

ARTICLE 89

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TEXT OF ARTICLE 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

INTRODUCTORY NOTE

1. Article 89 establishes the voting procedure of the Trusteeship Council and stipulates the majority required for the adoption of decisions in the Trusteeship Council. The present study deals with the practice which has evolved through the decisions of the Trusteeship Council, and with the application and interpretation of the provisions of this Article.
2. The questions concerning the application and interpretation of the provisions of Article 89 are dealt with in the Analytical Summary of Practice which is divided into eleven sections. Each section deals with the significant implications of one of these questions.
3. Instances of the routine application of Article 89 are included in the General Survey because, although they shed no particular light on the interpretation of the relevant provisions, they indicate the actual practice as developed in the Trusteeship Council.
4. There was lengthy discussion of the Article when the Trusteeship Council considered the adoption of its rules of procedure. Debate on the subject has also developed occasionally when the effect of the absence of one of its members raised an acute problem, or when a vote was equally divided. These debates shed light primarily on considerations involving the application and interpretation of the provisions of Article 89 (2). This material has been included in the relevant sections, especially section H, entitled "The question of equally divided votes and the absence of a majority".

I. GENERAL SURVEY

5. The procedure for the application of Article 89 is laid down under rules 36 to 43 in section VII, entitled "Voting", of the rules of procedure of the Trusteeship Council. ^{1/}
6. Rule 36 reproduces verbatim the text of Article 89 (1). Under this rule, each member of the Trusteeship Council is entitled to one vote.
7. Rule 37 lays down provisions regarding the majority required for the taking of decisions and governs the counting of votes. Its first sentence reproduces the

^{1/} United Nations Publications, Sales No.: 1952.I.19.

wording of Article 89 (2) with the addition of the words "or recommendations". These words had originally been included in a draft rule submitted by a delegation to the Preparatory Commission. ^{2/} Although the term "recommendations" does not appear in the relevant Articles of the Charter concerning the functions and powers of the United Nations with respect to the International Trusteeship System, the addition of these two words did not become a subject of discussion in the Trusteeship Council.

8. Rule 38 deals with the question of equally divided votes in a vote other than for an election. If a vote is equally divided, the rule provides for a second vote at the next meeting or following a brief recess. The interval of "a brief recess" was designed to avoid the postponement of the second vote until the next session, if the equal division of votes occurred at the last meeting of a session. ^{3/} In a great number of cases, second votes have, in fact, been taken after a brief recess. Rule 38 also provides that a proposal "shall be deemed to be lost" unless there is a majority in its favour at the second vote.

9. Rules 39 and 40 deal with methods and conduct of voting. These rules provide for votes by show of hands as the normal method, with votes by roll-call only if requested by a member. In the latter case, each representative shall reply "Yes", "No", or "Abstention", and the result of the vote is to be inserted in the record.

10. Rules 41 to 43 concern elections. The President and Vice-President are elected by secret and separate ballot. The same method may be used in the election to any other office or function of the Council, if the Council so decides. At the eighth session, secret ballots were taken twice ^{4/} in elections to a number of places on a subsidiary organ.

11. Under rule 42, the President decides by drawing lots between the candidates, if neither of them has obtained the required majority in the second ballot. This provision was applied ^{5/} once, in the election of the President at the fourteenth session. Since the votes for two candidates were equally divided, the Acting President drew the name of one of the two candidates, who was thus elected President.

12. In practice, many decisions in the Trusteeship Council have been taken without a formal vote. In such cases, the President announced the decision in such phrases as "It is so decided", "It is so agreed", or "There being no objection, the draft resolution is adopted". ^{6/}

13. The rules of procedure provide that certain decisions may be taken when the Council is not in session. These decisions can be taken by consulting the members of the Council, and relate to such matters as the holding of special sessions, the changing of the date of a regular session, or the designation of a place of meeting other than the Headquarters of the United Nations. Such decisions can be taken at the request of a majority of its members or of any member of the Council with the concurrence of a majority of the members. The relevant rules of procedure are rules 2, 3, 5 and 6.

^{2/} PC/EX/TC/13, p. 7.

^{3/} T C (I), 11th mtg., p. 252.

^{4/} T C (VIII), 334th mtg., para. 13; and 341st mtg., para. 26.

^{5/} T C (XIV), 526th mtg., para. 8.

^{6/} T C (VII), 2nd mtg., para. 3; and 19th mtg., paras. 47 and 107.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the exercise by the President of the right to vote

14. In the course of the discussion 7/ of the provisional rules of procedure of the Trusteeship Council by the Executive Committee of the Preparatory Commission of the United Nations, it was proposed, in connexion with the question of the voting power of the President, that, when a vote was equally divided, the President should have a casting vote. The proposal, however, was not included in the provisional rules of procedure of the Trusteeship Council, it having been questioned whether such a provision would be in conformity with the intentions of Article 86.

15. At the first session of the Trusteeship Council, the question was raised 8/ whether the President was to be entitled to vote as the representative of his Government or whether he was to have no vote and was to regard himself as an impartial presiding officer; full information on the voting power of the President was also requested.

16. At a subsequent meeting, the President of the Trusteeship Council appointed 9/ his alternate to take his place as the representative of his Government, and declared that, by so doing, he could be more impartial, and could give his full attention to his duties as presiding officer.

17. Under rule 22 of the rules of procedure of the Council, 10/ the President may appoint one of his alternates or advisers to participate in the proceedings and to vote in the Trusteeship Council. It is also provided that, in such a case, the President shall not exercise his right to vote.

18. At the second session, the President of the Council did not, at first, appoint an alternate to act as representative of his Government and therefore exercised his right to vote. Later, an alternate was appointed to participate in the proceedings and to vote. Since then, it has become the normal practice of the Trusteeship Council that the representative of a member, upon being elected President, serves exclusively in that capacity for the duration of his term as President, an alternate being appointed to participate fully in the proceedings and to exercise the right to vote. There have been occasions on which the President did not avail himself of his privilege under rule 22 of the rules of procedure. Thus, at the eleventh session the President announced 11/ that he would not, as a rule, take part in the voting but that if he wished to do so as an exceptional measure, he would announce his intention to the Council. He voted on four occasions during the session.

B. The question of the meaning of the term "decisions" 12/

19. No definition or interpretation of the term "decisions" is given in the rules of procedure of the Trusteeship Council, nor has it become a subject of discussion in the Council. However, the Secretary-General, at the request of the General Assembly,

7/ PC/EX/TC/13, p.7.

8/ T C (I), 1st mtg., p.6.

9/ T C (I), 2nd mtg., p. 16.

10/ United Nations Publications, Sales No.: 1952.I.19.

11/ T C (XI), 414th mtg., para. 110.

12/ See in this Repertory under Article 18.

under resolution 362 (IV), prepared a report 13/ in which the term "decisions" was interpreted to cover all types of action which the General Assembly might take. It was stated in the report that the remarks with respect to the term "decisions" applied similarly to decisions of the Trusteeship Council.

C. The question of the quorum

20. Rule 30 of the provisional rules of procedure recommended by the Preparatory Commission stated that "At any meeting of the Council, two thirds of the members shall constitute a quorum". 14/

21. In the discussion 15/ on the adoption of this rule at the first session of the Trusteeship Council, it was suggested that the quorum proposed by the Preparatory Commission was a large one, and that a simple majority would be preferable. On the other hand, it was feared that, if a simple majority were to constitute a quorum, decisions could be taken by a very small number of votes and the general trend of decisions might be affected adversely. It was pointed out, on the other hand, that since alternates could replace representatives when necessary, it would not be difficult to obtain a quorum of two thirds of the members, and that decisions of the Trusteeship Council should be adopted by the largest possible number of votes in order to provide the Council with adequate authority in its work.

22. Under the relevant rule, rule 50 of the rules of procedure, 16/ as adopted, two thirds of the members constitute a quorum.

D. The question of the absence and withdrawal of members from meetings of the Council

23. One member of the Council was not represented at the first, second and sixth sessions of the Council. Its representative withdrew from the Trusteeship Council at the first meeting of the seventh session, and was absent for the remainder of that session.

24. At the sixth session of the Council, it was proposed 17/ that the second vote on a draft resolution be deferred until the next session, at which, it was hoped, all members would be represented. There was objection to this proposal on the ground that the work of the Council might be delayed indefinitely if the argument implied in the remark about the absence of one member was followed to its logical conclusion. The Council rejected by 6 votes to 5 a proposal to suspend the application of rule 38 of the rules of procedure, which relates to equally divided votes, so far as the draft resolution in question was concerned.

25. At the seventh session, the representative of a member, announcing his withdrawal from the Trusteeship Council, stated 18/ that his Government would not recognize the legality of any decisions or recommendations adopted by the Council in the presence

13/ G A (V), Annexes, a.i. 49, p. 1, A/1356.

14/ A proposal to the effect that representatives of members not administering Trust Territories should constitute one half of this quorum was not accepted by the Preparatory Commission (PC/EX/TC/18, p. 3).

15/ T C (I), 12th mtg., pp. 281-283.

16/ United Nations Publications, Sales No.: 1952.I.19.

17/ T C (VI), 76th mtg., paras. 73, 75 and 92.

18/ T C (VII), 1st mtg., para. 21.

and with the participation of the then representative of another member and would not consider itself bound by those decisions and recommendations.

26. The Acting President stated 19/ that the work of the Trusteeship Council was not invalidated by the absence of any one of its members. He recalled that one of the members of the Council had absented itself from the first and second sessions, yet the validity of the work of the Council had not been disputed. Similarly, at the preceding session, one of the members of the Council had not taken part in the discussions; the Council had nevertheless continued its work and the decisions which it had taken were perfectly valid. The same would be true in the future. That statement was not challenged by any member of the Council, which included 20/ the ruling in its report to the General Assembly.

E. The question of the meaning of the expression "members present and voting"

27. Article 89 refers to decisions of the Trusteeship Council taken by "members present and voting". It does not explicitly define the phrase "members present and voting" to mean members casting an affirmative or negative vote. Nevertheless, in actual practice, the majority required for the adoption of a decision has been calculated on the basis of the total number of affirmative and negative votes cast, that is to say, without reference to the number of abstentions.

28. At the first session of the Council, it was pointed out 21/ that, owing to the absence of one of the members of the Council, the balance of membership had been upset and the administering members were in the majority. The opinion was expressed that, in respect of important decisions, the Council should consider the possibility of requiring a majority calculated on the basis of its full membership, including the absentee. On the other hand, it was argued that Article 89 was definite and without exception, and that the Council had no power to decide that certain questions should be decided by a two thirds majority. At that time there were ten members. Therefore, six constituted both a simple majority of the full membership of ten and two thirds of the nine members actually present.

29. Also at the first session of the Council, there was considerable debate 22/ on a proposal submitted 23/ by the Secretariat that rule 19 of the provisional rules of procedure of the Council transmitted by the Preparatory Commission include a provision that abstentions and invalid votes should not be counted as votes cast. It was pointed out by the Secretariat that the best interpretation of an abstention was to consider it as an intention to leave the decision to those who cast either a positive or a negative vote, and that to add the abstentions to the total of votes cast would, in fact, result in counting them as negative votes. It was also stated that invalid votes should be considered void and not be counted.

30. The opinion was expressed 24/ by some members that it was not necessary to adopt any provision in the rule with regard to abstentions and invalid votes, and that the Trusteeship Council could follow the practice of the General Assembly as it gradually became established. On the other hand, it was argued that a member which abstained

19/ Ibid., para. 27.

20/ T C (VII), 30th mtg., para. 83.

21/ T C (I), 11th mtg., pp. 243, 247 and 248.

22/ Ibid., pp. 240-251

23/ T C (I), Suppl., annex 2 b (T/4), pp. 39 and 40.

24/ T C (I), 11th mtg., pp. 242, 243 and 244.

should not be in the same category as a member which was absent. It was, however, objected that abstaining members were present only, but not voting. The abstentions, therefore, should not be taken into account in determining the decision.

31. It was decided 25/ by 5 votes to 3 to add to rule 19 of the provisional rules of procedure the provision proposed by the Secretariat under which abstentions should not be counted as votes.

32. Objection was also raised 26/ to the proposal of the Secretariat that invalid votes should not be counted. The attention of the Council was called to the fact that, in the General Assembly, Members which cast invalid votes were considered as having participated in the vote. The opinion was advanced that there should be an opportunity for the correction of a technically invalid vote. On the other hand, it was pointed out that an invalid vote was not a vote; the member had attempted to vote but had not succeeded in doing so.

33. The Council did not adopt 27/ the proposal of the Secretariat that a provision under which invalid votes should not be counted be added to rule 19 of the provisional rules of procedure, 4 votes having been cast in favour of the proposal and 4 against.

34. In view of the divergent decisions taken on the proposals regarding abstentions and invalid votes, the question was raised 28/ whether blank ballot-papers should be treated as abstentions and not counted, or as invalid and counted in the total number of votes. No decision was reached at that time.

35. At the fourteenth session of the Council, in the election of the President, two votes were taken by secret ballot. On the first ballot the votes were equally divided. When a second vote was taken, the result was the same. Both votes were recorded as follows: 29/

Number of ballot-papers.....	12	Required majority.....	5
Number of abstentions.....	4	Number of votes obtained:	
Number of invalid ballots...none		Mr. Asha (Syria)	4
Number of valid ballots.....	12	Mr. Urquía (El Salvador)	4

As thus recorded, blank ballots were treated as both abstentions and valid ballots. However, they were not counted in the total number of valid votes in the determination of the majority required.

F. The question of non-participation in the vote

36. On the occasion of certain votes in the Council, one or more representatives present did not participate in a vote. Such non-participation in the vote has not, in every case, been noted in the record, or it has been shown in the record without any explanation. In one instance, the result of a vote was recorded 30/ as having been 4 votes in favour and 3 against, with 1 abstention and 1 member not voting. Another

25/ Ibid., p. 249.

26/ Ibid., pp. 241-246.

27/ Ibid., p. 250.

28/ Ibid.

29/ T C (XIV), 526th mtg., para. 8.

30/ T C (I), 1st mtg., p. 13.

result recorded 31/ showed 5 votes in favour and 1 against, with 1 abstention. On the latter occasion there were twelve members present. However, there was no explanation of the five missing votes.

37. On the other hand, explanation of non-participation in the vote has not infrequently been given, either before or after the vote was taken. On one occasion, 32/ the representative of one member did not take part in the vote on the deletion of two paragraphs from his minority statement and stated that he wished to record his protest. On two other occasions, 33/ the representative of the same member did not vote on draft resolutions sponsored by the representative of a particular member. At the eighth session of the Council, a representative explained 34/ that he had not voted because the text of a report which he considered complicated was not available in French and he did not, thus, fully understand it. At the fourteenth session, a representative stated 35/ that he had not voted because the French text of a report to be adopted had not been available.

G. The question of abstentions in relation to methods of voting:
show of hands and roll-call

38. There is no provision in the rules of procedure of the Council for the announcement and recording of the number of abstentions in a vote by show of hands. During the discussion 36/ on the adoption of the rules of procedure at the first session, the view was expressed that abstention might take the form either of a specific announcement or of failure to cast a vote. It was argued, on the one hand, that it was not good practice to call for a show of hands on abstentions, for there could only be those who voted for and those who voted against; the remainder must be those who abstained. However, if a member wished to have an abstention recorded, he would be entitled to do so. On the other hand, it was stated that it was not clear as to what exactly constituted an abstention. Two alternatives were seen: representatives considered to have abstained might be either all those who had not voted for or against, or only those who had raised their hand when abstentions had been called for during the vote.

39. In practice, abstentions have not normally been called for in a vote by show of hands at the first five sessions of the Council. Beginning with the sixth session, abstentions have been regularly called for and their numbers recorded.

40. The phrase "before a vote is taken" in rule 39 was adopted 37/ at the first session of the Council as an amendment to the provisional rule in order to avoid a second vote if, for certain reasons, a member should request a roll-call only after the vote had been taken by another method.

41. When a representative has abstained, he has been considered to have participated in the roll-call. 38/ It may be added that, at the eighth session, the record 39/ of

31/ T C (XII), 462nd mtg., para. 15.

32/ T C (III), 43rd mtg., p. 565.

33/ T C (X), 388th mtg., paras. 12-14, and T C (XIV), 548th mtg., paras. 27 and 28.

34/ T C (VIII), 345th mtg., para. 48.

35/ T C (XIV), 562nd mtg., para. 46.

36/ T C (I), 11th mtg., pp. 245 and 251.

37/ Ibid., p. 253.

38/ Ibid., p. 254.

39/ T C (VIII), 345th mtg., paras. 37-43.

a roll-call showed the result as none in favour, none against, and 11 abstentions, including the sponsor of the amendment which was the subject of the vote. In one case, absent members were also mentioned in the record of a roll-call vote. 40/

H. The question of equally divided votes and the absence of a majority

42. In connexion with the problem of equally divided votes and the absence of a majority, the following draft rule was submitted 41/ to the Preparatory Commission by the Executive Committee.

"In the case of equality of votes, the President shall have a casting vote."

The Preparatory Commission did not adopt 42/ this draft text and, instead, embodied the following sentence in rule 20 of the provisional rules of procedure transmitted to the Trusteeship Council:

"Unless at the second vote there is a majority in favour of the proposal, it shall be deemed to be lost."

The rule was adopted by the Trusteeship Council (see also paragraph 8 above) and became rule 38 of the rules of procedure.

43. In the course of the first fourteen sessions of the Trusteeship Council, the vote was equally divided on forty different occasions, and a second vote had to be taken in accordance with rule 38. On twenty-seven occasions, the second vote was again equally divided and the proposals were deemed to be lost. In the second vote on the other thirteen proposals, nine were adopted and four rejected.

44. At the third session of the Council, a proposal to adopt a paragraph in a report of the Drafting Committee on the report on the administration of a Trust Territory was deemed 43/ at first to have been lost, 6 votes having been cast in favour and 6 against in two successive votes. The equally divided vote gave rise to a procedural discussion. Several representatives expressed dissatisfaction with the rule, and felt that it should be revised. Considering it illogical to discard a paragraph the adoption of which half of the members had supported, one representative proposed that the paragraph should be retained in the report with a note explaining that opinion on its adoption had been divided. There were two opposite points of view: in support of the latter proposal it was pointed out that the vote had been taken on whether to retain or delete a paragraph. If an equally divided vote were to be considered as an affirmative decision, the result might be the retention of paragraphs representing opinions not shared by a majority. In opposition, it was stated that if an equally divided vote were to be considered to constitute a negative decision, the report would become a minority report in that it would represent views acceptable to only six out of twelve members. Finally, one representative announced that he would withdraw his negative vote and abstain on the vote on the adoption of the paragraph in question. This vote having been withdrawn, the paragraph was then declared adopted by 6 votes to 5, with 1 abstention.

40/ T C (VII), 27th mtg., para. 63.

41/ PC/EX/TC/13, p. 7.

42/ PC/EX/TC/23, p. 3.

43/ T C (III), 40th mtg., p. 524.

45. This case of a vote being changed after the second vote had been taken made it clear than in an equally divided vote there was neither a majority nor a minority.

46. At the fourth session of the Council, in voting on a part of a report of the Drafting Committee on the report on the administration of a Trust Territory which contained the observations of the members of the Council, the vote was equally divided. There was no proposal for the deletion of that part of the report. One representative was of the opinion 44/ that it should be automatically retained, in the absence of any proposal for deletion. Another representative stated 45/ that half of the members voting in favour had to yield on the adoption of any measure opposed by the other half, and that the Charter had so provided in order to ensure that no imprudent measure would be adopted by the Council.

47. The President said 46/ that the Council had before it a draft report submitted by the Drafting Committee and had to decide either to adopt or to reject the report; the report could not be deemed to have been adopted without a vote being taken. It was finally 47/ adopted in amended form by a second vote of 7 to none.

48. In voting on another draft report, the Council, at its fourth session, failed to adopt a part of the report containing individual observations of members; 6 votes were cast in favour and 6 against in both the first and second votes. The equal division of votes also occurred when the report as a whole was voted upon. The result was that the Council failed to adopt 48/ any report. In this case, the Council faced a dilemma when the members were equally divided and maintained their respective positions. This situation was resolved (see paragraph 50 below) at the fifth session of the Council, at which time the decisions were reconsidered.

I. The question of the reconsideration of decisions

49. At its third session, the Council decided 49/ not to grant a hearing to a certain petitioner. It was then proposed that the Council set aside that decision. In opposition to this proposal, attention was drawn to the rule of procedure of the General Assembly which provided that, when a proposal had been adopted or rejected, it might not be reconsidered at the same session unless the General Assembly, by a two thirds majority of members present and voting, so decided. In the opinion of some members, this provision showed that the reopening of a question settled by a vote was considered by the General Assembly to be a grave matter. The Council decided 50/ by 7 votes to 4, with 1 abstention, not to set aside the above-mentioned decision.

50. The draft report (see paragraph 48 above) which had not been adopted at the fourth session of the Council was reconsidered at the fifth session. After one representative had said 51/ that the action with regard to the report would in no way establish a precedent and that it was to be hoped that improved procedure would eliminate the possibility of a recurrence of the difficulties encountered, the President stated that it should be borne in mind that the Trusteeship Council was a new organ which had not

44/ T C (IV), 43rd mtg., p. 563.

45/ Ibid., 46th mtg., p. 600.

46/ Ibid., 43rd mtg., pp. 563 and 565.

47/ Ibid., 47th mtg., p. 611.

48/ Ibid., 48th mtg., p. 637.

49/ T C (III), 3rd mtg., p. 29.

50/ Ibid., 7th mtg., p. 91.

51/ T C (V), 29th mtg., pp. 358-360.

perfected its procedures; he confirmed that a vote to reconsider was a practical emergency measure which would not be construed as establishing a precedent. The draft report was adopted after having been amended.

J. The question of the voting procedure of the subsidiary organs

51. In accordance with rule 67 of the rules of procedure, rules 36 to 38 on voting apply to the proceedings of the committees of the Trusteeship Council. Although the committees elect their own Chairmen, the rules on election are not mentioned explicitly in rule 67. In practice, rules 41 and 42 have been followed.

52. In the case of visiting missions, there has been no specified voting procedure in cases where there has been disagreement among the members. However, reservations of the dissenting member or members have been included in the text of the report of the visiting mission concerned. It may be noted that the Chairmen of visiting missions, with the exception of the Spécial Visiting Mission to Western Samoa, have been appointed by the Trusteeship Council.

K. The question of the amendment and suspension of rules of procedure

53. In connexion with the consideration of the provisional rule on amendment of rules at the first session of the Council, the question was raised ^{52/} whether a decision to amend a rule of procedure should require a simple or a two-thirds majority. The President referred to Article 89, and said that a majority of members present and voting was required.

54. It was proposed that provision be made for the suspension of a rule by unanimous consent, in view of the fact that the rule on amendment could not be invoked during the last three days of a session. Since the phrase "unanimous consent" implied that the decision of the Council would have to be unanimous, its admissibility was questioned. It was suggested that the phrase be replaced by the words "if no Member objects". As finally adopted, the phrase in question read "by decision of the Council". This wording appears in the present rule 106.

^{52/} T C (I), 19th mtg., p. 507.