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)

CONTENTS — TABLE DES MATIÈRES

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
SECTION A. — REQUÊTE POUR AVIS CONSULTATIF

SECTION B.—DOSSIER TRANSMITTED BY THE SECRETARY-GENERAL OF THE UNITED NATIONS (ART. 65, PARA. 2, OF THE STATUTE)
SECTION B. — DOSSIER TRANSMIS PAR LE SECRÉTAIRE GÉNÉRAL DES NATIONS UNIES (ART. 65, PAR. 2, DU STATUT)

SECTION C.—WRITTEN STATEMENTS
SECTION C. — EXPOSÉS ÉCRITS

SECTION C.—WRITTEN STATEMENTS
SECTION C. — EXPOSÉS ÉCRITS

1. LETTER FROM THE LEGAL ADVISER OF ISRAEL TO THE REGISTRAR OF THE COURT

22 February 1955.

Sir,

I am directed by the Minister for Foreign Affairs to acknowledge receipt of your letter, No. 21430 of 9 December 1954, and the special and direct communication under Article 66, par. 2, of the Statute of the Court, contained in your letter No. 21461 of 16 December 1954, in the case on the voting procedure on questions relating to reports and petitions concerning the territory of South-West Africa, under the resolution adopted by the General Assembly of the United Nations on 23 November 1954.

In reply to the above communications, Mr. Sharett has instructed me respectfully to draw the attention of the Court to the statements made by the representatives of Israel in the meetings of the Fourth Committee and the plenary meetings of the General Assembly, held during the ninth session, at which this question was discussed. The Government of Israel does not wish to add to those statements and it does not therefore propose submitting any further written statement within the time-limit fixed.

I have the honour, etc.

(Signed) Shabtai ROSENNE,
Legal Adviser.

2. LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF CHINA TO THE REGISTRAR OF THE COURT

February 25, 1955.

Sir,

I have the honor to acknowledge receipt of your communications Nos. 21430 and 21461 dated December 9 and 16, 1954, respectively, forwarding to me a certified copy of the request to the Court for an Advisory Opinion on the voting procedure on questions relating to reports and petitions concerning the Territory of South-West Africa and requesting my Government to indicate whether it wishes to avail itself of the right to present a written statement before March 15, 1955.

In reply, I have the honor to inform you that the Government of the Republic of China does not consider it necessary on its part to present a written statement on the question, inasmuch as its views thereon have been set forth in the relevant records of the ninth session of the General Assembly of the United Nations.

Accept, Sir, etc.

(Signed) George K. C. YEH,
Minister for Foreign Affairs.

3. LETTRE DE L'ENVOYÉ EXTRAORDINAIRE ET MINISTRE PLÉNIPOTENTIAIRE DE YOUGOSLAVIE AU GREFFIER DE LA COUR

N° 103/55.

le 10 mars 1955.

Monsieur le Greffier de la Cour,

En réponse à votre lettre n° 21461 en date du 16 décembre 1954, j'ai l'honneur de vous informer que mon Gouvernement m'a fait savoir qu'il n'a pas le désir de présenter un exposé écrit ou oral relatif au Territoire du Sud-Ouest africain (résolution de la 9me Assemblée générale des Nations Unies du 23 novembre 1954). Le Gouvernement yougoslave est d'avis que la question a déjà été examinée et épuisée avant par un avis consultatif de la Cour internationale de Justice, se rapportant à la question du Territoire du Sud-Ouest africain.

Veuillez agréer, etc.

(Signé) Milan RISTIĆ.

4. WRITTEN STATEMENT OF THE UNITED STATES OF AMERICA ON THE QUESTIONS SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE UNITED NATIONS GENERAL ASSEMBLY IN ITS RESOLUTION 904 (IX) DATED NOVEMBER 23, 1954

INTRODUCTORY

The General Assembly of the United Nations, in resolution 904 (IX), dated November 23, 1954, decided to submit certain legal questions with respect to voting procedures of the General Assembly in connection with the Territory of South-West Africa to the International Court of Justice, with a request for an advisory opinion.

In that resolution, the General Assembly considered desirable some elucidation of the Court's Advisory Opinion of July 11, 1950, with respect to South-West Africa. The resolution particularly referred to that part of the Court's opinion which stated that the degree of supervision to be exercised by the General Assembly with regard to the Territory of South-West Africa "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". The resolution then referred to resolution 844 (IX) adopted by the General Assembly on October 11, 1954, establishing the procedure for the examination of reports and petitions relating to the Territory of South-West Africa, including a 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."

Consequently the General Assembly in its resolution of November 23, 1954, requested 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 Government of the United States of America desires to address itself in this written statement to question *(a)*. It is the view of this Government that special rule F adopted by the General Assembly in resolution 844 (IX) October 11, 1954, accords with a correct interpretation of the Advisory Opinion of the International Court of Justice, and that consequently question *(b)* does not arise.

I. Summary of Argument

The Advisory Opinion of July 11, 1950 (International Status of South-West Africa), concluded that the General Assembly is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory of South-West Africa. The Court did not state that in exercising these functions the General Assembly must follow procedures identical with those of the League of Nations : the Court stated that such procedures "should conform as far as possible to the procedure" of the League of Nations Council. The Court particularly noted that the supervisory functions of the General Assembly, though similar to those of the League's Council, are "not identical". Finally, the Court expressly stated that the same procedure followed by the General Assembly for the approval of a trusteeship agreement, should be followed by the General Assembly for the approval of any modification of the international status of a territory under Mandate. This procedure includes a two-thirds majority vote of the General Assembly, as expressly required by Article 18, paragraph 2, of the Charter of the United Nations.

Mandatory Powers were not invariably members of the League Council, where a rule of unanimous decision prevailed on many matters. Although invited to sit with the Council in the consideration of mandate questions, such a Power could not have claimed a right of veto. There is even question whether a mandatory Power occupying a Council seat could have exercised a power of veto so as to frustrate proper League supervision of the territory mandated to that Power, by analogy to the principle that no one shall be a judge in his own cause. One of the fundamental features of the Charter of the United Nations is the adoption of the general principle of majority voting and the abandonment of the requirement of unanimity in voting. For most of the principal organs of the United Nations, including the Court itself, the requirement of a simple majority vote prevails. Even in the Security Council, which has primary responsibility under the

Charter for the maintenance of international peace and security, a system of qualified majority voting prevails rather than one of complete unanimity.

The United Nations Conference on International Organization considered various proposals for voting requirements in the General Assembly and decided that a two-thirds majority vote should be the highest vote required, and that this special majority should be required only for "important" questions. It is believed that when the Court concluded, in its Advisory Opinion of July 11, 1950 (International Status of South-West Africa), that the General Assembly is legally qualified to exercise supervisory functions with regard to the Territory of South-West Africa, the Court referred to the General Assembly as constituted by the Charter of the United Nations, including the express provisions governing voting procedures in that body.

II. The Court's Opinion of July 11, 1950

The Advisory Opinion of July 11, 1950 (International Status of South-West Africa), considered in detail various relevant provisions of the Charter of the United Nations. Thus, in arriving at the conclusion that the "General Assembly is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory" of South-West Africa, the Court stated:

> "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...." [1950] I.C.J., 137.

The Opinion also referred to the League of Nations Assembly resolution of April 18, 1946, which "noted that Chapters XI, XII, and XIII of the Charter of Nations embody principles corresponding to those declared in Article 22 of the Covenant". *Ibid.* The Opinion considered at length Article 80 of the Charter in determining that the Territory was entitled to continued international supervision. *Id.* at 133, 134, 136-38.

Finally, the Opinion stated: "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." (Underscoring supplied.) *Id.* at 138. In thus qualifying its opinion as to the procedure, the Court, it is only proper to assume, was well aware that the Charter of the United Nations prescribed procedures for the General Assembly different from those prescribed for the Council of the League of Nations by the Covenant of that organization.

Thus, the Opinion states : "It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, *though not identical*, supervisory functions." (Underscoring supplied.) *Id.* at 136.

III. Voting Procedures in the Council of the League of Nations

A difference in voting procedure is, of course, one of the important differences between the procedures of the Council of the League of Nations and those of the General Assembly of the United Nations. Article 22 of the Covenant of the League of Nations conferred on the League Council supervisory authority with respect to the Mandatory System, and Article 5, paragraph 1, of that instrument stipulated :

> "1. 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."

This was the "unanimity" rule of the League of Nations. It should be noted that this provision did not mean absolute unanimity at all times of all members of the Council [1]. A notable exception to the "unanimity" rule was the principle that no one may be a judge in his own cause, a principle embodied in Articles 15 and 16 of the Covenant. See Williams, "The League of Nations and Unanimity", (1925) XIX, *American Journal of International Law*, 475, 483-84.

The Permanent Court of International Justice had occasion to consider the scope of the unanimity rule in the Council's procedures. Its Advisory Opinion, *Interpretation of Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Iraq and Turkey)* ([1925] P.C.I.J., Series B, No. 12), was rendered in response to the following resolution adopted on September 19, 1925, by the Council of the League of Nations :

> "The Council of the League of Nations, having been seized of the question of the frontier between Turkey and Iraq by application of Article 3, paragraph 2, of the Treaty of Lausanne, decides, for the purpose of elucidating certain points of law, to request the Permanent Court of International Justice to give an advisory opinion on the following questions :
>
> '(1) What is the character of the decision to be taken by the Council in virtue of Article 3, paragraph 2, of the Treaty of Lausanne—is it an arbitral award, a recommendation or a simple mediation ?

[1] Article VIII of the Council's rules of procedure provided that a majority of its members constituted a quorum. Article IX provided that abstentions from voting should be disregarded. *Rules of Procedure of the Council*, adopted by the Council on May 26, 1933.

(2) Must the decision be unanimous or may it be taken by a majority ?

May the representatives of the interested Parties take part in the vote ?'

The Permanent Court is requested to examine these questions, if possible, in an extraordinary session.

The Council requests the Governments of Great Britain and Turkey to be at the disposal of the Court for the purpose of furnishing it with all relevant documents or information. It has the honour to transmit to the Court the Minutes of the meetings of the Council at which the question of the frontier between Turkey and Iraq has been examined.

The Secretary-General is authorized to submit the present request to the Court, together with all the relevant documents, to explain to the Court the action taken by the Council in the matter, to give all assistance necessary in the examination of the question, and, if necessary, to take steps to be represented before the Court." *Id.*, at 6-7.

In response to these questions, the Court gave the following answers :

"(1) That the 'decision to be taken' by the Council of the League of Nations in virtue of Article 3, paragraph 2, of the Treaty of Lausanne, will be binding on the Parties and will constitute a definitive determination of the frontier between Turkey and Iraq ;

(2) That the 'decision to be taken' must be taken by a unanimous vote, the representatives of the Parties taking part in the voting, but their votes not being counted in ascertaining whether there is unanimity." *Id.*, at 33.

It will be recalled that the "interested Parties" in the Council's proceedings in the matter of the Turkish-Iraq frontier (the "Mosul dispute") were Great Britain, as Mandatory for Iraq, and Turkey. While the first question submitted to the Court involved an interpretation of the Treaty of Lausanne, the second question involved an interpretation of the provisions of the Covenant relative to voting procedures in the Council. The Court, in answering the second question, gave due consideration to Articles 4, 5, 15 and 16 of the Covenant, and, in giving its answer as stated above, made the following observations :

"It follows from the foregoing that, according to the Covenant itself, in certain cases and more particularly in the case of the settlement of a dispute, the rule of unanimity is applicable, subject to the limitation that the votes cast by representatives of the interested Parties do not affect the required unanimity.

The Court is of opinion that it is this conception of the rule of unanimity which must be applied in the dispute before the Council.

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.

From a practical standpoint, to require that the representatives of the Parties should accept the Council's decision would be tantamount to giving them a right of veto enabling them to prevent any decision being reached; this would hardly be in conformity with the intention manifested in Article 3, paragraph 2, of the Treaty of Lausanne." *Id.*, at 31-32.

The proceedings in the Council subsequent to this opinion are also pertinent. They have been summarized by Professor Manley O. Hudson as follows:

> "When the opinion came before the Council on December 8, 1925, the Turkish representative stated that as Turkey had voted against the request for the opinion, his Government could not be considered to be bound by the opinion, to which he attributed 'only the character of a legal consultation of a theoretical character without any practical bearing'. He also drew the Council's attention to an 'advisory opinion' by Gilbert Gidel [1], which he compared with that of the Court. On the question of accepting the Court's opinion, the President of the Council first said that as this was a 'question of procedure', the Council might apply the rule in the Covenant relating to a question of procedure; later, the vote was taken on the basis of a stricter rule that unanimity would be required for accepting the opinion, without counting the votes of the parties to the dispute, Great Britain and Turkey. The report 'in favour of accepting the advisory opinion .... was unanimously adopted, the representative of Turkey voting against the report' [2]. Thereafter, on December 16, 1925, the Council took a decision under Article 3, paragraph 2, of the Treaty of Lausanne, in the absence of a Turkish representative, the vote being unanimous [3]; this decision was later made definitive [4]."

In considering the League Council unanimity rule in conjunction with supervision of the Mandates System, it is worth recalling that mandatory Powers were not invariably members of the League

[1] Professor Gidel's opinion had been placed in the hands of members of the Court before the Court's opinion was given. Series C, No. 10, p. 325.

[2] League of Nations Official Journal, 1926, p. 128.

[3] *Ibid.*, pp. 187-193.

[4] *Ibid.*, p. 503. The Mosul dispute was finally settled by the Treaty of June 5, 1926, between Great Britain, Iraq and Turkey. For the text, see 64 League of Nations Treaty Series, p. 379. Hudson, *The Permanent Court of International Justice* (1943), 517-18.

Council [1] and thus in a position to claim for themselves whatever consequences might flow from the unanimity rule. The Council did invite mandatory Powers to sit with it in considering questions in which they were concerned. Such Powers, if not members of the Council, could not even have claimed a right of veto. In cases where a mandatory Power held a Council seat, it still seems doubtful whether the Power would have been permitted to exercise a veto in such a way as to frustrate operation of the Mandates System. See Wright, *Mandates under the League of Nations* (1930), 132.

IV. Voting Procedures of the United Nations General Assembly

As stated above, the Opinion of July 11, 1950 (International Status of South-West Africa), indicated the Court's awareness of the fact that United Nations procedures with respect to dependent territories, though similar, were not identical, to League of Nations procedures regarding mandated territories. A further illustration of the Court's awareness of this fact appears in the statement of the Opinion beginning at page 141, as follows :

> "Article 7 of the Mandate, in requiring the consent of the Council of the League of Nations for any modification of its terms, brought into operation for this purpose the same organ which was invested with powers of supervision in respect of the administration of the Mandates. In accordance with the reply given above to Question *(a)*, those powers of supervision now belong to the General Assembly of the United Nations. On the other hand, Articles 79 and 85 of the Charter require that a Trusteeship Agreement be concluded by the mandatory Power and approved by the General Assembly before the International Trusteeship System may be substituted for the Mandates System. These articles also give the General Assembly authority to approve alterations or amendments of Trusteeship Agreements. By analogy, it can be inferred that the same procedure is applicable to any modification of the international status of a territory under Mandate which would not have for its purpose the placing of the territory under the Trusteeship System. This conclusion is strengthened by the action taken by the General Assembly and the attitude adopted by the Union of South Africa which is at present the only existing mandatory Power."

In reaching this conclusion, the Court, of course, must have been cognizant of the voting procedures of the General Assembly with respect to trusteeship questions, for which there is express provision in the Charter of the United Nations.

A. *Charter Provisions*

The full text of the article of the Charter regarding voting in the General Assembly is set forth as follows :

[1] The Union of South Africa, for example, did not become a member of the Council until its election as a non-permanent member on December 13, 1939. The composition of the Council remained unchanged from December 13, 1939, to April 18, 1946, when the League was dissolved.

"CHAPTER IV.—THE GENERAL ASSEMBLY

. . . . . .

VOTING.—*Article 18*

1. Each Member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the Members present and voting. These questions shall include : recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 *(c)* of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operations of the trusteeship system, and budgetary questions.

3. 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."

Thus, under Article 18, paragraph 2, a two-thirds majority vote of the General Assembly is the specified vote for questions relating to the operation of the Trusteeship System. This would therefore be the voting procedure which the Court has expressly said in its Opinion of July 11, 1950, "is applicable to any modification of the international status of a territory under Mandate which would not have for its purpose the placing of the territory under the Trusteeship System". In following this analogy, as the Court described it, back to its source, it is evident that discharge by the General Assembly of the functions of *supervising* a mandate must follow the same procedure.

In its Advisory Opinion No. 12, November 21, 1925 (Frontier between Iraq and Turkey), discussed above, the Permanent Court of International Justice stated : ".... it should be observed in the first place that Article 3, paragraph 2, of the Treaty of Lausanne refers to the Council of the League of Nations, that is to say, *to the Council with the organization and functions conferred upon it by the Covenant*". (Underscoring supplied.) The Court further observed :

"The representative of the British Government has contended that the clause in Article 5 of the Covenant only contemplates the exercise of the powers granted in the Covenant itself. The Court cannot accept this view. Article 5 states a general principle which only admits of exceptions which are expressly provided for, and this principle, as has already been stated, may be regarded as the rule natural to a body such as the Council of the League of Nations. The fact that the present case concerns the exercise of a power outside the normal province of the Council, clearly cannot be used as an argument for the diminution of the safeguards with which,

in the Covenant, it was felt necessary to surround the Council's decisions."

It may be supposed that this Court, in concluding that the General Assembly is legally qualified to exercise supervisory functions with regard to the Territory of South-West Africa, had in mind this same principle, i.e. that the General Assembly was the General Assembly of the United Nations "with the organization and functions conferred upon it" by the Charter and with "the safeguards" with which, in the Charter, it was felt necessary to surround the General Assembly's decisions.

B. *History of Article 18*

The voting procedures of the United Nations are fundamental to the operation of the Organization. In order to demonstrate the importance attached to these voting procedures by the negotiators of the Charter, an historical review is presented.

The Dumbarton Oaks Proposals for a General International Organization, of 1944, which provided the basis for the negotiations at the United Nations Conference on International Organization, San Fransisco, 1945, contained the following texts regarding voting in the General Assembly:

"CHAPTER V.—THE GENERAL ASSEMBLY

. . . . . .

Section C. Voting

1. Each Member of the Organization should have one vote in the General Assembly.

2. Important decisions of the General Assembly, including recommendations with respect to the maintenance of international peace and security; election of members of the Security Council; election of members of the Economic and Social Council; admission of Members, suspension of the exercise of the rights and privileges of Members, and expulsion of Members; and budgetary questions, should be made by a two-thirds majority of those present and voting. On other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, the decisions of the General Assembly should be made by a simple majority vote." 3 UNCIO/Docs. 6.

Thus, it may be noted that the text of Article 18 as finally approved by the San Francisco Conference contains little substantive change from the Dumbarton Oaks text. The important substantive change, in fact, consists of the inclusion of election of members of the Trusteeship Council and of questions relating to the operation of the Trusteeship System in Article 18, paragraph 2, as important questions requiring a two-thirds majority of the Members present and voting. Had these two items not been expressly included in Article 29, para-

graph 2, it may be noted that the General Assembly would have had discretion under Article 18, paragraph 3, to decide such questions by a simple majority vote. It was upon recommendation of Committee II/4 (Trusteeship System) approved by Committee II/1 (General Assembly Structure and Procedures) that the San Francisco Conference decided to include these additional questions in Article 18, paragraph 2, of the Charter. 8 UNCIO Docs. 488-89.

Committee II/1 of the San Francisco Conference considered a number of other proposals for amendment to Chapter V, Section C, paragraphs 1 and 2, of the Dumbarton Oaks Proposals; these proposals appear in Conference Document 298, II/1/12, May 15, 1945 (8 UNCIO Docs. 508). Among the proposals were : one for unanimity in the case of decisions relating to military action (*id.* at 510) ; one to change the two-thirds majority vote of the General Assembly to three-quarters (*id.* at 512) ; various proposals for additional questions requiring two-thirds majority (*id.* at 512-13) ; and several proposals for deletion of certain provisions for requiring a two-thirds majority (*id.* at 514-15).

None of these proposals was accepted by Committee II/1 or by the Conference. In Conference Document 298, II/1/12, May 15, 1945, referred to above, there appears the following pertinent observation of one delegation :

> "The Delegation of the Dominican Republic has submitted the following comments in Doc. 2, G/14 (o) pp. 9-10 :
>
> 'Another point of considerable importance in the Dumbarton Oaks Proposals is that referring to the rule governing the voting procedure in the General Assembly. According to those Proposals, the most important decisions will be made by a two-thirds majority and others by a simple majority of those present and voting, with such exceptions as are established in the Charter (Ch. V, Sec. C, par. 2).
>
> 'The rule adopted by the Covenant of 1919 was the same as that which governs diplomatic conferences : unanimity, except in duly established cases. It is evident, nevertheless, that this rule frequently makes impossible the adoption of desirable or necessary decisions and for that reason the proposed innovation should be adopted, without its hindering in any way, however, the desirability that in place of the two-thirds majority a greater proportion be adopted which would permit joining the advantages of both systems and decreasing their respective undesirable features.' "
>
> 8 UNCIO Docs. 510-11.

The understanding of the Government of the United States of America as to the significance of Article 18 of the Charter was set forth in the Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, June 26, 1945 (Department of State Publication 2349), as follows (page 60) :

> "The provision in the Dumbarton Oaks Proposals for a two-thirds majority in voting on 'important questions' (which are listed

in the text) and a simple majority for all other questions, was written into the Charter (Article 18). It is significant that no one seriously considered perpetuating the unanimity rule which operated in the League of Nations and in many other international bodies."

Also of interest in this connexion are the observations contained in a staff study prepared for the United States Senate Subcommittee on the United Nations Charter [1]. In this study, entitled "Representation and Voting in the United Nations General Assembly", there appear the following pertinent comments :

"II. Present Voting Practices in the General Assembly

In the past, international organizations ordinarily have been based on two fundamental principles : the legal equality of States and unanimity in voting. In practice this has meant that nations like Luxembourg and Iceland, with very small populations, have participated in international assemblies on a basis of legal equality with large nations like the United States, China, and India. 'Russia and Geneva have equal rights', declared Chief Justice Marshall in 1825, and this principle of State equality applied to international conferences (as well as to international commerce).

It has meant, too, that whenever the decision stage has been reached at an international conference, any small State, as well as any large one, has been in a position to block action on substantive questions by casting a negative vote. Sometimes little countries have responded to the pressure of other States and have abandoned their opposition ; at other times they have prevented conferences from arriving at decisions which, but for their opposition, might have been unanimously approved.

Article 18

At the San Francisco Conference the framers of the U.N. Charter accepted the first of these principles but rejected the second. Article 18, which lays down the procedure for voting in the General Assembly, reads as follows : [here follows the text of Article 18].

. . . . . .

With respect to the principle of unanimity, the Charter turns its back upon the past. No doubt the experience of the League of Nations was, in large part, responsible for this departure. Article 5 of the League Covenant, in effect, gave every Member of the League a veto by providing that, with certain exceptions, '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'. This requirement by no means paralysed the League Assembly. It did, however, hamper its activity and on some occasions prevented it from reaching important decisions strongly advocated by a majority of the Members.

. . . . . .

[1] This staff study was prepared by Mr. Francis O. Wilcox, Chief of Staff of the Foreign Relations Committee of the Senate, who served with the United States Delegation to the San Francisco Conference.

The two-thirds majority for the handling of important questions seems to have worked fairly well in practice. No doubt it has served as a deterrent to hasty and ill-considered action by the General Assembly. On the other hand, it has not prevented action on any measure desired by a large majority of U.N. Members. During the first six years of the United Nations, there were some 18 instances in which draft resolutions (or portions of resolutions) received a simple majority in the committees of the General Assembly but were not adopted because they failed to secure the necessary two-thirds vote in the Assembly itself.

The principal effect of Article 18 is to reject the veto with respect to General Assembly votes. This is a move in the direction of democracy in world affairs in that it decreases the negative power of individual States. At the same time it increases the positive power of groups of States which may wish to band together to accomplish their objectives within the U.N. system." Staff Study No. 4, Subcommittee on the United Nations Charter, 83d Cong., 2nd Sess., September 1954, 2-4.

V. Voting Procedures in other Principal Organs of the United Nations

The decided trend, in framing the United Nations Charter, away from the unanimity principle is reflected also in the provisions made with respect to voting procedures for principal organs other than the General Assembly.

Article 55 of the Statute of the International Court of Justice, of course, establishes the voting procedures of the Court. Paragraph 1 of Article 55 provides for decision of all questions by a majority of the judges present.

Article 89 of the Charter provides for voting procedures in the Trusteeship Council: paragraph 2 of this article provides that decisions of the Council shall be made by a majority of the members present and voting. Under Article 85 and Chapter XIII of the Charter, the Trusteeship Council, operating under the authority of the General Assembly, has the task of assisting the General Assembly in carrying out its functions with respect to the International Trusteeship System.

Article 67 of the Charter provides for voting procedures in the Economic and Social Council: paragraph 2 of this article provides that decisions of the Council shall be made by a majority of the members present and voting.

Article 27 of the Charter establishes voting procedures in the Security Council. This article provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members (paragraph 2); and that "decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a

dispute shall abstain from voting" (paragraph 3). Thus, even in this organ of the United Nations, which is charged with primary responsibility for the maintenance of international peace and security, there is not a requirement of unanimity but rather a system of qualified majority voting.

VI. Precedents in the General Assembly

A. *Termination of Mandates: Transfer to the United Nations Trusteeship System*

As noted above, Article 18, paragraph 2, of the Charter requires a two-thirds vote of Members of the General Assembly present and voting for decisions of the General Assembly on questions relating to the operation of the Trusteeship System.

On February 9, 1946, the General Assembly adopted resolution 9 (I), inviting all States administering territories under Mandate to submit trusteeship agreements for approval and welcoming the declaration of the United Kingdom of its intention as mandatory to terminate the Mandate of Trans-Jordan and to establish the independence of that country [1].

On December 13, 1946, the General Assembly adopted resolution 63 (I) approving the following eight Trusteeship Agreements placing League of Nations Mandates under the United Nations Trusteeship System:

Territory	*Administering Authority*	*VOTE*		
		Affirmative	*Negative*	*Abstention*
New Guinea	Australia	41	6	5
Ruanda-Urundi	Belgium	41	6	5
Cameroons	France	41	5	6
Togoland	France	41	5	6
Western Samoa	New Zealand	41	6	5
Tanganyika	United Kingdom	41	6	5
Cameroons	United Kingdom	41	6	5
Togoland	United Kingdom	41	6	5

On November 1, 1947, the General Assembly, by a vote of 46 to 6, adopted resolution 140 (II), approving the Trusteeship Agreement for the former Mandate, Nauru, submitted by the Governments of Australia, New Zealand and the United Kingdom [2].

[1] Prior to that date, the following League Mandates had been terminated by the establishment of the independence of the countries involved: Iraq, Syria and Lebanon.

[2] During this same year, 1947, arrangements were completed for the placing of the Marshall, Caroline and Mariana Islands (formerly mandated to Japan) under the United Nations Trusteeship System, with the United States of America as administering authority. Since this territory, the Trust Territory of the Pacific Islands, was designated a strategic trust territory, this Trusteeship Agreement was approved, on behalf of the United Nations, by the Security Council of the Organization, in accordance with Article 83 of the Charter. The vote in the Security Council on April 2, 1947, approving the Trusteeship Agreement, was unanimous. As pointed out above, even in that body the "unanimity" rule does not prevail, since the majority required is a majority of seven members, including the concurring votes of the five permanent members.

Thus the General Assembly, in approving a series of nine Trusteeship Agreements in 1946 and 1947, acted by votes of more than two-thirds but less than all the Members of the Assembly; in each case there were at least some negative votes. This was done presumably in pursuance of the provision of Article 18 (2) specifying a two-thirds majority on "questions relating to the operation of the Trusteeship System".

It may be noted at the same time that these General Assembly decisions to approve Trusteeship Agreements had also the character of actions to modify and in fact terminate League of Nations Mandates. Under the League such action might have been taken by the League Council, where the unanimity rule was in force. In the General Assembly the actions were taken by less than unanimous vote and in accordance with the Charter provisions governing Assembly voting.

B. *Termination of Mandates: Palestine*

The General Assembly was heavily occupied during 1947 with the problems involved in the termination of the Palestine Mandate. In a formal communication to the Secretary-General of the United Nations, dated April 2, 1947, the United Kingdom, as Mandatory, announced its intention to ask the General Assembly, at its next regular session, to make recommendations, under Article 10 of the Charter, concerning the future government of Palestine. In this same communication, the United Kingdom requested the Secretary-General to summon a special session of the General Assembly for the purpose of constituting and instructing a special committee to prepare for the consideration of this question at the next regular session of the General Assembly. Accordingly, a special session was convened on April 28, 1947, which established a Special Committee on Palestine.

After consideration of the report of this Special Committee and extensive debate in its *Ad Hoc* Committee on Palestine, the General Assembly adopted resolution 181 (II), Future Government of Palestine, on November 29, 1947. This resolution called for the termination of the Mandate for Palestine not later than August 1, 1948, and the partition of the territory into independent Arab and Jewish States, together with a special international regime for the City of Jerusalem. This resolution was adopted by a two-thirds majority vote, 33 in favour, 13 against, with 10 abstentions (including the United Kingdom).

The United Kingdom subsequently announced its intention to abandon the Mandate on May 15, 1948. At midnight May 14, 1948, the Provisional Government of Israel proclaimed the independence of the State of Israel. This State was later admitted, in May 1949, as a Member of the United Nations.

The General Assembly's debate and resolution on the Palestine question in 1947 provide an example of Assembly action, to

terminate a mandate, by a two-thirds vote where that vote was considerably short of being unanimous and was not joined in by the mandatory Power.

C. *Other Mandate Questions : South-West Africa*

The Mandate of South-West Africa is the only League of Nations Mandate remaining in existence. All others have been terminated either through attainment of independence or through transfer to the United Nations Trusteeship System.

The status of the Territory of South-West Africa has been a matter of continuing concern to the General Assembly of the United Nations, which has adopted a series of resolutions on this subject : resolution 65 (I), 14 December 1946 ; resolution 141 (II), 1 November 1947 ; resolution 227 (III), 26 November 1948 ; resolution 337 (IV), 6 December 1949 ; resolution 449 B (V), 13 December 1950 ; resolution 570 B (VI), 19 January 1952 ; resolution 749 B (VIII), 28 November 1953 ; and resolution 904 (IX), 23 November 1954. These resolutions assert the view of the General Assembly that the normal way of modifying the international status of the Territory would be to place it under the United Nations Trusteeship System by means of a trusteeship agreement in accordance with the provisions of Chapter XII of the Charter.

On more than one occasion, the General Assembly has determined that a proposal before it regarding the Territory of South-West Africa was an "important question" within the meaning of Article 18, paragraph 2, of the Charter and hence required a two-thirds majority vote of Members of the General Assembly present and voting. Such a determination was made in connexion with resolutions 141 (II) and 337 (IV). Official Records of the General Assembly, 2nd sess., I, 638-48 ; Official Records of the General Assembly, 4th sess., 535. In both cases, the determination was made by vote of the General Assembly. At the second session, the subject was thoroughly considered on a point of order by the Indian delegation, which maintained that a simple majority vote sufficed. By a vote of 31 to 20 with 5 abstentions, the General Assembly found that the resolution on the status of South-West Africa was a subject of importance requiring a two-thirds majority. At the fourth session, the General Assembly made a similar determination by a vote of 23 to 16 with 6 abstentions, this time upholding the ruling of the President that a two-thirds majority vote would be required.

VII. Conclusion

When in 1950 the Court advised that supervision of the Mandate for South-West Africa devolved upon the United Nations General Assembly, it followed that the function of supervision must be carried out by the Assembly in accordance with the Charter provisions governing that body. The Charter provided for Assembly voting by simple majority and by two-thirds majority; there was no provision for a requirement of Assembly unanimity in any case.

Article 18 (2) of the Charter states that Assembly decisions on important questions shall be by a two-thirds majority; on all other questions, including the matter of adding to the category of important questions, decisions shall be by a simple majority. The article specifies among the important questions: "questions relating to the operation of the Trusteeship System". Assembly decisions "on questions relating to reports and petitions concerning the Territory of South-West Africa" do not come within this class. Under the Charter such decisions could be taken by a simple majority. But, in framing the rule on voting procedure which is the subject of the current request for an advisory opinion, the Assembly has chosen—as Article 18 (3) authorized—to determine that these questions shall be decided by a two-thirds majority.

In the view of the United States, the General Assembly acted quite properly in choosing to determine that this additional category of questions shall require a two-thirds vote for decision. Such a choice, and the adoption of a rule based on it, accord with a correct interpretation of the Court's Advisory Opinion of July 11, 1950.

It is submitted that question *(a)* should be answered in the affirmative and that, in consequence, question *(b)* does not call for any answer.

February 28, 1955.

5. EXPOSÉ DU GOUVERNEMENT DE LA RÉPUBLIQUE POPULAIRE DE POLOGNE CONCERNANT LA DEMANDE DE L'ASSEMBLÉE GÉNÉRALE DES NATIONS UNIES,

EN VUE DE DÉLIVRER L'AVIS CONSULTATIF DE LA COUR INTERNATIONALE DE JUSTICE CONCERNANT LA PROCÉDURE DE VOTE APPLICABLE AUX RAPPORTS ET PÉTITIONS RELATIFS AU TERRITOIRE DU SUD-OUEST AFRICAIN

Les questions présentées par l'Assemblée générale à la Cour internationale de Justice quoique formellement concernant les problèmes de procédure concernent en vérité l'ensemble du problème discuté depuis longtemps, à savoir quelle attitude l'Assemblée générale des Nations Unies devrait prendre envers la non-exécution par l'Union sud-africaine de ses obligations émanant de la Charte des Nations Unies envers les territoires du Sud-Ouest africain.

Le Gouvernement de la République populaire de Pologne considère comme indispensable de présenter à ce sujet les remarques suivantes :

Le Gouvernement de la République populaire de Pologne maintient dans toute son étendue l'attitude qu'il avait adoptée dans son exposé transmis à la Cour internationale de Justice le 20 mars 1950, en ce qui concerne l'avis consultatif concernant la situation juridique dans le Sud-Ouest africain ainsi que l'attitude prise par les délégations polonaises au cours de neuf sessions de l'Assemblée générale des Nations Unies, lors des discussions à ce sujet. Au cours de ces débats la délégation polonaise s'est constamment prononcée en faveur de la solution de ce problème en pleine conformité avec les dispositions et l'esprit de la Charte.

Le Gouvernement de la République populaire de Pologne a souligné à plusieurs reprises qu'il n'existe qu'un moyen pour résoudre le problème de l'avenir du Territoire du Sud-Ouest africain en conformité avec les dispositions de la Charte. Ces territoires doivent être soumis par l'Union au système de tutelle des Nations Unies pris en considération que dans l'avenir ils devront être déclarés indépendants. Plusieurs résolutions prises par l'Assemblée générale des Nations Unies recommandaient à l'Union sud-africaine de soumettre le Territoire du Sud-Ouest africain à la tutelle des Nations Unies conformément aux dispositions du chapitre XII de la Charte.

Toutefois, l'Union sud-africaine ignore jusqu'à présent les dispositions de la Charte et les résolutions susmentionnées, elle ne remplit pas les obligations qui lui incombent, elle vise l'annexion complète du Territoire du Sud-Ouest Africain. Le Gouvernement

de l'Union sud-africaine n'a rien fait en vue du développement économique, culturel et social de ce Territoire, mais au contraire la politique administrative de l'Union conduit à la destruction des richesses naturelles du Territoire du Sud-Ouest africain, elle empêche le développement culturel et social de la population autochtone, et surtout elle empêche le progrès de cette population vers la possibilité de s'administrer elle-même.

La création d'organismes spéciaux pour la question du Territoire du Sud-Ouest africain ne pouvait pas donner et n'a donné aucun résultat et, étant contradictoire avec la Charte, a rencontré l'opposition de plusieurs pays. Ainsi à présent — d'après le Gouvernement polonais — l'adoption de la procédure applicable aux rapports et aux pétitions et entre autre l'adoption du système de vote (ce qui devrait être l'objet de l'avis consultatif de la Cour internationale de Justice) ne pourra pas être conforme aux dispositions de la Charte et pourrait évoquer uniquement des résultats négatifs. Des propositions soumises à la neuvième session de l'Assemblée générale, qui consistaient entre autres à l'attribution de privilèges spéciaux à l'Union sud-africaine en ce qui concerne les rapports et les pétitions émanant du Territoire du Sud-Ouest africain et qui reviennent aux formules de mandats dans l'administration du Sud-Ouest africain, peuvent uniquement faciliter à l'Union d'échapper aux obligations prises par la ratification de la Charte. La réalisation de ces propositions mènerait au sanctionnement du système de mandats désuet et à la réalisation tacite de *statu quo* créé par l'Union sud-africaine contraire à la lettre et l'esprit de la Charte des Nations Unies. Il est à souligner que la Charte des Nations Unies ne contient aucune disposition qui permettrait la coexistence du système de tutelle et du mandat.

La situation actuelle dans ce domaine indique que ce problème exige une solution essentielle et que la transposition de la question sur le niveau de procédure équivaut à une fuite devant le problème même. C'est pourquoi le Gouvernement de la République populaire de Pologne maintient catégoriquement son attitude, à savoir, que le Territoire du Sud-Ouest africain doit être transmis sous tutelle des Nations Unies.

A la lumière de dispositions nettes et non équivoques de la Charte et la limitation stricte des compétences de la Cour internationale de Justice, les questions présentées à cette Cour sont entièrement inutiles.

6. WRITTEN STATEMENT OF THE GOVERNMENT OF INDIA REGARDING THE VOTING PROCEDURE OF QUESTIONS RELATING TO REPORTS AND PETITIONS CONCERNING THE TERRITORY OF SOUTH-WEST AFRICA

On December 6, 1949, the General Assembly adopted a resolution recalling its previous resolutions concerning the Territory of South-West Africa adopted on December 14, 1946, November 1, 1947, and November 26, 1948, respectively and declaring it "desirable that the General Assembly, for its further consideration of the question, should obtain an advisory opinion on its legal aspects". The General Assembly decided, therefore, to submit the following questions to the International Court of Justice, with a request that an advisory opinion be "transmitted to the General Assembly before its fifth regular session, if possible".

What is the international status of the Territory of South-West Africa and what are the international obligations of the Union of South Africa arising therefrom, in particular :

(a) 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 ?

(b) Are the provisions of Chapter XII of the Charter applicable and, if so, in what manner, to the Territory of South-West Africa ?

(c) Has the Union of South Africa the competence to modify the international status of the Territory of South-West Africa, or, in the event of a negative reply, where does the competence rest to determine and modify the international status of the Territory ?

The request was filed in the Registry of the Court on December 27, 1949. On December 30, 1949, the President issued an order fixing March 20, 1950, as the date of expiry of the time-limit for the submission of written statements by Governments. Such statements were submitted within the time-limit by Egypt, the Union of South Africa, the United States of America, India and Poland.

At public sittings held from May 16 to May 23, 1950, the Court heard oral statements, on behalf of the Secretary-General of the United Nations, the Government of the Philippines and the Government of the Union of South Africa.

The Court's Opinion was announced on July 11, 1950. Separate opinions were given by Judges McNair and Read, and dissenting opinions were given by Judges Alvarez, de Visscher and Krylov.

While the Court had deemed it unnecessary to consider separately the general introductory question before it, the reply was given to this question that "South-West Africa is a territory under the international Mandate assumed by the Union of South Africa on December 17, 1920."

As to Question *(a)*, the Court adopted, by twelve votes to two, the following reply :

> "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."

The supervisory functions of the League of Nations were based upon Article 22 of the Covenant and Article 6 of the Mandate for South-West Africa. Article 22 (7) required each Mandatory to render to the Council an annual report in reference to the mandated territory, and Article 22 (9) provided for a permanent commission to receive and examine the annual reports and to advise the Council on all matters relating to the observance of the Mandates. Article 6 of the Mandate required the Mandatory to make to the Council "an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed" in certain articles of the Mandate. The Court took the view that the obligation to submit to such supervision did not disappear when the Council of the League of Nations ceased to exist.

The Court referred to an "innovation" by which the supervisory function of the Council was rendered more effective. This was the resolution adopted by the Council of the League of Nations on January 31, 1923, by which the Council decided that a certain "procedure shall be adopted in respect of petitions regarding inhabitants of mandated territories". No reference was made to the power which the Council of the League of Nations must have had to change the procedure, or to abolish it altogether. Yet the establishment of this procedure was found to have bestowed a "right" on the inhabitants of South-West Africa, and the right "which the inhabitants of South-West Africa had thus acquired" was found to have been "maintained" by Article 80 (1) of the Charter. The Court proceeds to say that the "Dispatch and examination of petitions form a part" of the supervision to be exercised by the United Nations, concluding that the Government of the Union of South Africa is obliged to transmit petitions to the General Assembly of the United Nations.

Having concluded that the supervisory functions of the Council of the League of Nations have devolved upon the General Assembly of the United Nations, the Court found it necessary to state a qualification. It said that

> "South-West Africa is still to be considered as a territory held under the Mandate of December 17, 1920. 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."

It was added that "these observations are particularly applicable to annual reports and petitions".

The Court's Opinion was considered at some length by the Fourth Committee at the fifth session of the General Assembly, and on December 13, 1950, the General Assembly resolved to accept the opinion and to urge the Government of the Union of South Africa to take the necessary steps to give effect to it.

The fifth session of the U.N. General Assembly appointed an *ad hoc* Committee on South-West Africa to carry on negotiations with the Union Government regarding the implementation of the Advisory Opinion of the International Court of Justice. The ninth session of the U.N. General Assembly adopted on October 11, 1954, a set of special rules laying down the procedure in dealing with reports and petitions relating to the Territory of South-West Africa. This resolution contains the following rule regarding 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."

On October 11, 1954, the General Assembly adopted the resolution containing Special Rule F. The Assembly, however, rejected the Fourth Committee's recommendation requiring the concurrent vote of the Union Government for the adoption of Special Rule F and also rejected the resolution referring the matter to the International Court of Justice.

Several delegations felt doubts about the legality of the voting procedure adopted by the General Assembly and were in favour of submitting the question to the International Court for its advisory opinion. Consequently the Fourth Committee again recommended to the General Assembly the adoption of the resolution referring the question to the International Court. This resolution was ultimately adopted by the General Assembly on November 23, 1954, and transmitted to the International Court of Justice on December 2, 1954. The General Assembly,

in its resolution of November 23, 1954, requested the Court to give an 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 voting procedure in the General Assembly is regulated by Article 18 of the Charter as follows :

(i) Each Member of the General Assembly shall have one vote.

(ii) Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the Members present and voting. These questions shall include recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 *(c)* of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the Trusteeship System and budgetary questions.

(iii) 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.

As to the voting procedure in the General Assembly, the Charter distinguishes between "important questions" and "other questions". Important questions shall include .... "questions relating to the operation of the Trusteeship System". Such a question is to be decided by a two-thirds majority of the Members present and voting. Rule 78 of the Rules of Procedure interprets the phrase "Members present and voting" to mean "Members casting an affirmative or negative vote. Members who abstain from voting are considered as not voting."

The Court in giving its Advisory Opinion in 1950 said "South-West Africa is still to be considered as a territory held under the Mandate of December 17, 1920. 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." It was added that "these observations are particularly applicable to annual reports and petitions". It must be assumed that while giving this decision the Court was aware of the different voting procedure in the Covenant of the League of Nations (Article 5) and in the Charter of the United Nations (Article 18). The advice contained in the Opinion of the Court that the degree of 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" could be understood to be operative only within the provisions of the Charter. The qualifications and limitations adumbrated in the phrase "as far as possible" must be kept in view. The Court could not be assumed to have intended to qualify the provisions of the Charter with respect to the voting procedure.

The two most important organs of the League of Nations, the Council and the Assembly, were permitted to make use of various methods of voting. Article 5 of the Covenant provides that "Except where otherwise expressly provided in the Covenant, or by the terms of the present Treaty, decisions of any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting...." On matters of importance the unanimous consent of those who are present is generally required, while unimportant decisions are taken on a majority basis. Where unanimity among those present is required it may on some occasions prove to be so obstructive as to prevent action. The history of the League is replete with such instances.

The principle of unanimity is a legacy from the concept of sovereignty. In a world where national sovereignty is so widely stressed, the principle of unanimity as opposed to the more convenient doctrine of a majority decision has a natural appeal. The rule of unanimity has, in fact, been treated by many persons as an inevitable corollary of the theory of sovereignty, which, as it is generally understood, would subject no State to any limitation against its will. Writers on international law have often so defined sovereignty and independence that the requirement of unanimity for any concerted action of a group of nations would follow. While it is entirely natural and logical to assert a connection between sovereignty as a theoretical concept and the rule of unanimity, it is quite another thing to claim that the relationship consistently exists in practice. From a staunch adherence to the principle of absolute sovereignty, States are gradually becoming aware of the need of limitations on their sovereignty. This is absolutely essential for the harmonious working of the family of nations. Also, a gradual adoption of the majority principle as opposed to one of unanimity is seen in the practice of international conferences. The United Nations Charter has not accepted the principle of unanim-

ity except in the Security Council. The results of the rule of unanimity in international conferences have not been reassuring. It has proved to be highly dilatory in some cases, and intolerably obstructive in others.

In view of the above facts it is to be assumed that the Court, when advising the General Assembly in its exercise of supervision over the Territory of South-West Africa to abide by the procedure of the Mandates System as far as possible, did not intend to revive the unanimity principle. This position is further strengthened by the fact that Article 18 of the Charter does not refer to any principle of unanimity. The Court could have intended, in this context, the General Assembly to be governed by the provisions of the Charter only. The General Assembly could not travel outside the Charter. It is bound to act within the Charter. Therefore with respect to the reports and petitions regarding Trust Territories the General Assembly is bound by Article 18 of the Charter. Clause 2 of Article 18 of the Charter says that "questions relating to the operation of the Trusteeship System" is an important question. Consideration of reports and petitions is a question relating to the operation of the Trusteeship System. The fact that South Africa has not yet entered into a trusteeship agreement with the United Nations regarding South-West Africa will not change the above position as far as the General Assembly is concerned.

It is accordingly submitted that Special Rule F of the Rules of Procedure as adopted by the General Assembly resolution of October 11, 1954, is correct.

It is also submitted that the procedure which as nearly as possible approximates the procedure followed by the Council of the League of Nations is the one prescribing two-thirds majority and that on this ground also Special Rule F is to be held to be correct.

In conclusion it is respectfully submitted that the Court may be pleased to answer the questions referred to it in the following manner :

That the following Rule on the Voting Procedure to be followed by the General Assembly is a correct interpretation of the Advisory Opinion of the International Court of Justice of July 11, 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."