refusal of the Government of the Union to assist in the implementation of the advisory opinion of the International Court of Justice, the Assembly recalled and reaffirmed the conclusion of the Court that the Territory of South-West Africa was a territory under international Mandate and that, consequently, the Union of South Africa

continued to have certain international obligations resulting from Article 22 of the Covenant of the League of Nations and from the Mandate, the supervisory functions to be exercised by the United Nations, to which annual reports and petitions were to be submitted.

21. The new approach was based on the consideration that without United Nations supervision the inhabitants of the Territory were deprived of the international supervision envisaged by the Covenant of the League of Nations and the belief that the Assembly would not fulfil its obligations towards them if it were not to assume the supervisory responsibilities which were formerly exercised by the League of Nations. Therefore the Assembly established "until such time as an agreement is reached between the United Nations and the Union of South Africa" a new Committee on South-West Africa consisting of seven members, and requested it :

"(a) To examine, within the scope of the Questionnaire adopted by the Permanent Mandates Commission of the League of Nations in 1926, such information and documentation as may be available in respect of the Territory of South-West Africa ;

(b) To examine, as far as possible in accordance with the procedure of the former Mandates System, reports and petitions which may be submitted to the Committee or to the Secretary-General ;

(c) To transmit to the General Assembly a report concerning conditions in the Territory taking into account, as far as possible, the scope of the reports of the Permanent Mandates Commission of the League of Nations ;

(d) To prepare, for the consideration of the General Assembly, a procedure for the examination of reports and petitions which should conform as far as possible to the procedure followed in this respect by the Assembly, the Council and the Permanent Mandates Commission of the League of Nations."

22. By the same resolution, the Committee on South-West Africa was also authorized to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice. Once more, the General Assembly solemnly appealed to the Government of the Union to reconsider its position and to continue negotiations with the new Committee, for the purpose of concluding an agreement providing for the full implementation of the advisory opinion. The negotiations were to be undertaken in accordance with certain principles, *inter alia*, that (a) the supervision of the administration of South-West Africa, though it should not exceed that which applied under the Mandates System, should be exercised by the United Nations ; (b) the Union Government should assume its obligations to the United Nations and not, as proposed by the Union Government, to the three Powers (France, the United Kingdom and the United States of America) as principals.

23. Documents of the eighth session of the General Assembly containing records of some of the relevant meetings, the report of the Fourth Committee, draft resolutions and the text of resolution 749 (VIII) are contained in Section VII of the dossier.

24. In its report to the ninth session of the General Assembly (documents numbers 42 and 43) the Committee on South-West Africa described the manner in which it had fulfilled the functions entrusted to it by resolution 749 (VIII). Negotiations with the Government of the Union of South Africa had not been resumed, as, in reply to an invitation by the Committee to that Government to designate a representative to confer with it, the Government of the Union had recalled its earlier standpoint to the effect, in particular, that (a) the Mandate with respect to South-West Africa had lapsed but that, in order to find a solution which would remove this question from the United Nations, it was prepared to enter into an arrangement with the three remaining principal Allied or Associated Powers, and that (b) the Union Government's responsibilities in regard to South-West Africa should not in any way exceed those which it assumed under the Mandate. Having pointed out that, despite lengthy discussions, it had not been possible to reach agreement, the Government of the Union had indicated that it was not prepared to consider proposals which did not meet its basic requirements.

25. The Committee on South-West Africa further informed the General Assembly that it had adopted provisional rules of procedure for the purpose of examining reports and petitions relating to the Territory of South-West Africa, and that in drawing up these rules it had adhered as closely as possible to the rules of procedure of the Permanent Mandates Commission of the League of Nations. Certain alternative procedures were incorporated in the rules to enable the Committee to discharge its responsibilities under resolution 749 (VIII) in the event that the Union Government should refuse to transmit annual reports or petitions with respect to South-West Africa.

26. As requested under sub-paragraph (d) of paragraph 12 of resolution 749 (VIII), the Committee also prepared for the consideration of the General Assembly rules of procedure to govern the consideration by the Assembly of reports and petitions relating to South-West Africa. The Committee adopted two resolutions on this subject. The first resolution contained the text of draft rules of procedure with regard to reports, petitions, and on privacy of meetings. With respect to voting procedure, it was proposed that, subject to the concurring vote of the Union of South Africa as the State most directly concerned, the following "special rule F" be adopted: "Decisions of the General Assembly on questions relating

to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations." In the second resolution, the Committee on South-West Africa noted that special rule F involved a question of interpretation of the advisory opinion of the International Court of Justice, and expressed the opinion that the General Assembly should not adopt this rule without the concurring vote of the Union of South Africa as the Member State most directly concerned. It recommended therefore to the General Assembly that, if special rule F should be approved by the required majority of the General Assembly, but without the concurring vote of the Union of South Africa, the General Assembly should submit to the International Court of Justice for an advisory opinion the questions whether the Assembly was correctly interpreting the opinion of the International Court of Justice by adopting a rule on voting procedure which would read as did special rule F, and if this interpretation of the Court's opinion should not be correct, what voting procedure should be applied.

27. Documents in Section VIII of the dossier contain the report of the Committee on South-West Africa to the ninth session of the General Assembly as well as the records of several of the meetings of the Committee and certain of its working papers, including those bearing on the question of voting procedure to be adopted by the General Assembly.

28. At its ninth session the General Assembly adopted three * resolutions relating to South-West Africa. By resolution 844 (IX) it adopted in a slightly amended form the special rules proposed by the Committee on South-West Africa with respect to the procedure with regard to reports, to petitions, the privacy of meetings and special rule F relating to the voting procedure. By resolution 852 (IX) it reiterated its previous resolutions relating to the placing of the Territory of South-West Africa under the International Trusteeship System. Resolution 904 (IX) contains the request for an advisory opinion from the International Court of Justice. The proceedings at the ninth session of the General Assembly as they relate especially to the question of the voting procedure to be applied by the General Assembly in considering reports and petitions concerning the Territory of South-West Africa are described in greater detail in Part III of this Introductory Note.

29. Section IX of the dossier contains the records of all the meetings of the Fourth Committee and of plenary meetings of the ninth session of the General Assembly relating to the question of South-West Africa, as well as the reports of the Fourth Committee,

* *Note by the Registrar* : See p. 38, para. I.

the texts of the various proposals and amendments, certain other documents, and the texts of the resolutions adopted by the General Assembly.

III

30. The *Ad Hoc* Committee on South-West Africa, established by General Assembly resolution 449 (V) and reconstituted by resolutions 570 (VI) and 651 (VII), and representatives of the Union of South Africa held various exchanges of views, both orally and in writing, between 22 June 1951 and 7 October 1953. An account of these negotiations is contained in the reports of the Committee (documents numbers 15, 19 and 22) and in the summary records of its meetings.

31. During these negotiations, representatives of the Union of South Africa made reference, on several occasions, to the question of the voting procedure. They maintained that, as the unanimity rule which had applied in both the Council and the Assembly of the League would not apply in the United Nations General Assembly, should the Union Government accept the principle of United Nations supervision, its obligations would be more onerous than they had been under the League. The Union Government was unable, therefore, to conclude an agreement with the United Nations because it felt that its commitments would inevitably be increased thereby (documents numbers 12, p. 10 ; 13, p. 4 ; 14, p. 7 ; 18, p. 4 ; 21).

32. In an exchange of letters between the Chairman of the Committee on South-West Africa established by resolution 749 (VIII) and the Minister of External Affairs of the Union of South Africa, the Union Government stated that one of the basic elements of any solution of the question which would be satisfactory to the Union Government was that its responsibilities in regard to South-West Africa under any new arrangement should not in any way exceed those which it had assumed under the Mandate. It maintained the position that the proposals hitherto made by the *Ad Hoc* Committee "would not, *inter alia*, safeguard the rule of unanimity which was provided for in the Covenant of the League of Nations" whilst they would confer on certain countries, which are Members of the United Nations but which were not members of the League, rights which they did not have under the Mandates System of the League (document number 42, p. 7).

33. Under paragraph 12 (*d*) of General Assembly resolution 749 A (VIII), the Committee on South-West Africa was requested to "prepare, for the consideration of the General Assembly, a

procedure for the examination of reports and petitions which should conform as far as possible to the procedure followed in this respect by the Assembly, the Council and the Permanent Mandates Commission of the League of Nations". The Committee first took up this item at its 13th meeting on 11 February 1954, at which time it appointed a Working Group, composed of the representatives of Mexico, Norway and Pakistan, to study the question. The Working Group held seven closed meetings between 3 March and 1 April 1954 and submitted a report, the full text of which is contained in Annex III of the report of the Committee on South-West Africa (document number 42, pp. 11-13).

34. The Working Group examined, in particular, the relevant statements of the advisory opinion of the International Court of Justice concerning the supervisory function of the General Assembly with regard to the Territory of South-West Africa, namely that : (a) "The Court has arrived at the conclusion that the General Assembly of the United Nations is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory, and that the Union of South Africa is under an obligation to submit to supervision and control of the General Assembly and to render annual reports to it" ; (b) "Petitions are to be transmitted by that Government to the General Assembly of the United Nations, which is legally qualified to deal with them" ; (c) "South-West Africa is still to be considered as a territory held under the Mandate of 17 December 1920" and that "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", and that "these observations are particularly applicable to annual reports and petitions" ; (d) "The Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South-West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted....".

35. The Working Group noted that the Union of South Africa had on numerous occasions stated that the General Assembly, in applying the advisory opinion of the International Court of Justice, would have to subject decisions regarding South-West Africa to the unanimity principle as it operated both in the Council and the Assembly of the League of Nations, in order to comply fully with the advisory opinion. It further stated that :

“Two members¹ of the Working Group were of the opinion, however, that the International Court of Justice, in rendering its advisory opinion and in stating that the supervisory functions previously exercised by the Council of the League of Nations should now be exercised by the United Nations, could not have been unaware of the voting procedure established by the Charter of the United Nations. One member² of the Working Group held that the Court’s awareness of the voting procedure did not necessarily as a matter of law have to be reflected in the Court’s advisory opinion and that the preceding view of the majority might be construed as an unwarranted interpretation of that opinion.

The Working Group realized that Article 5 of the Covenant of the League of Nations and rule IX of the rules of the Council of the League of Nations provided that decisions by the Council required the agreement of all the Members of the League represented at the meeting and that therefore decisions by the Council regarding reports and petitions relating to the Territory of South-West Africa implied the agreement of the Union of South Africa.

On the other hand, the Working Group expressed the opinion that the term ‘decisions’ within the meaning of Article 5 of the Covenant of the League of Nations and the term ‘decisions’ within the meaning of Article 18 of the Charter of the United Nations cannot be regarded as being identical and that this fact might have some bearing upon the voting procedure to be established for the General Assembly’s examination of reports and petitions relating to the Territory of South-West Africa.”

36. The Working Group submitted two draft resolutions to the Committee on South-West Africa, both of which were adopted without change by the Committee at its 35th meeting on 23 June 1954³.

37. The first of these resolutions recommended the adoption by the General Assembly of five special rules dealing with procedure to be followed with regard to reports, petitions and privacy of meetings. The second operative paragraph of the draft resolution which the Committee recommended to the General Assembly for adoption read as follows :

¹ Mexico and Pakistan.

² Norway.

³ In this connexion paragraph 22 of the report of the Committee on South-West Africa to the General Assembly may be noted, in which four delegations stated that in their opinion the voting procedure to be applied by the General Assembly with regard to the examination of reports and petitions relating to South-West Africa could be based on Article 18, paragraph 2, of the Charter, in conformity with the Advisory Opinion of the International Court of Justice, but they agreed to the resolutions (adopted by the Working Group) in order to remove any legal doubts that could be raised regarding the question of voting procedure. The representative of one delegation referred in this connexion to the reservation which his delegation made in paragraph 6 of the report of the Working Group (document number 42, p. 3).

"Adopts, subject to the concurring vote of the Union of South Africa as the State most directly concerned, the following special rule F :

'Voting procedure

'*Special rule F* : Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations.' "

38. The second resolution which the Working Group recommended and the Committee adopted reads as follows :

"*The Committee on South-West Africa,*

Noting that special rule F, dealing with voting procedure, involves a question of interpretation of the Advisory Opinion of the International Court of Justice on the question of South-West Africa,

Is of the opinion that the General Assembly should not adopt this rule without the concurring vote of the Union of South Africa, as the Member State most directly concerned, and therefore

Recommends to the General Assembly that, if special rule F should be approved by the required majority of the General Assembly, but without the concurring vote of the Union of South Africa, the General Assembly should submit to the International Court of Justice for an advisory opinion the following questions :

(a) Having regard to the Advisory Opinion of the International Court of Justice on the question of South-West Africa, and having particular regard to the Court's opinion on question (a), namely: 'that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South-West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and petitions are to be submitted, and the reference to the Permanent Court of International Justice to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court'; is the General Assembly correctly interpreting the opinion of the International Court of Justice by adopting a rule on voting procedure for the General Assembly which would read :

'Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations' ? ;

(b) If this interpretation of the Court's opinion should not be correct, will the Court indicate what voting procedure should be applied ?"

39. The above-mentioned two resolutions of the Committee on South-West Africa were before the Fourth Committee of the General Assembly when it considered, during the ninth session, the question of the procedure to be followed by the Assembly in the examination of reports and petitions relating to the Territory of South-West Africa. This procedure was discussed at the 399th to 402nd meetings of the Fourth Committee from 4 to 7 October 1954. The Committee's report with a detailed record of the voting is contained in document A/2747 (document number 59, p. 7).

40. The draft resolution recommended for adoption by the General Assembly in the first of the two resolutions of the Committee on South-West Africa was approved by the Fourth Committee with some changes. The only change relating to the question of voting procedure was proposed by India, to alter the second operative paragraph of the resolution to read "Adopts, subject to the acceptance of the Union of South Africa, as the Mandatory for the Territory of South-West Africa, the following special rule F" ; the rule itself was not to be changed. This amendment was voted upon in parts. The words "subject to the acceptance by the Union of South Africa, as the Mandatory for the Territory of South-West Africa" were approved by 15 votes to 7, with 28 abstentions. The rest of the Indian amendment was approved by 23 votes to one, with 25 abstentions. The amendment as a whole was then approved by 23 votes to 4 with 20 abstentions.

41. Special rule F was approved by 34 votes to 2 with 13 abstentions, while the draft resolution as a whole was approved by a roll-call vote of 32 to 4, with 15 abstentions.

42. The Fourth Committee then took up the consideration of the second resolution of the Committee on South-West Africa, i.e. the recommendation that, if the General Assembly should approve special rule F by the required majority but without the concurring vote of the Union of South Africa, the General Assembly should submit the questions proposed by the Committee on South-West Africa regarding voting procedure to the International Court of Justice.

43. A draft resolution which submitted these questions to the Court was introduced jointly by India, Mexico, Norway, Syria and the United States of America, and an amendment to the draft resolution which would insert a preamble and a second operative paragraph was proposed by Mexico. This amendment was approved by the Committee by 33 votes to one, with 13 abstentions, and the joint draft resolution as amended was approved by the Fourth Committee by 35 votes to one, with 11 abstentions.

44. When the General Assembly met in its 494th plenary meeting on 11 October 1954 it therefore had before it the following two draft resolutions on the question of South Africa contained in Part I of the report of the Fourth Committee :

DRAFT RESOLUTION A

The General Assembly,

Having received a report of the Committee on South-West Africa concerning the procedure for the examination by the Assembly of reports and petitions relating to the Territory of South-West Africa,

Having in mind the advisory opinion of the International Court of Justice on South-West Africa,

Desiring to apply, as far as possible, and pending the conclusion of an agreement between the United Nations and the Union of South Africa, the procedure followed in that respect by the Council of the League of Nations,

1. *Adopts* the following special rules :

Procedure with regard to reports

Special rule A : The General Assembly shall receive annually from the Committee on South-West Africa the report on South-West Africa submitted to the Committee by the Union of South Africa (or a report on conditions in the Territory of South-West Africa prepared by the Committee in accordance with paragraph 12 (c) of the General Assembly resolution 749 A (VIII)) together with the observations of the Committee on the report as well as the comments of the duly authorized representative of the Union of South Africa, should that Government decide to follow the General Assembly's recommendation and appoint such a representative.

Special rule B : The General Assembly shall, as a rule, be guided by the observations of the Committee and shall base its conclusions, as far as possible, on the Committee's observations.

Procedure with regard to petitions

Special rule C : The General Assembly shall receive annually from the Committee on South-West Africa a report with regard to petitions submitted to it. The summary records of the meetings at which the petitions were discussed shall be attached.

Special rule D : The General Assembly shall, as a rule, be guided by the conclusions of the Committee and shall base its own conclusions, as far as possible, on the conclusions of the Committee.

Private meetings

Special rule E : Having regard to rule 62 of the rules of procedure of the General Assembly, meetings at which decisions concerning persons are considered shall be held in private.

2. *Adopts*, subject to the acceptance by the Union of South Africa, as the Mandatory for the Territory of South Africa, the following special rule F :

Voting procedure

Special rule F : Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations.

DRAFT RÉSOLUTION B

The General Assembly,

Considering that resolution 844 (IX) contains the following provision :

“Adopts, subject to the acceptance by the Union of South Africa, as the Mandatory for the Territory of South-West Africa, the following special rule F :

“Voting procedure

“Special rule F : Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations”,

Considering also that the Union of South Africa, as Mandatory Power of the Territory of South-West Africa, did not accept the special rule F referred to in the preceding paragraph,

1. *Submits* to the International Court of Justice for an advisory opinion the following questions :

(a) Having regard to the advisory opinion of the International Court of Justice on the question of South-West Africa, and having particular regard to the Court's opinion on question (a), namely “that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South-West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and the petitions are to be submitted, and the reference to the Permanent Court of International Justice to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court” ;

is the General Assembly correctly interpreting the opinion of the International Court of Justice by adopting a rule on voting procedure for the General Assembly which would read :

“Decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations” ?

(b) If this interpretation of the Court’s opinion should not be correct, will the Court indicate what voting procedure should be applied ?

2. *Declares* that, if the International Court of Justice replies in the affirmative to the first question submitted to it, the provision which is reproduced in the first paragraph of the preamble of the present resolution, and under which the adoption of special rule F is made conditional on the acceptance of that rule by the Union of South Africa, will cease to be in force.

45. In voting on the first of these two resolutions the Assembly took a separate vote by roll-call on the words in the second operative “subject to the acceptance by the Union of South Africa, as the Mandatory for the Territory of South-West Africa”. The result of the vote was 13 in favour, 8 against, and 29 abstentions. Having failed to obtain the necessary two-thirds majority the phrase was not adopted. The resolution as a whole, with the deletion of the phrase in question, was then adopted by a roll-call vote of 33 to 3, with 15 abstentions.

46. Following this vote the President of the Assembly made a ruling that, in view of the text of draft resolution A, as adopted, there was no reason to put draft resolution B to the vote. The ruling was challenged and, when put to the vote, was upheld by 30 votes to 8, with 13 abstentions. Draft resolution B was therefore not voted upon.

47. At the 409th meeting of the Fourth Committee on 19 October 1954, the representatives of Norway, Thailand and the United States of America made statements indicating that, in the absence of a request for an advisory opinion of the International Court of Justice on the voting procedure to be applied in reaching decisions on reports and petitions relating to the Territory of South-West Africa, their delegations would not participate in the consideration of resolutions based on the substance of the report of the Committee on South-West Africa as far as it related to conditions in the Territory. At the same meeting the representative of Norway informed the Committee that as a result of the amendment of draft resolution A by the deletion of the phrase which made the adoption of the rule concerning voting procedure contingent upon the acceptance

of the Union of South Africa, his delegation could not be associated with the future work of the Committee on South-West Africa. The representative of Thailand also informed the Assembly of the withdrawal of his Government from membership in the Committee.

48. Following these statements the Fourth Committee appointed a Sub-Committee "to review the situation arising in the 409th meeting of the Fourth Committee on 19 October 1954, and to report back to the Committee on what to do".

49. The Sub-Committee held three meetings. Its report (document number 59, p. 10) contained a recommendation that the Fourth Committee should recommend to the General Assembly that it re-open, in accordance with rule 83 of its rules of procedure, the question of submitting special rule F to an advisory opinion by the International Court of Justice. This recommendation of the Sub-Committee was rejected by the Fourth Committee at its 425th meeting on 8 November 1954, by a roll-call vote of 18 to 18, with 16 abstentions (document number 52, p. 195). In consequence, a recommendation of the Sub-Committee for referral of the voting procedure for reports and petitions relating to South-West Africa to the International Court of Justice for an advisory opinion was considered to have fallen away.

50. Following upon this decision of the Fourth Committee, the representatives of Iraq, Sweden and the United States of America stated that, as a consequence of the decision taken by the Committee, their delegations would be unable to accept an invitation to serve on the Committee on South-West Africa. The representatives of Brazil, Mexico, Pakistan, Syria and Thailand reserved the positions of their Governments with respect to their future participation in the Committee on South-West Africa (document number 59, p. 14).

51. At its 500th and 501st plenary meetings on 23 November 1954 the Assembly had before it Part II of the report of the Fourth Committee on the Question of South Africa (document number 59) and a draft resolution proposed by Guatemala and Lebanon (document number 58) under which certain questions would be submitted to the International Court of Justice for an advisory opinion. The representative of Guatemala explained to the Assembly that although the phrasing of the questions to be referred to the International Court was similar to that in the resolution which the Assembly at its earlier meeting had decided not to vote upon, the resolution now before the Assembly did not constitute a reconsideration of the decision taken by the General Assembly on 11 October not to vote on draft resolution B in the first part of the Fourth Committee's report; in both motivation and wording the resolution was a new proposal. The representative of the Union of South

Africa contended that a decision to consider the draft resolution submitted by Guatemala and Lebanon would constitute a reconsideration of the decision taken by the General Assembly on 11 October when it decided not to vote on draft resolution B ; therefore, under rule 83 of the rules of procedure, the resolution could not be voted upon unless the Assembly, by a two-thirds majority, decided to reconsider the decision it had previously taken. A vote was taken on this preliminary question. Twenty-five votes were cast against the view that consideration of the draft resolution constituted reconsideration of the previous decision, 18 were in favour of this view and there were 11 abstentions.

52. The Assembly then turned to the draft resolution itself, which requested an advisory opinion from the International Court of Justice ; the resolution was adopted by a roll-call vote of 25 to 11, with 21 abstentions (documents numbers 56 and 57). The resolution adopted is the resolution at present before the International Court of Justice.

53. After the adoption of this resolution the Assembly decided, upon the motion of the representative of Thailand, not to vote on the first two draft resolutions relating to petitions in Part II of the Fourth Committee's report until the advisory opinion had been obtained from the International Court of Justice. This decision was taken by 27 votes to 18, with 8 abstentions. In connexion with the third draft resolution in Part II of the Fourth Committee's report, a resolution dealing with the report of the Committee on South-West Africa, the General Assembly decided, after the question had been raised by the Union of South Africa, that in its vote on the resolution it was not applying special rule F concerning voting procedure which it had adopted at its meeting on 11 October. This decision was taken by 18 votes to 4, with 30 abstentions. It then adopted the resolution by 40 votes to 3, with 11 abstentions (document number 57).

7 March 1955.

PART II.—CONTENTS OF THE DOSSIER

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- (6) 321st plenary meeting [extract]
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- (8) Official Records of the General Assembly, Fifth Session, Annexes, agenda item 35, containing the texts of the following documents :

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- Page 5 Denmark, El Salvador, Iraq, Norway, Peru, Thailand, United States of America and Venezuela : revised draft resolution A/C.4/L.124/Rev.1 (see para. 7 of document A/1643)
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- .. 8 Cuba, Ecuador, Guatemala, Mexico and Uruguay : draft resolution A/C.4/L.128 (see para. 15 of document A/1643)
- .. 5 India, Indonesia and Philippines : amendment to the joint draft resolution of Brazil, Cuba, Mexico, Syria and Uruguay (A/C.4/L.116/Rev.1) A/C.4/L.129 (see para. 9 of document A/1643)
- .. 8 Union of Soviet Socialist Republics : amendment to the joint draft resolution of Cuba, Ecuador, Guatemala, Mexico and Uruguay (A/C.4/L.128) A/C.4/L.130 (same text as document A/C.4/L.126—see para. 17 of document A/1643)
- (9) Union of Soviet Socialist Republics : amendment to draft resolution II proposed by the Fourth Committee (A/1643) A/1661
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- (11) Resolution 449 (V). Question of South-West Africa

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- (13) 8th meeting A/AC.49/SR.8
- (14) 11th meeting A/AC.49/SR.11
- (15) Report of the *Ad Hoc* Committee on South-West Africa to the General Assembly [See No. 16, page 2] A/1901

III. RECORDS OF THE GENERAL ASSEMBLY, SIXTH SESSION, 1951-1952

- (16) Official Records of the General Assembly, Sixth Session, Annexes, agenda item 38 :
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- (18) 30th meeting A/AC.49/SR.30
- (19) Report of the *Ad Hoc* Committee on South-West Africa to the General Assembly [See No. 32, page 1] and Addendum to the report of the *Ad Hoc* Committee on South-West Africa to the General Assembly [See No. 32, page 30] A/2261 and A/2261/Add.1

V. RECORDS OF THE GENERAL ASSEMBLY, SEVENTH SESSION, 1952

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- (20) Resolution 651 (VII). Question of South-West Africa

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- (21) 38th meeting (part III) A/AC.49/SR.38/Part III
- (22) Report of the *Ad Hoc* Committee on South-West Africa to the General Assembly [See No. 32, page 31] and Addendum to the report of the *Ad Hoc* Committee on South-West Africa to the General Assembly [See No. 32, page 48] A/2475 and A/2475/Add.1

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- (28) 363rd meeting
- (29) 364th meeting

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- (30) 460th plenary meeting [extract].

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- (31) Burma and India : draft resolution A/C.4/L.304
- (32) Official Records of the General Assembly, Eighth Session, Annexes, agenda item 36, containing the texts of the following documents :

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.. 52 Afghanistan, Brazil, Burma, Denmark, Egypt, India, Indonesia, Iraq, Liberia, Pakistan, Philippines, Saudi Arabia, Syria, Thailand and Uruguay : draft resolution A/C.4/L.305/Rev.1 and Add.1 (see para. 31 of document A/2572, draft resolution A)

.. 54 Afghanistan, Burma, Egypt, India, Indonesia, Iraq, Pakistan, Philippines, Saudi Arabia, Syria and Uruguay : draft resolution A/C.4/L.306 and Add.1 (see para. 31 of document A/2572, draft resolution B)

Resolution of the General Assembly :

- (33) Resolution 749 (VIII). Question of South-West Africa

VIII. RECORDS OF THE COMMITTEE ON SOUTH-WEST AFRICA, 1954

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- (36) 35th meeting A/AC.73/SR.35

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- (37) Conference Room Paper No. 6—Explanatory memorandum concerning paragraph 12 (*d*) of General Assembly resolution 749 A (VIII) (prepared by the Secretariat, at the request of the Committee)
- (38) Working Group Paper No. 1—Excerpts from statements by the representative of South Africa concerning procedure applied in the League of Nations regarding the examination of reports and petitions from South-West Africa
- (39) Working Group Paper No. 3—The operation of the Council of the League of Nations with regard to the Mandated Territory of South-West Africa
- (40) Working Group Paper No. 4—Informal memorandum concerning a procedure for the examination of reports and petitions by the General Assembly (in pursuance of paragraph 12 (*d*) of General Assembly resolution 749 A (VIII))
- (41) Report of the Working Group of the Committee on South-West Africa concerning a procedure for the examination of reports and petitions by the General Assembly [See No. 42, Annexes III and IV, pages 11-14]
- (42) Report of the Committee on South-West Africa to the General Assembly A/2666 and Corr.1.
Official Records of the
General Assembly,
Ninth Session, Sup-
plement No. 14
- (43) Addendum to the report of the Committee on South-West Africa to the General Assembly [See No. 59, page 2] A/2666/Add.1

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- (45) 400th meeting (see paras. 5-33)
- (46) 401st meeting (see paras. 3-64)
- (47) 402nd meeting
- (48) 404th meeting
- (49) 406th meeting
- (50) 409th meeting (see paras. 1-45)
- (51) 424th meeting (see paras. 41-72)
- (52) 425th meeting
- (53) 426th meeting (see paras. 4-26)
- (54) 427th meeting [extract]

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- (55) 494th plenary meeting (see paras. 2-91)
- (56) 500th plenary meeting (see paras. 2-133)
- (57) 501st plenary meeting (see paras. 1-127)

General Assembly and Fourth Committee documents :

- (58) Guatemala and Lebanon: draft resolution A/L.178 (adopted by
[See No. 59, page 17, resolution 904 the General Assembly
(IX).] without amendment)
- (59) Official Records of the General Assembly, Ninth Session, Annexes,
agenda item 34, containing the texts of the following documents:

- Page 7 Report of the Fourth Com- A/2747
mittee (Part I)
- .. 13 Report of the Fourth Com- A/2747/Add.1
mittee (Part II)
- .. 13 Letter dated 12 October A/2753 (see para. 9
1954 from the Permanent of document
Representative of Thailand A/2747/Add.1)
to the United Nations
addressed to the President
of the General Assembly
- .. 13 Letter dated 13 October A/2754 (see para. 9
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Representative of Norway A/2747/Add.1)
to the United Nations
addressed to the President
of the General Assembly
- .. 10 Report of the Sub-Committee A/C.4/274
on South-West Africa to
the Fourth Committee
- .. 8 India : revised amendments A/C.4/L.333/Rev.1 and
to the draft procedure Rev.2 (see paras.
proposed by the Committee 5 (c) and 6 of docu-
on South-West Africa for ment A/2747)
the examination by the
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ports and petitions relating
to the Territory of South-
West Africa (A/2666,
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- Page 6 India, Mexico, Norway, Syria and United States of America : draft resolution A/C.4/L.334
- „ 7 Peru and Philippines : amendment to the draft procedure proposed by the Committee on South-West Africa for the examination by the General Assembly of reports and petitions relating to the Territory of South-West Africa (A/2666, Annex IV) A/C.4/L.335 (see para. 5 (a) of document A/2747)
- „ 8 Colombia : amendment to A/C.4/L.333/Rev.2 A/C.4/L.336 (see para. 5 (c) of document A/2747)
- „ 7 Colombia : amendment to the draft procedure proposed by the Committee on South-West Africa for the examination by the General Assembly of reports and petitions relating to the Territory of South-West Africa (A/2666, Annex IV) A/C.4/L.337 (see para. 5 (b) of document A/2747)
- „ 7 Mexico : amendments to draft resolution A/C.4/L.334 A/C.4/L.338
- „ 13 Brazil, Chile, Denmark, Mexico, Peru and United States of America : draft resolution A/C.4/L.340 (see para. 3 of document A/2747/Add.1)
- „ 12 Burma, Egypt, India, Lebanon, Liberia and Philippines : draft resolution A/C.4/L.341
- „ 12 Burma, Egypt, India, Lebanon, Liberia, Pakistan and Syria : draft resolution A/C.4/L.342

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- Page 17 Resolution 844 (IX). Procedure for the examination of reports and petitions relating to the Territory of South-West Africa (A/RESOLUTION/201)

Page 17 Resolution 904 (IX). Voting (A/RESOLUTION/225)
procedure on questions
relating to reports and
petitions concerning the
Territory of South-West
Africa : request for an
advisory opinion from the
International Court of
Justice

„ 18 Resolution 851 (IX). Report (A/RESOLUTION/226)
of the Committee on
South-West Africa

PART III.—ADDITIONAL NOTES RELATING TO THE
REQUEST FOR AN ADVISORY OPINION ON SOUTH-WEST
AFRICA (VOTING PROCEDURE)*

I. *Correction to Introductory Note of dossier*

There is a minor error in the Introductory Note of the dossier of documents transmitted to the Court by the Secretary-General. The Note says in paragraph 28 that at its ninth session the General Assembly adopted three resolutions relating to South-West Africa. In fact, four resolutions were adopted at that session. The one to which reference was unfortunately omitted in paragraph 28, although it is mentioned in paragraph 52, is resolution 851 (IX) on the report of the Committee on South-West Africa. The text of this resolution is given in document number 59, page 18.

II *The scope of the unanimity rule in the Council of the League of Nations*

It has often been assumed in the course of the discussion of South-West Africa, and was expressly stated by the Working Group of the Committee on South-West Africa in 1954¹, that

“.... Article 5 of the Covenant of the League of Nations and rule IX of the rules of the Council of the League of Nations provided that decisions by the Council required the agreement of all the Members of the League represented at the meeting and that therefore decisions by the Council regarding reports and petitions relating to the Territory of South-West Africa implied the agreement of the Union of South Africa”.

This note contains some further information about the general scope of the unanimity rule in the League Council, and about its application in matters relating to Mandates.

Article 22 of the Covenant of the League, which laid upon Mandatories the obligation of submitting annual reports to the Council, makes no express provision concerning voting in the Council concerning the Mandates. The general provision on voting is Article 5, paragraph 1, of the Covenant, which provides that

“Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.”

* Filed in the Registry on May 10th, 1955.

¹ Dossier, Document 42, pp. 12-13, para. 7.

It will be convenient first to explore the meaning of the phrase "all the Members of the League represented at the meeting", and then to survey briefly the various exceptions to the unanimity rule which were provided or were developed in the practice of the Council.

Paragraph 5 of Article 4 of the Covenant provides that :

"Any Member of the League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League."

Paragraph 6 of the same Article provides that :

"At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one representative."

It was the usual practice of the Council to interpret the right of a non-member of the Council "to sit as a member" as implying a right to vote. Not only was the article applied to Members of the League which were not members of the Council. It was even applied by analogy to non-members of the League, a practice for which there is the highest judicial authority. The Permanent Court of International Justice, in its twelfth Advisory Opinion, relating to Article 3, paragraph 2, of the Treaty of Lausanne¹, declared that Turkey, then not a member of the League, should be allowed to take part in the voting in the Council on the dispute being considered. In that case, however, because of special circumstances which will be examined later, the votes of the parties were not to be counted in ascertaining whether there was unanimity.

There were various exceptions to the unanimity rule in the Council. In the first place, there were a number of provisions in the Treaty of Versailles outside of the Covenant and in the other peace treaties which provided for a majority vote instead of unanimity². Moreover, it was soon established, and was provided in the rules of procedure of the Council³ as well as of the Assembly, that unanimity was not necessary when there was a provision to that effect in *any* treaty, even when the treaty was later in date than the Treaty of Versailles and quite separate from the peace settlements. As an example, it is sufficient to mention the provision of the Statute of the Permanent Court of International Justice concerning the participation of the Council in the election of judges.

Moreover, it is specified in Article 5, paragraph 2, of the Covenant that all matters of procedure, including the appointment of com-

¹ *P. C. I. J.*, Ser. B, No. 12, p. 33.

² For example, Treaty of Versailles, Art. 213, and para. 40 of Annex to Part III, Sec. IV.

³ Rule IX of the Council.

mittees to investigate particular matters, should be decided by a majority of the Members of the League represented at the meeting. In the practice of the Council it was established that certain types of matters were matters of procedure. In the first place, rules of procedure were always treated as matters of procedure¹. It was impliedly provided in the first rules of procedure adopted by the Council that all decisions relating to individuals should be taken by majority vote². Moreover, there is at least one clear case showing that the Council interpreted the expression "the appointment of committees to investigate particular matters" as including the decision to establish such a committee as well as the decision on its composition, and hence subject to majority vote³. It is also probable that the Council regarded as procedural the decision on whether to invite a non-member of the League to sit with the Council⁴. On other points, for example the vote necessary for the Council to request an advisory opinion from the Permanent Court, there were statements by representatives that a majority was sufficient, but no clear decision was ever taken by the Council⁵.

It was also established in the practice of both the Council and the Assembly that an abstention did not prevent unanimity and did not constitute a negative vote⁶.

There are two articles in the Covenant which provide that in certain circumstances the vote of the State or States most directly concerned should not be counted in determining whether the necessary unanimity had been obtained. These provisions, which require only what may be called a *qualified* unanimity, are applications of the principle that no one should be a judge in his own cause. One of them is Article 15, concerning settlement of any dispute between Members of the League which is likely to lead to a rupture and which is not submitted to arbitration or judicial settlement. Paragraphs 6, 7 and 10 of Article 15 provide that the votes of the parties cannot prevent the effects of otherwise unanimous decisions of the Council or the Assembly.

The other article is Article 16, which provides in paragraph 4 :

"Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the

¹ C. A. Riches, *The Unanimity Rule and the League of Nations*, pp. 54-56.

² Rules of procedure of the Council, rule IX. This provision was, however, modified in the rules adopted in 1933.

³ League of Nations Official Journal, 1922, pp. 549-551.

⁴ League of Nations Official Journal, 1931, pp. 2322-2329.

⁵ M. O. Hudson, *The Permanent Court of International Justice 1920-1942*, pp. 488-494.

⁶ C. A. Riches, *op. cit.*, pp. 42-50.

League by a vote of the Council concurred in by Representatives of all the other Members of the League represented thereon."

Apart from these two provisions, there is no other express stipulation in the Covenant preventing a Member from being judge and party in the same case. Articles 10, 11, 13 and 19 of the Covenant, under which disputes could also be brought before the organs of the League, contain no provision against counting the votes of the parties to the dispute. Article 22 on the Mandatory System is likewise silent in this regard.

Two of the draftsmen of the Covenant, Lord Cecil of Chelwood of the United Kingdom and Mr. Scialoja of Italy, suggested in 1930, when amendment of Article 13 of the Covenant was under consideration, that it was only by inadvertence that a provision on qualified unanimity had been inserted in some of the articles concerning disputes and omitted from others. Lord Cecil, in supporting a proposed amendment, said ¹ :

"He himself had always held that it must have been by some accident that the rule in the Covenant providing that unanimity should not comprise the parties to the dispute had only been enacted in certain cases. Obviously, if it were the right rule, it should be applied to all cases of dispute, and he was in favour of taking the opportunity of suggesting that course."

Mr. Scialoja agreed with Lord Cecil, and said ² :

"There was no doubt that it had been simply by an oversight that it had not been said that the votes of the interested parties should not figure in calculating unanimity."

However the omission may have arisen, it will be of greater interest to see how the text of the Covenant was applied in practice by the Council of the League. In the practice of the Council there were certain cases in which the rule of qualified unanimity and the principle that no one should be both judge and party in his own case were applied, even though the cases did not arise under the provisions of the Covenant which specifically incorporated this rule.

The first such case arose in 1922, when the Council was called on under Article 393 of the Treaty of Versailles, which made no special provision on voting, to designate the eight States of chief industrial importance for the purpose of representation on the Governing Body of the International Labour Organisation. India requested, under Article 4 of the Covenant, that it be allowed to sit as a member of the Council during the consideration of its claim for designation as one of the eight States. The Council

¹ Minutes of the Committee for the Amendment of the Covenant of the League of Nations to bring it into Harmony with the Pact of Paris, Doc. C.160.M.69. 1930.V, p. 47.

² *Ibid.*, p. 48.

consulted the Director of the Legal Section of the Secretariat, who gave the opinion that "the Council would act in this affair as arbitrator, and that India could not be both judge and party to the case"¹. The Council followed this advice, and though India was offered an opportunity for an oral hearing or for the submission of a written statement, the right to vote was refused.

Another case also occurred in 1922, when the Council, pursuant to a decision of the Peace Conference, was considering a boundary dispute between Austria and Hungary, both of which had agreed to accept the decision of the Council as binding. A memorandum by the Secretary-General of the League stated²:

"Austria, having declared by the Protocol of Venice 'that she would accept a decision recommended by the Council of the League of Nations', must not take part in the vote, but will at the same time be represented at discussions of the Council in virtue of Article 4 of the Covenant....

"The provision of Article 4 of the Covenant does not apply to Hungary, as she is not a Member of the League. The Council, however, will no doubt desire to admit the representative of Hungary to the discussions on a footing of equality with that of Austria, as has been done in previous cases...."

This procedure was followed by the Council³.

A further case, in 1923, arose in a similar way, and involved a boundary dispute between Czechoslovakia and Hungary. In that case the Council, having first heard the representatives of the parties in public⁴, took the decision at a private meeting at which the parties were not present⁵. The decision was then communicated to the parties at a public meeting⁶, and they were not asked whether they accepted it.

Still another case occurred in 1924, when the Council was considering the method of executing the investigations which it was empowered to make under the peace treaties concerning the carrying out of the military regulations of those treaties. Six States, including some which were to be investigated, asked under Article 4 of the Covenant to participate in the Council during the discussion⁷. The Council adopted the view of a commission of jurists that the treaties of peace contemplated that the Council would be constituted in its ordinary manner for this purpose, and consequently all the requests were refused⁸.

¹ League of Nations Official Journal, 1922, p. 1160.

² *Ibid.*, p. 1333.

³ *Ibid.* pp. 1184, 1196.

⁴ League of Nations Official Journal, 1923, pp. 556-558.

⁵ *Ibid.*, p. 599.

⁶ *Ibid.*, pp. 601-602.

⁷ League of Nations Official Journal, 1924, pp. 920-922.

⁸ *Ibid.*, pp. 1315-1317.

A case in 1925 presents a special interest, since it involved an advisory opinion from the Permanent Court of International Justice. Article 3, paragraph 2, of the Treaty of Lausanne provided that if Turkey and Great Britain were unable to agree within a certain time on the frontier between Turkey and Iraq, the dispute should be referred to the Council of the League. When the dispute was brought before the Council under that treaty provision, it was decided in September 1925 to request an advisory opinion on the questions whether under the treaty the Council's decision would be binding, whether the decision had to be unanimous, and whether the representatives of the interested parties might take part in the vote¹. The Court, in its unanimous advisory opinion², concluded on the basis of the text of the treaty that the Council's decision would be binding. It next concluded, on the basis of the composition and functions of the Council, of Article 5, paragraph 1, of the Covenant, and of the silence of the Treaty of Lausanne on voting, that the unanimity rule applied. The Court then took up the question whether the parties might vote. The Court first recognized that "the very general rule laid down in Article 5 of the Covenant does not specially contemplate the case of an actual dispute which has been laid before the Council"; that contingency, however, was dealt with in Article 15, paragraphs 6 and 7, which excluded the vote of the parties, as did Article 16, paragraph 4. It followed, in the Court's view, that "in certain cases and more particularly in the case of the settlement of a dispute", the votes of the parties did not affect the required unanimity. Consequently it was "this conception of unanimity which must be applied in the dispute before the Council". Having reached this conclusion, the Court further stated :

"It is hardly open to doubt that in no circumstances is it possible to be satisfied with less than this conception of unanimity, for, if such unanimity is necessary in order to endow a recommendation with the limited effects contemplated in paragraph 6 of Article 15 of the Covenant, it must *a fortiori* be so when a binding decision has to be taken.

"The question which arises, therefore, is solely whether such unanimity is sufficient or whether the representatives of the parties must also accept the decision. The principle laid down by the Covenant in paragraphs 6 and 7 of Article 15 seems to meet the requirements of a case such as that now before the Council, just as well as the circumstances contemplated in that article. The well-known rule that no one can be judge in his own suit holds good."

¹ League of Nations Official Journal, 1925, pp. 1377-1382.
P.C.I.J., Ser. B, No. 12.

The Court then said that giving the right of veto over the Council's decision would be contrary to the intention of the Treaty of Lausanne. Finally it was stated that though the votes of the parties were not to be taken into account in ascertaining whether there was unanimity, their representatives would "take part in the vote, for they form part of the Council, and, like other representatives, they are entitled and in duty bound to take part in the deliberations of that body". As has been said before, Turkey was not then a member of the League. The Council, having received the advisory opinion of the Court, finally decided, over the negative vote of the representative of Turkey, to accept and follow it ¹.

There are two other cases which are less clear. In one of them, arising under Articles 10 and 11 of the Covenant, the Council held a private meeting, at first without the participation of the parties; then the parties were called into the private meeting, and a draft resolution was approved; and finally a public meeting was held at which the parties were asked whether they had any objections. They declared they accepted what they termed the Council's "decision", and the resolution was formally adopted ². In the other case, in which both Article 11, paragraph 2, and a provision of a peace treaty were invoked by the parties, the President of the Council proposed that the Council should pronounce on the report of a sub-committee, but excepted the parties, who were invited not to express themselves but to delay giving their final answer for three months, so that their Governments could examine the report carefully ³. The President's proposal was adopted, and thus the Council approved the report without the vote of the parties ⁴.

On the other hand, there were two cases of disputes brought before the Council under Article 11 of the Covenant in which a party to the dispute was allowed to vote, and by its vote was considered to have prevented the necessary unanimity. The first was in 1928, when the Council considered a dispute between Poland and Lithuania. Lithuania, which was not a member of the Council, was asked to sit in the meeting and to vote. The President proposed a draft resolution. Lithuania's vote was the only one against the draft resolution, which otherwise received unanimous support. The President declared it had failed of adoption ⁵.

The second case arose in 1931 in the Sino-Japanese conflict over Manchuria, also brought before the Council under Article 11. A draft resolution was proposed, calling upon Japan to withdraw

¹ League of Nations Official Journal, 1926, p. 128.

² League of Nations Official Journal, 1925, pp. 1699-1700.

³ League of Nations Official Journal, 1927, pp. 1404, 1413.

⁴ *Ibid.*, p. 1414.

⁵ League of Nations Official Journal, 1928, p. 896.

its troops¹. Japan was the only member of the Council to vote against this draft. The draft was regarded as having been defeated².

Thus in the practice of the Council a certain number of disputes brought before the Council under a treaty provision were decided without counting the votes of the parties; the Council also decided to carry out functions concerning the International Labour Organisation and supervision of fulfilment of the peace treaties without the participation of States which were or claimed to be concerned. On the other hand there are two clear cases in which the Council did not admit any limitation of the unanimity rule respecting disputes under Article 11 of the Covenant.

The texts governing voting in the Council having been cited and the practice of the Council under them having been described in a general way, it remains now to examine the specific practice in voting on matters concerning Mandates. That practice is very simple: in the entire history of the Council there was never a negative vote on any question concerning Mandates, and hence all decisions were taken unanimously. Naturally this unanimity involved from time to time the acceptance of amendments proposed by or intended to meet the views of Mandatory Powers, the postponement of consideration of matters until the Council's rapporteur could work out an agreed text, and occasionally an abstention or a statement of reservations. It appears never to have been contended in the Council that Mandatories which were members of the Council did not have the right to vote.

It is clear that at least on one point concerning Mandates, the unanimity rule applied. It was decided by the Council on 22 July 1922 that in the A Mandates, as well as the B and C Mandates, any alterations of the terms would require unanimity³. This was, however, the only category of questions relating to Mandates on which an express decision was taken concerning voting.

As for the participation in the Council of Mandatories which were not members of that body, there was a gradual development of practice. In the early days of the League, all of the Mandatories were members of the Council except for the three Dominions Australia, New Zealand and South Africa. A representative of the "British Empire" sat as a permanent member of the Council, but during the first three years of the League no special representative of a Dominion ever came to the Council. During those three years such important decisions were taken as the adoption of a constitution of the Permanent Mandates Commission⁴, the approval of the terms of the Mandates under which the Dominions were to

¹ League of Nations Official Journal, 1931, p. 2341.

² *Ibid.*, pp. 2358-2359.

³ League of Nations Official Journal, 1922, p. 821.

⁴ League of Nations Official Journal, November-December 1920, pp. 87-88.

administer the Mandated territories¹, the invitation to Mandatories to furnish reports², the adoption of the rules of procedure of the Permanent Mandates Commission³, and the consideration of the first two reports of the Commission⁴. This absence of the Dominions may, however, not be the result of the practice of the Council, but rather of the arrangements within the British Commonwealth regarding diplomatic representation of its members.

The first occasion on which special representatives of the Dominions sat in the Council during its discussion of Mandates questions was on 20 April 1923, when the national status of inhabitants of B and C Mandates was under consideration⁵. On that occasion the representative of the Union of South Africa was appointed to a drafting committee to prepare a resolution for adoption by the Council.

On 25 September of the same year the Council decided, with reference to the third report of the Permanent Mandates Commission, that "when the report was discussed, each Mandatory Power not represented on the Council should be invited to send a representative to assist in the discussion of those parts of the report which concerned it"⁶. Thereafter representatives of the Mandatories concerned which were not members of the Council were quite often, though not always, present at the Council's discussions on Mandates. In 1931 the President of the Council recognized that such Mandatories had a right to attend. He announced that "the Australian and New Zealand Governments had intimated their decision not to avail themselves of their right to take their seats on the Council as mandatory Powers"⁷. Such a right was also recognized elsewhere in the records of the Council⁸. The right to sit in the Council as a Mandatory was also granted to Japan after that country had ceased to be a Member of the League of Nations⁹.

The right of Mandatories to sit in the Council certainly extended to all times when the reports of the Permanent Mandates Commission concerning their respective Mandates were under discussion, and also to the discussions of questions raised by the Mandates Commission or otherwise, which concerned conditions in all Mandates generally¹⁰. On the other hand, no Mandatory not a

¹ League of Nations Official Journal, 1921, p. 12.

² *Ibid.*, p. 644.

³ League of Nations Official Journal, 1922, pp. 88-89.

⁴ League of Nations Official Journal, 1921, pp. 1124, 1126, 1133; 1922, p. 1178.

⁵ League of Nations Official Journal, 1923, pp. 567-572.

⁶ *Ibid.*, p. 1328.

⁷ League of Nations Official Journal, 1931, p. 2044.

⁸ See, for example, League of Nations Official Journal, 1933, p. 1319; *ibid.*, 1934, p. 121; *ibid.*, 1935, p. 157.

⁹ See, for example, League of Nations Official Journal, 1936, p. 78; *ibid.*, 1937, p. 85.

¹⁰ See, for example, League of Nations Official Journal, 1926, p. 867.

member of the Council ever was present at the election of members of the Permanent Mandates Commission. As to discussions of the general organization of the Mandates system, Mandatories not members of the Council did not participate in the broad initial decisions of 1920 to 1922 concerning that system, perhaps for reasons which have no relevance here. However, three such Mandatories were present in the Council in 1927 when it was decided to create another post on the Permanent Mandates Commission in order to permit the appointment of a German national¹.

As to the right of a Mandatory not a member of the Council to vote when participating in Mandates discussions, there appear to be no express statements in the records. However, Mandatories, non-members as well as members of the Council, sometimes proposed amendments in the Council. The Council might adopt the amendment², adopt it in principle and refer it to the Rapporteur to draw up a final text³, or adopt another amendment designed to meet the views of the Mandatory⁴. Or the Mandatory might not insist on the point. For example at a meeting of the Council on 9 June 1926, the representative of the Union of South Africa—then not a member of the Council—observed that a paragraph of a draft resolution was unnecessary. The President inquired whether he had any “formal objection” to the paragraph. The representative of the Union replied in the negative; he said he merely wished to state that he saw no need for the paragraph so far as South Africa was concerned. The Council took note of the statement and adopted the paragraph⁵. There is nothing in the records, therefore, to indicate that any resolution was ever adopted over the firm opposition of the Mandatory concerned.

Even when a resolution had been adopted without any objection by a Mandatory, if the Mandatory later questioned the decision, the Council was willing to re-open the whole matter. For example, in 1929, the Council approved certain conclusions of the Permanent Mandates Commission in a resolution⁶. At the meeting where the resolution was adopted, a representative of the Union of South Africa was present and raised no objection. After the meeting, however, the South African representative wrote a letter to the Secretary-General of the League explaining that the resolution

¹ League of Nations Official Journal, 1927, pp. 1118-1121.

² League of Nations Official Journal, 1925, p. 1366. Amendment submitted by the Union of South Africa.

³ *Ibid.*, p. 1365. Amendment submitted by South Africa.

⁴ League of Nations Official Journal, 1924, pp. 339-341. Amendment submitted by the British representative to meet the views of the Union of South Africa.

⁵ League of Nations Official Journal, 1926, p. 867.

⁶ League of Nations Official Journal, 1929, pp. 1465-1472.

had been adopted so swiftly that he had no opportunity to present his comments. The Council took note of this letter, and decided to suspend the operation of the resolution with respect to South-West Africa and to re-open the discussion of the relevant part of the Commission's report¹. After a postponement of discussion granted at the request of South Africa, that country finally declared that it did not intend to oppose the Commission's report². The Council then confirmed its earlier resolution and decided that it should thenceforth apply with respect to South-West Africa³.

III. *Voting in the General Assembly*

Article 18 of the Charter provides in paragraph 2 that "Decisions of the General Assembly on important questions"—including various types of questions, one of which is questions relating to the operation of the Trusteeship System—are to be made by a two-thirds majority of the Members present and voting. Paragraph 3 provides that:

"Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the Members present and voting."

There is little to add to the factual information contained in the written statement submitted to the Court by the Government of the United States of America concerning the history of the drafting of Article 18. Article 18 as finally adopted is substantially similar to Chapter V, Section C, of the Dumbarton Oaks Proposals⁴ except that the election of members of the Trusteeship Council and questions relating to the operation of the Trusteeship System were added at the San Francisco Conference to the list of important questions requiring a two-thirds majority. These changes were a consequence of the establishment of the Trusteeship System, which had not been provided for in the Dumbarton Oaks Proposals. The changes were recommended by Committee II/4, which dealt with the Trusteeship System⁵, and were adopted by Committee II/1, which dealt with the structure and procedures of the General Assembly⁶.

The text as thus altered was submitted to the Co-ordination Committee. A representative in that Committee's Advisory Committee of Jurists objected that the article failed to enunciate in clear and broad terms what "important" questions would

¹ League of Nations Official Journal, 1929, p. 1694.

² League of Nations Official Journal, 1930, p. 139.

³ *Ibid.*, pp. 69-70.

⁴ Documents of the United Nations Conference on International Organization (hereafter referred to as "UNCIO Docs."), Vol. 3, p. 6.

⁵ UNCIO Docs., Vol. 10, pp. 543, 561.

⁶ *Ibid.*, Vol. 8, pp. 488-489.

require a two-thirds vote¹, and the Advisory Committee of Jurists approved a revised text². The Co-ordination Committee, however, preferred the earlier version of the article, and used it as the basis of discussion³. At the 37th meeting of the Co-ordination Committee,

“Discussion of the new phrase from Committee II/I, ‘questions relating to the operation of the Trusteeship System’ brought an understanding that the questions embraced trust agreements, decisions on reports and everything else relating to the System.”⁴

The discussion of paragraph 3 of Article 18 was as follows⁵:

“Mr. Robertson asked Mr. Golunsky if the third sentence raised the possibility that, if the Assembly could decide by simple majority to move a question up into the ‘important’ category, it could also by a simple majority move it down again; he concluded that, if so, it was logically conceivable thus to amend the Charter by a simple majority. Messrs. Golunsky, Liang and the Chairman said the text was not subject to that interpretation.”

The final text of Article 18 was approved at a later meeting of the Co-ordination Committee⁶. At that meeting it was made clear that the list of important questions in paragraph 2 “was not an inclusive list, and that other provisions for the two-thirds vote did not need mention”.

I shall now turn briefly to the practice of the General Assembly in matters of voting. In the first place, unlike the Council of the League of Nations, the General Assembly has never had to consider the question whether it could adopt voting procedures different from those laid down in the Charter if it were so provided by some other instrument which conferred special functions on the Assembly. The peace treaties of 1947, unlike those of 1919, were silent about voting⁷. When the Assembly dealt with the question of the disposal of the former Italian colonies, which arose out of a peace treaty, the President stated, without any objection, that the question was an important one within the meaning of Article 18, paragraph 2, of the Charter and that consequently a two-thirds majority was

¹ UNCIO Docs., Vol. 17, p. 407.

² *Ibid.*, p. 422.

³ *Ibid.*, p. 323.

⁴ *Ibid.*, p. 324.

⁵ *Ibid.*, p. 325.

⁶ *Ibid.*, p. 349.

⁷ Treaty of Peace with Italy, Annex XI, para. 3 (disposal of the Italian Colonies); United Nations Treaty Series, Vol. 49, p. 215. Cf. the same treaty, Annex VI, Art. 11 (appointment of the Governor of Trieste); *ibid.*, p. 189.

necessary¹; amendments which received less than that vote were considered as not adopted².

As for its regular functions under the Charter, by the end of 1953 the General Assembly had adopted 806 resolutions; only twelve of those were adopted by a simple majority, and the other 794 received a majority of two-thirds or more. Article 18 of the Charter was, however, referred to only with respect to twenty of the resolutions adopted and to about thirty-three proposals which were not adopted because they failed to obtain the required majority.

Special rule F, which is the subject of the request for an advisory opinion now before the Court, is the only case in which the General Assembly has ever expressly made a "determination of additional categories of questions to be decided by a two-thirds majority" under Article 18, paragraph 3, of the Charter. Apart from this one instance, the Assembly's decisions on the vote required have as a rule been taken with regard to individual questions, and not with regard to categories. Such decisions have sometimes been taken on the understanding that they did not constitute precedents³. However, the rules of procedure of the General Assembly provide that three types of internal matters relating to the Assembly's work require a two-thirds majority⁴, though without any express reference to Article 18.

As regards South-West Africa, all of the resolutions of the General Assembly have received at least a two-thirds majority. The question of the vote to be required was extensively debated by the General Assembly at its second session⁵ in connexion with the report of the Fourth Committee, and finally the President's interpretation that "this is a subject of importance requiring a two-thirds vote" was sustained by a majority. On the other hand, during the fourth session of the General Assembly, the President ruled without any challenge that the request for an advisory opinion on South-West Africa which later came to this Court was a procedural matter and could be decided by a simple majority⁶. The request was then adopted by more than a two-thirds vote.

¹ General Assembly, Official Records, Third Session, Part II, Plenary Meetings, p. 583.

² *Ibid.*, p. 593.

³ For example, General Assembly, Official Records, First Session, Part II, Plenary Meetings, p. 1060; *ibid.*, Sixth Session, Plenary Meetings, p. 468, para. 89; *ibid.*, p. 476, para. 195.

⁴ Rules 15, 19 and 83.

⁵ General Assembly, Official Records, Second Session, Plenary Meetings, pp. 573-648.

⁶ *Ibid.*, Fourth Session, Plenary Meetings, p. 536, paras. 134-137.