

ARTICLE 80

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TEXT OF ARTICLE 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

INTRODUCTORY NOTE

1. As was explained in the Repertory, Article 80 has been referred to in decisions of the General Assembly and an advisory opinion of the International Court of Justice relating to the status of South West Africa and in particular to the question of the responsibilities and functions of the United Nations in relation to that Territory under its present international status.
2. During the period under review the General Assembly and its Committee on South West Africa have exercised supervisory functions with respect to the Territory, and a brief account of their exercise of these functions is given in the General Survey.
3. The question of the scope and Charter basis of these functions has been further discussed in the General Assembly, which has requested two advisory opinions of the International Court of Justice. These discussions and advisory opinions have been dealt with in the Analytical Summary of Practice under the same headings as sections A 1 and 2 and section B of the study of Article 80 in the Repertory. There is no material to report under section A 3 in Article 80 of the Repertory. On the other hand, it has been found necessary to include a new section on the question of the voting procedure in the General Assembly on questions relating to reports and petitions concerning the Territory.
4. It seems appropriate to repeat here the statement made in the Introductory Note to the Repertory study of this Article, namely that in accordance with the general principles applied in the preparation of the Repertory, the treatment of the question of the status of South West Africa in this study does not imply any pronouncement of the question of the Charter authority under which the General Assembly acted in the resolutions relating to that question adopted by it.

I. GENERAL SURVEY

5. As noted in the Repertory under this Article, the General Assembly, by resolution 749 A (VIII) of 28 November 1953, and in implementation of the advisory opinion of the International Court of Justice on the international status of the Territory of South West Africa, established procedures for the exercise of supervisory functions by the United Nations over the administration of South West Africa.
6. To that end the General Assembly established, until such time as an agreement was reached between the United Nations and the Union of South Africa, a Committee on South West Africa, consisting of seven Members, and requested that Committee 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;"

7. It further authorized the Committee to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice regarding the question of South West Africa.

8. In its report to the General Assembly at its ninth session, the Committee on South West Africa noted 1/ that the Government of the Union of South Africa continued to maintain that the:

"Mandate in respect of South West Africa has lapsed and that while they continue to administer the Territory in the spirit of the trust they originally accepted, they have no other international commitments as a result of the demise of the League [of Nations]. Nevertheless, in order to find a solution which would remove this question from the United Nations, they are prepared to enter into an arrangement with the three remaining Allied and Associated Powers, namely France, the United Kingdom and the United States."

9. The Committee also annexed to its report its provisional rules 2/ which it described 3/ as adhering as closely as possible to the rules of procedure of the Permanent Mandates Commission of the League of Nations. The Committee incorporated in its rules certain alternative procedures 4/ which it considered necessary to enable it to discharge its responsibilities under General Assembly resolution 749 A (VIII) in case the Union Government should refuse to transmit annual reports and petitions with respect to South West Africa.

10. The Committee also transmitted to the General Assembly proposed rules of procedure 5/ for the exercise by the latter of its functions in respect of the Territory. As one of the special rules, it submitted a proposed rule F relating to voting procedure by which decisions of the General Assembly on questions relating to reports and petitions concerning South West Africa would be regarded as important questions within the meaning of Article 18 (2) of the Charter. The Committee recommended, however, that the General Assembly should not adopt this rule without the concurring vote of the Union of South Africa as the State most directly concerned, and that if the rule should be approved by the required majority, but without the concurring vote of the Union, the General Assembly should refer the question of its voting procedure to the International Court of Justice for an advisory opinion.

11. The Committee noted that no report on the administration of the Territory had been received from the Union Government. It had, however, examined information and documentation on South West Africa, in particular documents 6/ prepared by the Secretary-General setting forth the information available. On the basis of its examination, it adopted a report 7/ on conditions in South West Africa which it annexed to its general report to the General Assembly.

1/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), para. 10.

2/ Ibid., annex II.

3/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), para. 16.

4/ Ibid., annex II, rules XXII-XXIX.

5/ Ibid., annex IV. See also in this Supplement, under Article 18.

6/ A/AC.73/L.3 and Add.1-Add.3.

7/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex V.

12. Finally, the Committee noted 8/ that the Union Government had continued not to recognize any obligation to transmit petitions to any international body since the demise of the League of Nations. The Committee had therefore decided to examine petitions received by it according to an alternative procedure and submitted a draft resolution 9/ for adoption by the General Assembly concerning the one petition which it had examined. Subsequently in an addendum to its report, the Committee submitted a draft resolution 10/ on another petition.

13. When the report of the Committee on South West Africa was considered at the ninth session of the General Assembly, the General Assembly adopted 11/, on the report 12/ of the Fourth Committee, the special rules governing the procedure for its examination of reports and petitions relating to South West Africa. It, however, at first decided 13/ in effect that it was not necessary to refer the question of its voting procedure to the International Court of Justice. Subsequently the Fourth Committee submitted to the General Assembly a report 14/ containing in addition to draft resolutions on the report of the Committee on South West Africa and on the status of the Territory, draft resolutions on the two petitions which had been reported upon by the Committee on South West Africa. Before voting on these draft resolutions, however, the General Assembly adopted a draft resolution 15/, submitted in plenary meeting by the representatives of Guatemala and Lebanon, by which it decided to seek an advisory opinion of the International Court of Justice 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: 16/

'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?"

14. The General Assembly then decided 17/ to defer voting on the two draft resolutions 18/ relating to petitions until the opinion of the Court had been received, but adopted the other two draft resolutions 19/ submitted by the Fourth Committee.

8/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), para. 39.

9/ *Ibid.*, annex VI (c).

10/ G A (IX), annexes, a.i. 34, A/2666/Add.1, annex III (b).

11/ G A resolution 844 (IX).

12/ G A (IX), annexes, a.i. 34, A/2747.

13/ G A (IX), Plen., 494th mtg., paras. 65-88.

14/ G A (IX), annexes, a.i. 34, A/2747/Add.1.

15/ A/L.178, adopted as G A resolution 904 (IX).

16/ International status of South West Africa, I C J, *Reports* 1950, pp. 128-145.

17/ G A (IX), Plen., 501st mtg., para. 101.

18/ G A (IX), annexes, a.i. 34, A/2747/Add.1, draft resolutions A and B.

19/ *Ibid.*, draft resolutions C and D, adopted as G A resolutions 851 (IX) and 852 (IX).

15. In its advisory opinion handed down on 7 June 1955, the Court was unanimously of the opinion 20/ that the rule on voting procedure adopted by the General Assembly was a correct interpretation of its advisory opinion on the status of the Territory.

16. During the following year, the Committee on South West Africa continued to exercise its functions under terms of reference established by the General Assembly. The attitude of the Union Government having remained unchanged, its report 21/ on conditions in the Territory was based on information and documentation 22/ prepared for it by the Secretary-General. In addition to this report and a number of other annexes, the Committee's report to the General Assembly at its tenth session contained the texts 23/ of three petitions and the draft resolutions submitted by it on these petitions. Finally, in a second supplement 24/ to its report, the Committee noted 25/ that it had received a request for an oral hearing from an inhabitant of South West Africa and invited the General Assembly to arrive at a decision as to the admissibility of oral hearings.

17. At the tenth session, the General Assembly adopted, on the report 26/ of the Fourth Committee, ten resolutions relating to South West Africa. By the first 27/ of these, it accepted and endorsed the advisory opinion of the International Court of Justice on voting procedures on questions relating to reports and petitions concerning the Territory of South West Africa. Five resolutions 28/ related to petitions, including the two which had been deferred from the ninth session. The resolutions 29/ on the status of the Territory and on the report of the Committee on South West Africa were similar to those adopted at the preceding session. On the question of the admissibility of oral hearings by the Committee on South West Africa, the General Assembly decided 30/ to request an advisory opinion of the International Court of Justice on the following question:

"Is it consistent with the advisory opinion 31/ of the International Court of Justice of 11 July 1950 for the Committee on South West Africa, established by General Assembly resolution 749 A (VIII) of 28 November 1953, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa?"

18. Finally, the General Assembly took note 32/ of statements which had been made by the Reverend Michael Scott before the Fourth Committee on behalf of the Native inhabitants of the Territory and transmitted them to the Committee on South West Africa for its study and consideration as appropriate.

20/ South West Africa - Voting Procedure, I C J, Reports 1955, p. 78.

21/ G A (X), Suppl. No. 12 (A/2913), annex II.

22/ A/AC.73/L.7 and Add.1.

23/ G A (X), Suppl. No. 12 (A/2913), annexes VI-VIII.

24/ G A (X), annexes, a.1. 30, A/2913/Add.2.

25/ Ibid., paras. 4 and 5.

26/ Ibid., A/3043.

27/ G A resolution 934 (X).

28/ G A resolutions 935 (X) - 939 (X).

29/ G A resolutions 940 (X) and 941 (X).

30/ G A resolution 942 (X).

31/ International status of South West Africa, I C J, Reports 1950, pp. 128-145.

32/ G A resolution 943 (X).

19. In its advisory opinion delivered on 1 June 1956, the Court, by eight votes to five, was of the opinion ^{33/} that the grant of oral hearings to petitioners by the Committee on South West Africa would be consistent with its opinion on the international status of the Territory. The grant of oral hearings by the Committee was, however, contingent on authorization by the General Assembly, the Court having construed ^{34/} the question submitted to it as meaning whether it was legally open to the General Assembly to authorize the Committee to grant oral hearings. The Court held ^{35/} that it would not be inconsistent with its opinion of 11 July 1950 for the General Assembly to authorize a procedure for the grant of oral hearings by the Committee to petitioners who had already submitted written petitions, provided the General Assembly was satisfied that such a course was necessary for the maintenance of effective international supervision of the administration of the Territory.

20. The Committee on South West Africa on 12 July 1956 adopted its report ^{36/} to the General Assembly at its eleventh session. It noted that the attitude of the Union Government towards the Committee remained unchanged. The Committee submitted a further report ^{37/} on conditions in the Territory, including, as requested by the General Assembly, its recommendations on action which it considered should be taken by the Union Government.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The responsibilities and functions of the United Nations in relation to the administration of South West Africa under its present international status

1. *The question of the obligation of the Union of South Africa to administer the Territory of South West Africa in accordance with the League of Nations Mandate and to submit reports on its administration of the Territory to the United Nations*

21. As was recorded in the Repertory ^{38/}, the advisory opinion of the International Court of Justice on this question was 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 ...".

22. Reference was also made in the Repertory ^{39/} to the extent to which Article 80 (1) was used by the Court in forming that opinion. This opinion of the Court was accepted by the General Assembly and has continued to be the basis for the examination of conditions in the Territory carried out on its behalf by the Committee on South West Africa established by resolution 749 A (VIII).

^{33/} Admissibility of hearings of petitioners by the Committee on South West Africa, I C J, Reports 1956, p. 32.

^{34/} Ibid., p. 26.

^{35/} Ibid., p. 32.

^{36/} G A (XI), Suppl. No. 12 (A/3151).

^{37/} Ibid., annex II.

^{38/} See in the Repertory, vol. IV, under Article 80, para. 9.

^{39/} Ibid., paras. 10 and 20-22.

23. At the same time it was indicated in the Repertory that the Government of the Union of South Africa did not accept the opinion of the Court that the Mandate for the Territory continued to exist or that the United Nations possessed supervisory powers over the Administration of South West Africa.

24. This attitude has been reasserted by the representatives of the Union Government on several occasions during the period covered by the recent study. Thus, in a letter 40/ dated 25 March 1954 from the Permanent Representative of the Union of South Africa, addressed to the Chairman of the Committee on South West Africa, the following statements are made:

"The Union Government maintain that the Mandate in respect of South West Africa has lapsed and that while they continue to administer the Territory in the spirit of the trust they originally accepted, they have no other international commitments as a result of the demise of the League [of Nations]..... The Union Government have never recognized any obligation to submit reports and petitions to any international body since the demise of the League of Nations."

25. The Committee on South West Africa had therefore found it necessary 41/ to report on conditions in the Territory on the basis of its:

"[examination], within the scope of the Questionnaire adopted by the Permanent Mandates Commission of the League of Nations in 1926, [of] such information and documentation as ... [was] available in respect of the Territory.....".

26. In General Assembly resolution 851 (IX) on the report of the Committee on South West Africa, after recalling this fact, as well as noting with satisfaction that the representative of the Union of South Africa had participated in the substantive discussion in the Fourth Committee of the Committee's report, the General Assembly invited the Government of the Union of South Africa to co-operate with the Committee on South West Africa and, in particular, to submit to the Committee reports on its administration of the Territory of South West Africa and to assist the Committee on South West Africa in the examination of such reports or such information and documentation as may be available to that Committee.

27. At the following session of the General Assembly, a further resolution 42/ contained a similar invitation to the Union Government.

2. *The question of the right of petition by the people of South West Africa*

28. In its advisory opinion on the international status of the Territory, the International Court of Justice stated 43/ that as part of the international supervision of the administration of the Territory:

"petitions are to be submitted by that Government [the Union of South Africa] to the General Assembly of the United Nations, which is legally qualified to deal with them".

40/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex I (c).

41/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex V, paras. 1 and 2.

42/ G A resolution 941 (X).

43/ International status of South West Africa, I C J, Reports 1950, pp. 137 and 138.

The Committee on South West Africa had, in accordance with that opinion, been requested 44/ to:

- "examine as far as possible in accordance with the procedure of the former Mandates System petitions which may be submitted to the Committee or the Secretary-General".

29. The rules of procedure of the Permanent Mandates Commission had provided that all petitions from the inhabitants of the Mandated Territories should be transmitted to it through the Mandatory Power, together with such comments as the latter might think desirable, and that any such petitions received by the United Nations directly or through another channel should be returned to the signatories with the request that they be resubmitted through the Mandatory Power. The Committee on South West Africa adopted a similar rule 45/.

30. To enable it to discharge its responsibilities if the Union Government should refuse to transmit petitions with respect to the Territory, however, the Committee adopted an alternative procedure 46/. Under the alternative procedure, signatories of petitions received by the United Nations from inhabitants of the Territory were to be asked to submit them through the Union Government, to which copies of the petitions and of the communications to the signatories were also to be transmitted. If, after a period of two months, a petition had not been received through the Union Government, the petition would be regarded as validly received.

31. The other rules adopted by the Committee follow those of the Permanent Mandates Commission, with the addition of an alternative rule 47/ that, in the absence of the co-operation of the Union Government, petitions from sources other than the inhabitants of the Territory should be regarded immediately as validly received (instead of the Committee waiting for a maximum period of six months, for the Mandatory Power to submit its comments).

32. The conclusions of the Committee with regard to the petitions examined by it are submitted to the General Assembly, which "shall, as a rule, be guided by the conclusions of the Committee on South West Africa and shall base its own conclusions, as far as possible, on the conclusions of the Committee". In practice, the conclusions of the Committee have been drawn up, and annexed to its reports, in the form of draft resolutions 48/ to be adopted by the General Assembly. In its consideration 49/ of such draft resolutions, the Fourth Committee has so far adopted no amendments of substance to the draft resolutions on petitions proposed by the

44/ G A resolution 749 A (VIII).

45/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex II, rule VIII.

46/ Ibid., rule XXVI, replacing rule VIII.

47/ Ibid., rule XXVII, replacing rule XII.

48/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex VI (c); G A (IX), annexes, a.i. 34, A/2666/Add.1, annex III (b); G A (X), Suppl. No. 12 (A/2913), annexes VI-VIII.

49/ G A (IX), 4th Com., 425th mtg., para. 78; G A (X), 4th Com., 497th mtg., paras. 28, 33 and 35.

Committee on South West Africa. They were adopted 50/, without amendment except in one instance 51/, as General Assembly resolutions 52/.

33. The Permanent Mandates Commission had no provision in its rules for oral presentations of petitions concerning mandated territories. The Committee on South West Africa, recognizing that its terms of reference required it to examine petitions as far as possible in accordance with the procedure of the former Mandates System, adopted a transitional rule of procedure 53/ to the effect that it would refer any requests for oral hearings which it might receive to the General Assembly for a decision concerning the admissibility of oral hearings. Having received such a request from an inhabitant of the Territory not then residing in the Territory, it accordingly referred 54/ it to the General Assembly at the tenth session.

34. When the question was discussed 55/ in the Fourth Committee, several representatives expressed the view that to grant hearings to petitioners would not be in accordance with the statement in the advisory opinion of the Court that the procedures applied in respect of South West Africa should conform as closely as possible to those followed by the League of Nations. Other representatives pointed out that if oral hearings were not provided for in the Covenant of the League or in the rules of procedure of the Permanent Mandates Commission, neither had the right of petition been expressly laid down. In present circumstances, the Council of the League and the Permanent Mandates Commission might have decided differently.

35. A draft resolution 56/ was submitted by the representatives of Mexico, Pakistan, Syria, Thailand and the United States of America whereby the General Assembly would (1) decide that the oral hearing of petitioners by the Committee on South West Africa would not be in accordance with the procedure of the former Mandates System and was therefore not admissible; (2) consider that the above decision was without prejudice to the right of members of the Committee to hear persons who applied to them for an interview in accordance with the practice of the Permanent Mandates Commission, as referred to in the minutes of the fourth meeting of the seventh session of the Commission; and (3) authorize the Committee, when it received requests for oral hearings from petitioners, to inform such persons that they might present their views to the Committee in writing. After being revised 57/ to meet objections, the draft resolution was withdrawn 58/ because it did not apparently completely meet the wishes of the majority of the Committee.

36. In its place, the Committee adopted 59/, by 23 votes to 5, with 21 abstentions, a draft resolution subsequently adopted 60/ without further amendment by the General Assembly by which it requested the International Court of Justice to give an advisory opinion on the following question:

50/ G A (X), Plen., 550th mtg., paras. 134-138.

51/ Draft resolution V submitted by the Fourth Committee (G A (X), annexes, a.i. 30, A/3043), was adopted, after amendment by the General Assembly, as G A resolution 938 (X).

52/ G A resolutions 935 (X) - 939 (X).

53/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex II, section D.

54/ G A (X), annexes, a.i. 30, A/2913/Add.2, paras. 4 and 5.

55/ For texts of relevant statements, see G A (X), 4th Com., 500th and 504th mtgs.

56/ G A (X), annexes, a.i. 30, p. 9, A/3043, para. 20 (A/C.4/L.413).

57/ Ibid., para. 21, A/C.4/L.413/Rev.1.

58/ G A (X), 4th Com., 505th mtg., para. 1.

59/ Ibid., 506th mtg., para. 38.

60/ G A resolution 942 (X).

"Is it consistent with the advisory opinion 61/ of the International Court of Justice of 11 July 1950 for the Committee on South West Africa, established by General Assembly resolution 749 A (VIII) of 28 November 1953, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa?"

37. In its advisory opinion of 1 June 1956, the Court stated the opinion 62/, by eight votes to five, that the grant of oral hearings to petitioners by the Committee on South West Africa would be consistent with its advisory opinion of 11 July 1950 on the international status of the Territory. The grant of oral hearings by the Committee was, however, contingent on authorization by the General Assembly, the Court having construed 63/ the question submitted to it as asking whether it was legally open to the General Assembly to authorize the Committee to grant oral hearings. The Court held 64/ that it would not be inconsistent with its opinion of 11 July 1950 for the General Assembly to authorize a procedure for the grant of oral hearings by the Committee to petitioners who had already submitted written petitions, provided the General Assembly was satisfied that such a course was necessary for the maintenance of effective international supervision of the administration of the Territory.

38. In the reasons given 65/ for its opinion, the Court recalled the observation in its 1950 opinion that:

"The purpose [of Article 80 (1) of the Charter] must have been to provide a real protection for those rights; but no such rights of the peoples could be effectively safeguarded without international supervision ...".

The Court held that the Council of the League of Nations, although it had not done so, had been competent to authorize the Permanent Mandates Commission to grant oral hearings to petitioners, had it seen fit to do so. The hearing of petitioners would not impose an additional obligation on the Mandatory Power. The Court had expressed the opinion in 1950 that 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".

The expression "as far as possible" was designed to allow for adjustments and modifications necessitated by legal and practical considerations. The refusal of the Mandatory to co-operate with the General Assembly constituted such a situation and justified the granting of oral hearings.

39. The five Judges who formulated a dissenting opinion 66/ laid stress on the statement contained in the 1950 opinion that the degree of supervision to be exercised by the General Assembly should not exceed that which applied under the Mandate System. In their opinion the functions of the General Assembly were in part limited to those which the Council of the League of Nations in fact exercised before its disappearance.

61/ International status of South West Africa, I C J Reports 1950, pp. 128-145.

62/ Admissibility of hearings of petitioners by the Committee on South West Africa, I C J, Reports 1956, p. 32.

63/ Ibid., p. 26.

64/ Ibid., p. 32.

65/ Ibid., pp. 26-32.

66/ Admissibility of hearings of petitioners by the Committee on South West Africa, I C J, Reports 1956, pp. 60-71.

The Judges raised the question of the General Assembly's authorizing the hearing of petitioners, in view of the refusal of the Union of South Africa to submit to supervision by the United Nations, even if by so doing it should depart from the 1950 opinion, but considered that this was a different question from that which had been put to the Court.

40. During the same session when it was considering the question of authorizing the Committee on South West Africa to grant oral hearings to petitioners, the Fourth Committee had before it the question whether it should itself grant a further hearing requested 67/ by the Rev. Michael Scott in order to make a statement on conditions in South West Africa. Reference is made in the Repertory 68/ to a favourable decision taken by the Fourth Committee during the fourth session of the General Assembly on an earlier request for a hearing and to the arguments advanced at that time, which was before the 1950 advisory opinion of the Court. A hearing had also been granted 69/ to Mr. Scott by the Fourth Committee during the sixth session of the General Assembly.

41. Delegations supporting the right of the Fourth Committee to grant hearings on South West Africa contended 70/ that the draft resolution approved (see paragraph 36 above) by the Committee for submission of the question of admissibility of hearings on South West Africa to the International Court of Justice for an advisory opinion was not intended to restrict the Fourth Committee's right to hear petitioners from the Territory. Delegations opposing the request expressed, in addition to practical factors, the view that the question of admissibility of oral hearings concerning South West Africa was essentially the same as regards both the Fourth Committee and the Committee on South West Africa. It seemed preferable therefore to wait until the Court had delivered its advisory opinion on that question.

42. The Fourth Committee decided by 29 votes to 11, with 10 abstentions to grant the request for a hearing. Subsequently the General Assembly adopted, on the recommendation of the Committee, a resolution 71/ by which it took note of the statement of the Rev. Michael Scott and transmitted it to the Committee on South West Africa for its study and consideration as appropriate.

3. The question of the voting procedure in the General Assembly on questions relating to reports and petitions concerning South West Africa

43. In its report to the General Assembly at its ninth session, the Committee on South West Africa proposed, 72/ as one of the special rules of procedure for the examination by the General Assembly of reports and petitions relating to the Territory, that decisions of the General Assembly on such questions should be regarded as important questions within the meaning of Article 18 (2) of the Charter. It proposed that this rule should be adopted, subject to the concurring vote of the Union of South Africa as the State most directly concerned, and recommended to the General Assembly that if the rule should be approved by the required majority, but without the concurring vote of the Union, that the General Assembly should submit to the International Court of Justice for an advisory opinion the following questions:

67/ A/C.4/313 and Add.1.

68/ See in the Repertory, vol. IV, under Article 80, para. 30.

69/ G A (VI), 4th Com., 204th mtg., para. 25.

70/ For texts of relevant statements, see G A (X), 4th Com., 507th mtg.

71/ G A resolution 943 (X).

72/ G A (IX), Suppl. No. 14 (A/2666 and Corr.1), annex IV.

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

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

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

44. In presenting the report to the Fourth Committee, the Rapporteur of the Committee on South West Africa stated 73/ that:

"the Union of South Africa had stated on several occasions that in applying the Court's advisory opinion, the General Assembly would have to make decisions relating to South West Africa subject to the principle of unanimity which had applied in the Council and Assembly of the League of Nations. On the other hand, most of the members of the Committee on South West Africa, including himself, had considered that the voting procedure recommended in special Rule F was in complete conformity with the Court's advisory opinion. In giving its advisory opinion and in stating that the supervisory functions formerly exercised by the Council of the League should now be exercised by the United Nations, the Court must have been fully aware of the voting procedure laid down in the Charter of the United Nations. However, in order to dispel any doubts which might arise, the Committee on South West Africa had decided to recommend that if special Rule F was adopted without the concurring vote of the Union of South Africa, as the State most directly concerned, the matter should be referred to the International Court of Justice for an advisory opinion."

45. The representative of the Union of South Africa, referring to the principle of unanimity upheld in the Covenant of the League, noted 74/ further that a Member of the League not represented in the Council of the League might be invited to send a representative to sit as a member (and have equal voting rights with other members) during the consideration by the Council of any meetings specially affecting its interests. The application of special rule F would deprive the Union of South Africa of the right which it had possessed under the League system to prevent a decision which might be unsatisfactory to it and the General Assembly would therefore be exercising a greater degree of supervision than the League Council. His Government could not therefore agree to special rule F.

73/ G A (IX), 4th Com., 399th mtg., para. 13.

74/ Ibid., paras. 22-24.

46. In the ensuing debate 75/ several delegations expressed the conviction that the Court in declaring that the supervisory functions exercised by the League should now be exercised by the United Nations had done so in full recognition that the United Nations would act in conformity with the voting procedure prescribed by the Charter. They were, however, prepared, in a spirit of conciliation, to support a request to the International Court of Justice.

47. Other delegations considered that the matter had already been clearly decided by the previous opinion of the International Court of Justice and could not therefore support the request for another opinion.

48. The proposals put forward 76/ by the Fourth Committee on voting procedure were the same in substance as the proposals of the Committee on South West Africa. The adoption of special rule F was to be "subject to the acceptance by the Union of South Africa, as the Mandatory for the Territory of South West Africa" and the Court's opinion as to the compatibility of the rule was to be sought, if the Union did not accept.

49. When the proposals of the Committee were examined 77/ by the General Assembly, a separate vote was called for on the phrase "subject to acceptance ... South West Africa". The result of the vote was 13 in favour, 8 against, with 29 abstentions. The phrase was not therefore adopted, having failed to obtain the necessary two-thirds majority. With the subsequent adoption of special rule F and other rules without qualification, the Chairman ruled, and his ruling was upheld, that it was not necessary to vote on the draft resolution by which an advisory opinion should be sought. Subsequently, however, reservations were expressed 78/ in the Fourth Committee by certain delegations as to the desirability of taking decisions on reports or petitions concerning South West Africa without seeking an opinion on voting procedure from the Court. The Committee decided 79/ by a tie-vote not to recommend to the General Assembly to reconsider its previous decision. When, however, the General Assembly examined 80/ part II of the report of the Fourth Committee 81/ on the question of South West Africa, it gave preference to a draft resolution 82/ submitted by the representatives of Guatemala and Lebanon which, after citing the advisory opinion of 1950 and recalling other pertinent decisions, contains an operative paragraph by which it requested 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? 83/

"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.'

75/ For texts of relevant statements, see G A (IX), 4th Com., 339th-402nd mtgs,

76/ G A (IX), annexes, a.i. 34, A/2747, para. 21.

77/ G A (IX), Plen., 494th mtg.

78/ For texts of relevant statements, see G A (IX), 4th Com., 409th mtg., New Zealand, paras. 8-13; Norway, paras. 5 and 6; Thailand, para. 15; United States, paras. 3 and 4.

79/ G A (IX), 4th Com., 425th mtg., para. 66.

80/ G A (IX), Plen., 501st mtg.

81/ G A (IX), annexes, a.i. 34, A/2747/Add.1.

82/ A/L.178.

83/ International status of South West Africa, I C J, Reports 1950, pp. 128-145.

"(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?"

50. The draft resolution was adopted by 25 votes to 11, with 21 abstentions and became resolution 904 (IX).

51. In the advisory opinion delivered on 7 June 1955, the Court explained 84/ the interpretation to be given to the passage contained in its 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, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations."

The Court unanimously held 85/ that the rule on voting procedure was a correct interpretation of its previous opinion.

52. In the Court's view 86/, the words "degree of supervision" related to the extent of the substantive supervision thus exercised and not to the manner in which the collective will of the General Assembly should be expressed. They comprised:

"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 ... and otherwise exercising normal and customary supervisory functions."

53. Referring to the statement 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 held 87/ that the voting system of the General Assembly had not been in contemplation when it made that statement. The voting system of an organ is prescribed in its constitution, in this case in Article 18 of the Charter, and could not be changed without a constitutional amendment. Recalling that in its previous opinion it had stated that:

"the competence of the General Assembly of the United Nations ... to exercise ... supervision [over the administration of South West Africa] is derived from the provisions of Article 10 of the Charter",

the Court held 88/ that it therefore followed 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 Article 18 of the Charter. The Court went on to state 89/:

84/ South West Africa - Voting Procedure, I C J, Reports 1955, pp. 72-77.

85/ Ibid., p. 78.

86/ Ibid., p. 72.

87/ Ibid., p. 75.

88/ South West Africa - Voting Procedure, I C J, Reports 1956, p. 76.

89/ Ibid., pp. 76 and 77.

"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."

54. The advisory opinion of the International Court of Justice on voting procedure was accepted and endorsed by the General Assembly in resolution 934 (X) of 3 December 1955. The resolution was adopted by 54 votes to none, with 4 abstentions.

55. When this proposal was adopted by the Fourth Committee, the representative of the Union of South Africa stated 90/ that he had voted against it because the recent advisory opinion was merely an interpretation of the original opinion, whose validity his Government could not accept.

4. *The question of the obligation of the Union of South Africa to accept the compulsory jurisdiction of the International Court of Justice*

56. There are no decisions requiring treatment under this subsection.

B. The question of the consent of the United Nations to the modification of the international status of South West Africa

57. It was noted in the Repertory 91/ that the International Court of Justice, as part of its advisory opinion on the international status of the Territory, held 92/:

"that the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South-West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations".

58. This opinion, which has been accepted 93/ by the General Assembly, was recited in the preamble of its resolution 852 (IX), on the status of the Territory, by which the General Assembly reasserted that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System. A similar resolution - 940 (X) - was adopted at the tenth session.

59. During the same session a draft resolution 94/ was proposed by the representatives of Haiti, Lebanon, Liberia, Pakistan and Saudi Arabia by which the General Assembly would: (1) call upon the Government of the Union of South Africa not to take any action tending to modify the status of South West Africa without prior consultation and consent of the United Nations; (2) consider further that the proper discharge of the sacred trust of civilization for the well-being and development of the peoples of the Territory required that they be fully and freely consulted on any proposal for a modification of the status of the Territory; and (3) request the Secretary-General to

90/ G A (X), 4th Com., 491st mtg., para. 33.

91/ See in the Repertory, vol. IV, under Article 80, para. 37.

92/ International status of South West Africa, I C J, Reports 1950, p. 144.

93/ G A resolution 449 A (V).

94/ G A (X), annexes, a.i. 30, p. 9, A/3043, para. 12 (A/C.4/L.410).

approach the Government of the Union to find out whether it had any such proposal and to consider its suggestions as to the manner in which the peoples concerned might be consulted, and to report to the Assembly on the results of his talks with the Government of the Union.

60. The representative of the Union of South Africa said 95/ that the sponsors of the proposal had apparently submitted it in the mistaken belief that the Union of South Africa had incorporated South West Africa. His Government had never felt that its incorporation would be contrary to the spirit of the Mandate, but it had given no consideration to incorporation.

61. The draft resolution was later withdrawn 96/.

62. In its report to the General Assembly at its eleventh session, the Committee on South West Africa reproduced statements made in the Union House of Assembly by the Prime Minister and the Minister for External Affairs and a motion by the Legislative Assembly for South West Africa, which in its opinion 97/ implied that the integration of South West Africa with the Union might have exceeded the limits imposed by the provisions of the Mandate. Drawing particular attention to the representation of South West Africa in the Union Parliament, the Committee recommended that the General Assembly should consider the desirability of clarifying the legal effects of that representation in the light of circumstances at present surrounding it, by seeking legal advice, either from a joint Trusteeship and Legal Committee or by referring the matter, for an advisory opinion, to the International Court of Justice.

95/ G A (X), 4th Com., 498th mtg., para. 40.

96/ Ibid., paras. 47-52.

97/ G A (XI), Suppl. No. 12 (A/3151), annex II, paras. 5-21.