

INTERNATIONAL COURT OF JUSTICE

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REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

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VOTING PROCEDURE ON QUESTIONS  
RELATING TO REPORTS AND PETITIONS  
CONCERNING THE TERRITORY OF  
SOUTH-WEST AFRICA

ADVISORY OPINION OF JUNE 7th, 1955

**1955**

COUR INTERNATIONALE DE JUSTICE

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RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

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PROCÉDURE DE VOTE APPLICABLE AUX  
QUESTIONS TOUCHANT LES RAPPORTS  
ET PÉTITIONS RELATIFS AU TERRITOIRE  
DU SUD-OUEST AFRICAIN

AVIS CONSULTATIF DU 7 JUIN 1955

This Opinion should be cited as follows:

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## INTERNATIONAL COURT OF JUSTICE

YEAR 1955

June 7th, 1955

VOTING PROCEDURE ON QUESTIONS  
RELATING TO REPORTS AND PETITIONS  
CONCERNING THE TERRITORY OF  
SOUTH-WEST AFRICA

*Resolution 844 (IX) of General Assembly.—Rule F governing majority required for decisions relating to reports and petitions concerning Territory of South-West Africa.—Article 18 of Charter.*

*Elucidation of Advisory Opinion of July 11th, 1950.—Limitations on degree of supervision to be exercised over Mandated Territory and on procedure to be followed.*

*“Degree of supervision” relates to measures, not to voting system.—Extent of obligations of Mandatory Power not affected by system adopted for voting.—Competence of General Assembly based on Charter.—Unanimity rule under Covenant of League not within scope of Question..*

*Voting system not contemplated in Opinion of 1950.—Adoption of Rule F by General Assembly within bounds of legal possibility.—Compatibility of Rule F with Opinion of 1950.*

## ADVISORY OPINION

*Present : President HACKWORTH ; Vice-President BADAWI ; Judges GUERRERO, BASDEVANT, WINIARSKI, ZORIČIĆ, KLAESTAD, READ, HSU MO, ARMAND-UGON, KOJEVNIKOV, Sir Muhammad ZAFRULLA KHAN, LAUTERPACHT, MORENO QUINTANA, CÓRDOVA ; Registrar LÓPEZ OLIVÁN.*

In the matter of the Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South-West Africa,

THE COURT,

composed as above,

*gives the following Advisory Opinion :*

With a letter of December 2nd, 1954, filed in the Registry on December 6th, the Secretary-General of the United Nations transmitted to the Court a certified true copy of a Resolution 904 (IX) of the General Assembly of the United Nations of November 23rd, 1954, which was in the following terms :

*“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 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 ?''

In accordance with Article 66, paragraph 1, of the Statute, notice was given on December 9th, 1954, to all States entitled to appear before the Court of the letter of the Secretary-General of the United Nations and of the Resolution annexed thereto. The Court was not sitting and the President considered that the States Members of the United Nations were likely to be able to furnish information on the questions referred to the Court. Accordingly, the Registrar, in pursuance of Article 66, paragraph 2, of the Statute, notified these States on December 16th, 1954, that the Court would be prepared to receive written statements from them within a time-limit fixed by an Order of the same date at March 15th, 1955.

The Governments of the United States of America, of the Republic of Poland, and of India availed themselves of this opportunity to submit written statements. The Governments of Israel and of the Republic of China, while not submitting written statements, referred to the views expressed by their representatives in the General Assembly when the question which had given rise to the request for an Advisory Opinion was there debated. Finally, the Government of Yugoslavia indicated that it was of the opinion that

the question had already been dealt with exhaustively by an Advisory Opinion of the Court on the question of the Territory of South-West Africa.

In accordance with Article 65, paragraph 2, of the Statute, the Secretary-General of the United Nations transmitted to the Court the documents likely to throw light upon the question. He also submitted an Introductory Note commenting on these documents.

The States Members of the United Nations were notified on March 25th, 1955, that the oral proceedings would begin on May 10th, 1955; at the same time they were requested to inform the Registrar, not later than April 15th, 1955, whether they intended to submit oral statements. No State having requested to be heard, the Court did not hold a public hearing.

\* \* \*

By Resolution 904 (IX) of November 23rd, 1954, the General Assembly

“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 ?”

The rule quoted in this Request for an Advisory Opinion is Rule F, which is set out in Resolution 844 (IX) adopted by the General Assembly on October 11th, 1954. This Rule prescribes a voting system to be followed by the General Assembly.

The General Assembly asks, in the first place, whether this Rule is a correct interpretation of the Advisory Opinion given by the Court on July 11th, 1950. This is the first question to be considered. The second question arises only in the event that the Court expresses the opinion that Rule F is not a correct interpretation of the Advisory Opinion of 1950.

By Resolution 449 (V) A of December 13th, 1950, the Opinion of 1950 was adopted by the General Assembly as the basis for the supervision of the administration of the mandated Territory of

South-West Africa. There followed prolonged and unfruitful negotiations between representatives of the Government of the Union of South Africa and an *ad hoc* Committee of the General Assembly.

At the Eighth Session, the General Assembly, by Resolution 749 (VIII) of November 28th, 1953, established a Committee on South-West Africa. It was requested to:

“(a) 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) 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) 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) 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.”

Acting under this authority, the Committee on South-West Africa prepared two sets of rules. One set of rules relates to its own procedure, and to the examination of reports, petitions and other information concerning the Territory of South-West Africa. The procedure was designed to be analogous to that which was followed by the Permanent Mandates Commission under the League of Nations. Provision was made for obtaining the views of the Mandatory Power and for the submission of reports and observations by the Committee to the General Assembly. The other set of rules prepared by the Committee prescribed the procedure to be followed by the General Assembly in its consideration of the reports and observations of the Committee on South-West Africa. The rules covered such matters as reports, petitions, and private meetings, as well as the way in which decisions of the General Assembly with regard to reports and petitions were to be made, the last-mentioned matter being dealt with in Rule F.

It appears that Rule F is part of a regime established by Resolutions of the General Assembly of November 28th, 1953, and October 11th, 1954, in which the expressed intention of the General Assembly was to conform to the Opinion of 1950.

The scope of Question (a) is thus limited by the wording used and by the reference to the General Assembly's acceptance of the Opinion previously given by the Court. It is therefore essential

that the Court should keep within the bounds of the question put to it by the General Assembly.

\* \* \*

In the question submitted to the Court there is a slight difference between the wording of the English and the French texts. The French version seems to express more precisely the intention of the General Assembly in submitting the matter to the Court for its Opinion. It asks whether Rule F corresponds to a correct interpretation of the previous Opinion. It refers generally to the previous Opinion, but the debates in the Fourth Committee and in the General Assembly indicate that the latter was primarily concerned with the question whether the rule as to the system of voting corresponds to a correct interpretation of the following passage :

“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.”

At this stage consideration will be given to the first part of this passage, namely, the statement that “The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System....” The task of the Court is to establish the true meaning of this statement. The question is whether this statement may properly be construed as including the system of voting to be followed by the General Assembly.

The function of supervision exercised by the General Assembly generally takes the form of action based on the reports and observations of the Committee on South-West Africa; whose functions are analogous to those exercised by the Permanent Mandates Commission. The words “the degree of supervision” relate to the extent of the substantive supervision thus exercised, and not to the manner in which the collective will of the General Assembly is expressed.

Accordingly, these words, if given their ordinary and natural meaning, should not be interpreted as relating to procedural matters. They relate to the measure and means of supervision. They comprise the means employed by the supervising authority in obtaining adequate information regarding the administration of the Territory and the methods adopted for evaluating such information, maintaining working relations with the Mandatory, and otherwise exercising normal and customary supervisory functions. The statement that the degree of supervision to be exercised by the General Assembly should not exceed that which was applied under the Mandates System means that the General Assembly should not

adopt such methods of supervision or impose such conditions on the Mandatory as are inconsistent with the terms of the Mandate or with a proper degree of supervision measured by the standard and the methods applied by the Council of the League of Nations.

Consequently, the action of the General Assembly in adopting Rule F, which prescribes the two-thirds majority rule, cannot be regarded as relevant to the "degree of supervision". It follows that this Rule cannot be considered as instituting a greater degree of supervision than that which was envisaged by the previous Opinion of the Court.

\* \* \*

This interpretation of the words used is confirmed by an examination of the circumstances which led to their use.

The Court, in the previous Opinion, was answering the question : "Does the Union of South Africa continue to have international obligations under the Mandate for South-West Africa and, if so, what are those obligations?" It was dealing with two kinds of international obligations assumed by the Union of South Africa under the Mandate.

The first kind of obligation was directly related to the administration of the Territory and corresponded to the sacred trust of civilization referred to in Article 22 of the Covenant. The Court found that these obligations did not lapse on the dissolution of the League of Nations.

The second kind of obligations related to the supervision of the administration of the mandated Territory by the League. The Court, taking into account the Resolution of the Assembly of the League of Nations of April 18th, 1946, and the provisions of Articles 10 and 80 of the Charter, recognized that the General Assembly was legally qualified to exercise the supervisory functions which had previously been exercised by the Council of the League. It was necessary for the purpose of defining the international obligations of the Union to indicate the limits within which it was subject to the exercise of supervision by the General Assembly.

In order to indicate those limits, it was necessary to deal with the problem presented by methods of supervision and the scope of their application. The General Assembly was competent, under the Charter, to devise methods of supervision and to regulate, within prescribed limitations, the scope of their application. These were matters in which the obligations could be subjected to precise and objective determination, and it was necessary to indicate this in a clear and unequivocal manner. This was done when it was said in the previous Opinion that : "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System

On the other hand, in marking out those limits, the Court did not need to deal with the system of voting. In recognizing that the competence of the General Assembly to exercise its supervisory functions was based on the Charter, the Court also recognized implicitly that decisions relating to the exercise of such functions must be taken in accordance with the relevant provisions of the Charter, that is, the provisions of Article 18. If the Court had intended that the limits to the degree of supervision should be understood to include the maintenance of the system of voting followed by the Council of the League of Nations, it would have been contradicting itself and running counter to the provisions of the Charter. It follows that the statement that "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System" cannot be interpreted as extending to the voting system of the General Assembly.

Accordingly, the Court finds that the statement in the Opinion of July 11th, 1950, that "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System", must be interpreted as relating to substantive matters, and as not including or relating to the system of voting followed by the Council of the League of Nations.

\* \* \*

In the course of the proceedings in the General Assembly and Committees of the United Nations, it was contended by representatives of the Union of South Africa that Rule F would not correspond to a correct interpretation of the previous Opinion. It was argued that the rule of unanimity governed the proceedings in the Council of the League of Nations, in which the mandatory Power was entitled to participate and vote; and that Rule F, by substituting a two-thirds majority rule, would lead to a degree of supervision exceeding that which applied under the Mandates System.

These contentions were questioned by representatives of other Governments and also in the written statements submitted to the Court in the present proceedings.

In view of the finding of the Court that the statement in the Opinion of 1950 that "The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System" does not include or relate to the system of voting, it is unnecessary to deal with the issues raised by these contentions or to examine the extent and scope of the operation of the rule of unanimity under the Covenant of the League of Nations.

\* \* \*

The Court will now consider whether Rule F is in accord with the statement in the Opinion of 1950, that the supervision to be exercised by the General Assembly "should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations".

While, as indicated above, the statement regarding the degree of supervision to be exercised by the General Assembly over the Mandate of South-West Africa, relates to substantive matters, the statement requiring conformity "as far as possible" with the procedure followed in the matter of supervision by the Council of the League of Nations, relates to the way in which supervision is to be exercised, a matter which is procedural in character. Thus, both substance and procedure are dealt with in the passage in question and both relate to the exercise of supervision. The word "procedure" there used must be understood as referring to those procedural steps whereby supervision is to be effected.

The voting system of the General Assembly was not in contemplation when the Court, in its Opinion of 1950, stated that "supervision should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations". The constitution of an organ usually prescribes the method of voting by which the organ arrives at its decisions. The voting system is related to the composition and functions of the organ. It forms one of the characteristics of the constitution of the organ. Taking decisions by a two-thirds majority vote or by a simple majority vote is one of the distinguishing features of the General Assembly, while the unanimity rule was one of the distinguishing features of the Council of the League of Nations. These two systems are characteristic of different organs, and one system cannot be substituted for the other without constitutional amendment. To transplant upon the General Assembly the unanimity rule of the Council of the League would not be simply the introduction of a procedure, but would amount to a disregard of one of the characteristics of the General Assembly. Consequently the question of conformity of the voting system of the General Assembly with that of the Council of the League of Nations presents insurmountable difficulties of a juridical nature. For these reasons, the voting system of the General Assembly must be considered as not being included in the procedure which, according to the previous Opinion of the Court, the General Assembly should follow in exercising its supervisory functions.

\* \* \*

There is, however, another aspect of this question. Rule F is contained in a group of six special rules, which were adopted by

the General Assembly in Resolution 844 (IX) of October 11th, 1954. They were designed 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". It seems to be clear that, both in adopting Rule F and in referring Question (a) to the Court, the General Assembly was proceeding upon the assumption that the word "procedure", as used in the second part of the passage in question, includes the voting system. It is also necessary to examine the question on the basis of that assumption. Looking at the matter from that point of view, there is equally no incompatibility between Rule F and the previous Opinion.

It is to be recalled that the Court, in its previous Opinion, stated that "The competence of the General Assembly of the United Nations to exercise such supervision and to receive and examine reports is derived from the provisions of Article 10 of the Charter, which authorizes the General Assembly to discuss any questions or any matters within the scope of the Charter and to make recommendations on these questions or matters to the Members of the United Nations". Thus, the authority of the General Assembly to exercise supervision over the administration of South-West Africa as a mandated Territory is based on the provisions of the Charter. While, in exercising that supervision, the General Assembly should not deviate from the Mandate, its authority to take decisions in order to effect such supervision is derived from its own constitution.

Such being the case, it follows that the General Assembly, in adopting a method of reaching decisions in respect of the annual reports and petitions concerning South-West Africa should base itself exclusively on the Charter. Article 18 of the Charter authorizes the General Assembly to decide whether decisions of this nature involve "important questions" or "other questions". The General Assembly has concluded that decisions by it on questions relating to reports and petitions concerning the Territory of South-West Africa shall be regarded as decisions on important questions to which the two-thirds majority rule should apply. It is from the Charter that the General Assembly derives its competence to exercise its supervisory functions; and it is within the framework of the Charter that the General Assembly must find the rules governing the making of its decisions in connection with those functions. It would be legally impossible for the General Assembly, on the one hand, to rely on the Charter in receiving and examining reports and petitions concerning South-West Africa, and, on the other hand, to reach decisions relating to these reports and petitions in accordance with a voting system entirely alien to that prescribed by the Charter.

When the Court stated in its previous Opinion that in exercising its supervisory functions the General Assembly should conform

“as far as possible to the procedure followed in this respect by the Council of the League of Nations”, it was indicating that in the nature of things the General Assembly, operating under an instrument different from that which governed the Council of the League of Nations, would not be able to follow precisely the same procedures as were followed by the Council. Consequently, the expression “as far as possible” was designed to allow for adjustments and modifications necessitated by legal or practical considerations.

In the matter of determining how to take decisions relating to reports and petitions concerning the Territory of South-West Africa, there was but one course open to the General Assembly. It had before it a text, Article 18 of the Charter, which prescribes the methods for taking decisions. The Opinion of 1950 left the General Assembly with Article 18 of the Charter as the sole legal basis for the voting system applicable to decisions in connection with its supervisory functions. It was on that basis that Rule F was adopted. In adopting that Rule, the General Assembly acted within the bounds of legal possibility.

There is thus no incompatibility between Rule F and the Opinion of 1950 in which the Court stated that the supervision to be exercised by the General Assembly should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations.

\* \* \*

The Court therefore considers that Rule F, recited in Question (a) of Resolution 904 (IX) of the General Assembly of November 23rd, 1954, is in accord with the passage contained in the Court's previous Opinion, namely, 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”. Accordingly, the Court concludes that Rule F corresponds to a correct interpretation of its Advisory Opinion of 1950.

Question (a) having been answered in the affirmative, it is not necessary to consider Question (b).

For these reasons,

THE COURT IS UNANIMOUSLY OF OPINION

with regard to Question (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?’”

that the said rule is a correct interpretation of the Advisory Opinion of July 11th, 1950.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this seventh day of June, one thousand nine hundred and fifty-five, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Green H. HACKWORTH,  
President.

(Signed) J. LÓPEZ OLIVÁN,  
Registrar.

Judge KOJEVNIKOV declares that he subscribes to the Opinion which the Court has given on Question (a) asked by the General Assembly of the United Nations on November 23rd, 1954. He would, however, like to indicate that the fact that he has voted in favour of the final part of the Advisory Opinion does not mean that he agrees with all that has been said, or with the reasoning advanced in all respects, nor that he acknowledges the correctness of the whole of the Advisory Opinion of July 11th, 1950.

He does not share the view, expressed in the Court's Advisory Opinion of 1950, that the provisions of Chapter XII of the Charter do not impose a legal obligation on the Union of South Africa to

place the Territory under the Trusteeship System. On the contrary, he considers that the Charter of the United Nations imposes on the Union of South Africa the obligation to place the Territory of South-West Africa under the Trusteeship System.

Judges BASDEVANT, KLAESTAD and LAUTERPACHT, availing themselves of the right conferred on them by Articles 57 and 68 of the Statute, append to the Opinion of the Court statements of their separate opinions.

*(Initialed)* G. H. H.

*(Initialed)* J. L. O.