

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

### Advisory Opinion of 7 June 1955

The question concerning the voting procedure to be followed by the General Assembly of the United Nations in making decisions on questions relating to reports and petitions concerning the territory of South-West Africa had been submitted for advisory opinion to the Court by the General Assembly, which, on November 23rd, 1954, adopted the following Resolution for this purpose:

*“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 refer-*

*ence 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 fol-*

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lowed 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?”

On receipt of the Request, the Court had given an opportunity to the Members of the United Nations to submit their views. The Governments of the United States of America, of the Republic of Poland and of India submitted 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. The Government of Yugoslavia indicated that it was of the opinion that the question had been dealt with exhaustively by the Advisory Opinion of 1950. Lastly, the Secretary-General of the United Nations transmitted to the Court the documents likely to throw light upon the question and an introductory note commenting on these documents. There were no oral proceedings.

In its Opinion the Court replied in the affirmative to the first question put: the Rule set out in (a) of the Resolution is a correct interpretation of the Opinion given by the Court in 1950. This reply made it unnecessary for the Court to consider the second question.

The Opinion of the Court was unanimous. Three Members of the Court—Judges Basdevant, Klaestad and Lauterpacht—while accepting the operative clause of the Opinion, reached their conclusions on different grounds and appended to the Opinion statements of their separate opinions. Another Member of the Court, Judge Kojevnikov, who also accepted the operative clause of the Opinion, appended thereto a declaration.

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In its Opinion, the Court briefly states the facts leading up to the Request for Opinion. In its Advisory Opinion of 1950, it had said that the Union of South Africa continued to have the international obligations binding upon it, in respect of the territory of South-West Africa, in accordance with the Covenant of the League of Nations and the Mandate for the territory, and that the supervisory functions were to be exercised

by the United Nations. That Opinion was accepted the same year by the General Assembly as a basis for supervision over the administration of the territory. Negotiations ensued between the United Nations and the Union of South Africa, but these were unsuccessful. In 1954, a Committee of the General Assembly drafted sets of rules of which one, Rule F (set out under (a) of the Resolution of November 23rd, 1954, above), related to the way in which decisions of the General Assembly with regard to reports and petitions were to be made. It is with regard to this Rule that the Court’s Opinion has been sought. The Assembly was primarily concerned with the question whether Rule F corresponds to a correct interpretation of the following passage from the Opinion of 1950:

“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.”

Having thus defined the question put to it, the Court considers whether the first part of this sentence (“The degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the Mandates System”) can be correctly interpreted as extending to the voting system to be followed by the General Assembly when making decisions with regard to reports and petitions concerning the territory of South-West Africa. It comes to the conclusion that the words “the degree of supervision” relate to the extent of the substantive supervision and not to the manner in which the collective will of the General Assembly is expressed; they do not relate to procedural matters. The first part of the sentence 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, Rule F cannot be regarded as relevant to the “degree of supervision”, and it follows that it cannot be considered as instituting a greater degree of supervision than that which was envisaged by the Court in its Opinion of 1950.

This interpretation is confirmed by an examination of the circumstances which led the Court to use the words in question. In its Opinion of 1950, it was necessary for it to say what were the obligations binding upon the Union of South Africa. It found that the obligations relating to the administration of the territory, and corresponding to the sacred trust of civilization referred to in Article 22 of the Covenant, did not lapse on the dissolution of the League of Nations. As to the obligations relating to supervision of the administration, the Court, taking into consideration the provisions of the Charter, found that supervision should henceforth be exercised by the General Assembly, but that it should not exceed that which applied under the Mandates System. But the Court had not then had 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, it implicitly recognized that the decisions of that organ in this connection 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. Accordingly, the Court finds that the first part of the sentence must be interpreted as relating to substantive matters and not to the

system of voting which was applicable in the time of the League of Nations.

The Court then proceeds to consider the second part of the sentence, according to which the degree of supervision "should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations": does Rule F accord with this requirement? Whereas the first part of the sentence relates to substantive matters, the second part is procedural in character and the word "procedure" there used refers to those procedural steps whereby supervision is to be effected. But the voting system of the General Assembly was not in contemplation when the Court used these words. Indeed, 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 the voting system of an organ is one of its distinguishing features. It is related to its composition and functions and cannot be transplanted upon another organ without disregarding one of the characteristics of the latter.

There is therefore no incompatibility between Rule F and the Opinion of 1950. It would, however, seem clear that, both in adopting Rule F and in referring the question to the Court, the General Assembly was proceeding on the assumption that the Court had used the word "procedure" as including the voting system. Even so, the conclusion would be the

same. In the Opinion of 1950, the Court had said that the General Assembly derived its competence to exercise its supervisory functions from the Charter; it is therefore within the framework of the Charter that it must find the rules governing the making of its decisions in connection with those functions. It would be legally impossible for it, 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.

As to the expression "as far as possible", this was designed to allow for adjustments necessitated by the fact that the Council of the League of Nations was governed by an instrument different from that which governed the General Assembly. For the latter, in the matter of determining how to make decisions relating to reports and petitions, there was but one course open. It had before it 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. It was on that basis that Rule F was adopted. In adopting that Rule, it acted within the bounds of legal possibility.

Rule F therefore corresponds to a correct interpretation of the Opinion of 1950.