

No. 54/52/UN9/19 QUESTION OF SOUTH WEST AFRICA

Attached are the texts of two statements by Canadian Representatives at the ninth session of the United Nations General Assembly, New York, on agenda item 34 - Question of South West Africa:

- (a) November 8, 1954, by Mr. D.M. Johnson, in the Fourth Committee
- (b) November 23, 1954, by Mr. Lucien Cardin, in plenary session

Note: The text of the resolution adopted in plenary session and the results of the voting are included at the end of the statements.

Statement by Mr. Johnson

The Canadian Delegation welcomes the decision of the Sub-Committee of the Fourth Committee on South West Africa to recommend that the General Assembly submit for a reference to the International Court for an advisory opinion Special Rule F of the Rules of Procedure which it adopted in plenary on October last.

In doing so the Canadian Delegation is motivated purely and simply by its desire to remove any possible doubts as to the legality of the method for arriving at decisions on South West Africa. Lest, however, this wish be misinterpreted, let me point out once again that the Assembly, in dealing with this item is faced with a problem which is sui generis. The territory of South West Africa is the only remaining mandated territory in the world today, and what we are here proposing to do is properly to discharge, in respect of that territory, functions not provided for in the Charter. It is therefore of the utmost importance that the decisions which we are about to take should be consistent with the principles of the Charter and redound to the credit of the United Nations.

Let us briefly review the facts.

As all members are aware, the International Court of Justice, in its advisory opinion of 1950 on South West Africa, stated that the Union of South Africa continued to have the international obligations mentioned in Article 22 of the Covenant of the League of Nations as well as in the Mandate which it held for that Territory and that the supervisory functions which formerly devolved on the League were henceforth to be exercised by the United Nations. With a view to implementing this opinion, the General Assembly after three years of unsuccessful endeavour to reach an agreement between the United Nations and the Government of South Africa, finally established last year the present Committee on South West Africa. This Committee after a thorough review of the whole question,



recommended a procedure which would enable the United Nations to exercise its supervisory functions. As part of these supervisory functions, the Committee recommended certain rules which would guide the Assembly in its consideration of annual reports on conditions in South West Africa. One of these set down the ways and means whereby Assembly decisions could be taken on these matters.

Now as the distinguished representative of Belgium pointed out the other day, the Charter had never foreseen that the General Assembly would have to act as a substitute for the League of Nations, as it was in fact being obliged to do in the case of South West Africa as a result of the International Court's advisory opinion. In the framing of the rule of voting procedure, the Committee was therefore faced with the question of deciding as to whether, (a) when the Assembly assumed functions not provided in the Charter, the voting procedure provided for in Article 18(2) was valid, or (b) whether unanimity as was the case under the League of Nations' practice in fact governed. After mature and careful consideration, the Committee on South West Africa proposed the strongest vote possible under the Charter and the Assembly's rules of procedure namely the two-thirds majority required for important questions. In order to remove any possible doubts as to the legality of its proposal, however, the Committee recommended at the same time that it be referred to the International Court for a specific advisory opinion.

From the very moment the conclusions of the Committee on South West Africa were made public the Canadian Delegation believed this decision to be a wise one, and in accordance with the best-informed legal and parliamentary practice. It was because the Canadian Delegation shared these very doubts encountered by the Committee that it voted for Resolution B in the Fourth Committee and later for the adoption of the rapporteur's report to the General Assembly. It was in this sense, and in this sense alone that the Canadian Delegation cast an affirmative vote with regard to the procedures suggested for the Assembly properly to discharge its functions over the Territory in Plenary on October 11 last. Had the Canadian Delegation known then that Resolution B calling for a reference of Special Rule F to the International Court for an advisory opinion would not have been put to a vote, it would in fact have opposed Special Rule F by voting against the procedure devised for the Assembly's supervision of conditions in South West Africa.

I should now like to make it perfectly clear that, in the absence of such an advisory opinion from the International Court which will remove the doubts already alluded to, my delegation will be placed in the position of having to abstain on all resolutions concerning reports and petitions relating to the Territory.

The Canadian attitude bespeaks no lack of interest in this question but rather reflects its earnest desire and, I believe, that of many other delegations around this room, properly to see



reconciled the Mandates System of the League of Nations, the Charter of the United Nations and the advisory opinion handed down by the International Court in 1950. Indeed it is the firm conviction of the Canadian Delegation that unless the Assembly asks the Court for its guidance on the question of the voting procedure to be followed by the Assembly in its consideration of matters pertaining to South West Africa, it will remain to plague our future debates and decisions on the Territory. As the distinguished representative of New Zealand so clearly stated in his intervention of October 17 last, a decision of this nature is the first requirement towards ensuring the cooperation of South Africa which we all so earnestly desire. It can only reflect in the eyes of the world, the sound and responsible manner by which the United Nations approaches the problems that confront it.

Statement by Mr. Cardin

The Canadian Delegation will vote in favour of the proposal of the Delegations of Guatemala and Lebanon to submit for a reference to the International Court of Justice for an advisory opinion Special Rule F of the Rules of Procedure relating to reports and petitions from South West Africa which this Assembly adopted in plenary on October 11 last.

The reasons for so doing are quite clear. As I had occasion to point out elsewhere, the Charter of the United Nations never foresaw that the General Assembly would have to act as a substitute for the League of Nations as it is in fact being obliged to do in the case of South West Africa as a result of the International Court's advisory opinion of July 1950. If, therefore, this Assembly is to discharge its functions with respect to the Territory in accordance with the terms of the Court's advisory opinion; that is, if it is to ensure that these conform as far as possible to the procedure followed respectively by the Council and the Permanent Mandates Commission of the League of Nations, then I submit that the manner in which decisions affecting the Territory are to be taken must be settled once and for all. This Assembly cannot if it has, as I believe it has, the prestige and responsibility of the Organization at heart, leave forever in suspense the question as to whether when it assumes functions not provided for in the Charter it should vote as the League of Nations voted or be governed by the terms of Article 18(2) of the Charter.

It follows from the above, that the only way to remove doubts in this matter which it is now clear are shared by more than one delegation in this Assembly is to refer Special Rule F to the International Court for a specific advisory opinion.

Unless this is done my delegation will be placed in the position of having to abstain on all resolutions concerning reports and petitions relating to the Territory. Let me add immediately that we would have to follow this policy until such time as we were satisfied beyond any possible doubt that Special Rule F was in full conformity with the Court's advisory opinion.



My delegation, however, has one remark to offer at this stage with regard to the resolution now before us. It refers to paragraph 6 of the preamble which reads:

"Having adopted this rule in a desire 'to apply as far as possible, and pending the conclusion of an agreement between the United Nations and the Union of South Africa, the procedure followed in that respect by the Council of the League of Nations'".

We fully share the view that the way should be left open for further negotiations with the South African Government. It is not clear from the wording of this paragraph, however, what kind of an agreement it would be hoped might ensue between the United Nations and the Union of South Africa. Now if what is meant here is a trusteeship agreement, then I submit that this is not in conformity with the advisory opinion of the International Court, which stated quite clearly that the United Nations had certain supervisory functions in regard to South West Africa, but did not say that there was any obligation on the part of South Africa to place the Territory under a trusteeship agreement. In the circumstances, it does seem to my delegation that the deletion of the words "and with a view to reaching an agreement between the United Nations and the Union of South Africa" is called for.

If this is done, the Canadian Delegation will be able to vote in favour of paragraph 6 of the preamble as well as for the resolution as a whole. If, on the other hand, the paragraph remains unchanged, the Canadian Delegation will abstain on it, but will nevertheless vote in favour of the resolution as a whole.

Voting Results

Following is the text of a resolution (U.N. Doc. A/L.178) adopted in plenary session on November 23 by a roll-call vote of 25 in favour (including Canada) to 11 against, with 21 abstentions:

(The resolution was introduced in plenary as the Assembly began consideration of the report (Doc. A.2747/Add.1) of the Fourth Committee on the Question of South West Africa.)

Text of Resolution

The General Assembly,

Having accepted, by resolution 449A (V) of 13 December 1950, the advisory opinion of the International Court of Justice of 11 July 1950 with respect to South West Africa,



Having regard, in particular, to the Court's opinion on the general question, namely, "that South-West Africa is a Territory under the international Mandate assumed by the Union of South Africa on December 17th, 1920", and to the Court's opinion on question (a), namely, "that the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South-West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations, to which the annual reports and petitions are to be submitted, and the reference to the Permanent Court of International Justice to be replaced by a reference to the International Court of Justice, in accordance with Article 7 of the Mandate and Article 37 of the Statute of the Court",

Having expressed, in resolution 749A (VIII) of 28 November 1953, its opinion "that without United Nations supervision the inhabitants of the Territory are deprived of the international supervision envisaged by the Covenant of the League of Nations" and its belief "that it would not fulfil its obligation towards the inhabitants of South West Africa if it were not to assume the supervisory responsibilities with regard to the Territory of South West Africa which were formerly exercised by the League of Nations",

Having regard to the opinion of the International Court of Justice that "the degree of supervision to be exercised by the General Assembly should not ... exceed that which applied under the Mandates System, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations" and that "these observations are particularly applicable to annual reports and petitions",

Having adoption, by resolution (IX) of 11 October 1954, a special rule F on the voting procedure to be followed by the General Assembly in taking decisions on reports and petitions concerning the Territory of South West Africa,

Having adopted this rule in a desire "to apply, as far as possible, and pending the conclusion of an agreement between the United Nations and the Union of South Africa, the procedure followed in that respect by the Council of the League of Nations",

Considering that some elucidation of the advisory opinion is desirable,

Submits the following questions to the International Court of Justice with a request for an advisory opinion:

- (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 reports and petitions concerning the Territory of South West Africa?

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