

Judge WINIARSKI, while voting in favour of the Opinion of the Court, makes the following declaration :

I regret that I am unable to accept the whole of the reasoning on which the Court has based its reply. In particular I think that as the Opinion of 1950 was not based on the idea of the United Nations as a successor in title of the League of Nations, the question of a devolution of the powers of the Council of the League of Nations to the General Assembly does not arise. I am in agreement with the minority opinion in considering that the whole structure of the Opinion of 1950 was founded on the objective elements of the situation which arose as a result of the disappearance of the League of Nations, and that that Opinion found in the General Assembly the organ qualified to exercise those functions which could not be allowed to go by default.

I also believe that the maintenance of the previously existing situation constitutes the dominant theme of the Opinion and that the decisive test is to be found in what was formerly done, and I therefore think that any enquiry as to the extent of the powers of the Council and of the General Assembly respectively is pointless. The powers of the supervisory organ, which are determined by the continuing obligations of the mandatory Power, are at the same time duties, and it is quite natural that, conscious of its responsibilities, the General Assembly should have put to the Court the question relating thereto.

I agree with the Court in considering that, though drafted in absolute terms, the question is to be understood as relating to the actual situation existing and I hesitate to reply to it as though this situation were normal, that is to say, as if the Mandatory were discharging its undertakings as it did under the regime of the League of Nations ; the *raison d'être* of the question cannot be ignored. If then, in these circumstances, the General Assembly, in order to secure further information, grants a hearing to a petitioner, its decision cannot be held to be irregular. If, on the same basis, it should authorize the Committee, which is its organ, to grant a hearing in a particular case in its stead, I should be unable to regard such a decision, which is one for the Assembly, as conflicting with the Opinion of 1950 ; if, in the same circumstances, it deemed it necessary to authorize the Committee to undertake such hearings, that, while not in accordance with the former practice, would be justified if warranted by imperative considerations and if kept within reasonable limits and governed by the rule of good faith.

Judge KOJEVNIKOV, while voting in favour of the Opinion of the Court, makes the following declaration :

While accepting the operative clause of the Advisory Opinion, I am unable to concur in certain respects with the reasoning, in

particular with that part which would attribute to the Opinion a limited and conditional character, for I am of opinion that petitions may be in writing or oral, or both in writing and oral, that hearings granted to petitioners by the Committee on South West Africa are consistent with the Advisory Opinion of the Court of July 11th, 1950, and that the presentation even of oral petitions is one of the indefeasible rights of the population of the Territory of South West Africa, rights which accrue from the Covenant of the League of Nations, and still more from the Charter of the United Nations, in conformity with which this Territory should be included in the Trusteeship System of the United Nations.

Judge Sir Hersch LAUTERPACHT, availing himself of the right conferred on him by Articles 57 and 68 of the Statute, appends to the Opinion of the Court a statement of his separate Opinion.

Vice-President BADAWI and Judges BASDEVANT, HSU MO, ARMAND-UGON and MORENO QUINTANA, availing themselves of the right conferred on them by Articles 57 and 68 of the Statute, append to the Opinion of the Court the joint statement of their dissenting Opinion, to which is attached a declaration by Vice-President Badawi.

*(Initialed)* G. H. H.

*(Initialed)* J. L. O.