

ADMISSIBILITY OF HEARINGS OF PETITIONERS BY THE COMMITTEE ON SOUTH-WEST AFRICA

Advisory Opinion of 1 June 1956

The question relating to the admissibility of hearings of petitioners by the Committee on South West Africa of the General Assembly of the United Nations had been submitted to the Court for an advisory opinion by the General Assembly which, on December 3rd, 1955, adopted the following Resolution for this purpose:

“The General Assembly,

“Having been requested by the Committee on South West Africa to decide whether or not the oral hearing of petitioners on matters relating to the Territory of South West Africa is admissible before that Committee (A/2913/Add.2),

“Having instructed the Committee, in General Assembly resolution 749 A (VIII) of 28 November 1953, to examine petitions as far as possible in accordance with the procedure of the former Mandates System,

“Requests the International Court of Justice to give an advisory opinion on the following question:

“Is it consistent with the advisory opinion 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?”

On receipt of the Request for an Opinion, the Court gave an opportunity to States Members of the United Nations to present their views. The Government of the United States of America and the Government of the Republic of China submitted written statements, and a representative of the Government of the United Kingdom of Great Britain and Northern Ireland made an oral statement at a public sitting of the

Court. The Secretary-General of the United Nations transmitted the documents likely to throw light upon the question, together with an introductory note.

The Court's Opinion, which was adopted by eight votes to five, gave an affirmative answer to the question put to it. Two Members of the Court—Judges Winiarski and Kojevnikov—while voting in favour of the Opinion, appended declarations thereto. Judge Sir Hersch Lauterpacht, who also voted for the Opinion, appended thereto a separate Opinion. The five Members of the Court who voted against the Advisory Opinion—Vice-President Badawi and Judges Basdevant, Hsu Mo, Armand-Ugon and Moreno Quintana—appended to the Opinion of the Court a joint dissenting opinion.

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In its Opinion, the Court first indicates its understanding of the question submitted to it. It understands it as relating to persons who have submitted written petitions to the Committee on South West Africa, in conformity with its Rules of Procedure. It also considers that it relates not to the authority of the Committee to grant hearings in its own right but to the question whether it is legally open to the General Assembly to authorize the Committee to grant hearings.

The General Assembly asks whether the grant of hearings would be consistent with the Advisory Opinion delivered by the Court in 1950. In order to answer that question, the Court must have regard to the whole of that Opinion and its general purport and meaning. It therefore analyses the Opinion. The

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operative part indicates that the obligations of the Mandatory continue unimpaired with this difference, that the supervisory functions formerly exercised by the Council of the League of Nations are now to be exercised by the United Nations. The organ now exercising these supervisory functions, that is, the General Assembly, is legally qualified to carry out an effective and adequate supervision of the administration of the Mandated Territory. In the reasoning on which the Opinion is based, the Court made it clear that the obligations of the Mandatory, including the obligation to transmit reports and petitions and to submit to the supervision, were those which obtained under the Mandates System. These obligations could not be extended, and consequently the degree of supervision to be exercised by the General Assembly should not exceed that which applied under the Mandates System. Following its finding regarding the substitution of the General Assembly for the Council of the League of Nations in the exercise of supervision, the Court states that the degree of supervision should conform as far as possible to the procedure followed by the Council of the League of Nations. But the necessity for supervision continues to exist: the Charter preserves the rights of States and peoples under existing international agreements, which implies the existence of a supervisory organ. From this analysis of the Opinion of 1950, it is clear that its paramount purpose was to safeguard the sacred trust of civilization through the maintenance of effective international supervision: in interpreting any particular sentences in the Opinion, it is not permissible to attribute to them a meaning which would not be in conformity with this paramount purpose or with the operative part of the Opinion.

How was the question of the grant of oral hearings dealt with during the régime of the League of Nations? The texts do not refer to hearings and no hearings were ever granted. Nor, however, do the texts refer to the right of petition, an innovation which was nevertheless introduced by the Council of the League to render its supervisory functions more effective: it was competent to do so, and it would also have been competent to authorize the Permanent Mandates Commission to grant hearings, had it seen fit to do so.

In this connexion, it had been contended that the Opinion of 1950 was intended to express the view that the Mandates System and the degree of supervision must be deemed to have been crystallized, so that the General Assembly could not do anything which the Council had not actually done, even if it had authority to do it. That is not the case. There is nothing in the Opinion of 1950 or in the relevant texts that can be construed as in any way restricting the authority of the General Assembly to less than that conferred on the Council

of the League of Nations. It was proper for the Court to point out, in its Opinion of 1950, that the General Assembly could not enlarge its authority, but the Court was not called upon to determine whether the General Assembly could or could not exercise powers which the Council of the League had possessed but for the exercise of which no occasion had arisen.

Reliance had also been placed on the sentence in the Opinion of 1950, to the effect that the degree of supervision to be exercised by the General Assembly should not exceed that which applied under the Mandates System, and it had been suggested that the grant of hearings would involve such an excess in the degree of supervision. But, in the present circumstances, in which the Committee on South West Africa is working without the assistance of the Mandatory, hearings might enable it to be in a better position to judge the merits of petitions. That, however, is in the interest of the Mandatory as well as of the proper working of the Mandates System. It cannot therefore be presumed that the grant of hearings increases the burden upon the Mandatory. Nor is it possible to interpret the sentence in the Opinion of 1950 referred to above as being intended to restrict the activity of the General Assembly to measures which had actually been applied by the League of Nations. The context of the sentence is against such a construction, as is the Opinion given by the Court in 1955.

The Court lastly notes that, by reason of the lack of cooperation by the Mandatory, the Committee on South West Africa has been constrained to make provision for an alternative procedure for the receipt and treatment of petitions. The particular question which has been submitted to the Court arose out of a situation in which the Mandatory has maintained its refusal to assist in giving effect to the Opinion of 11 July 1950, and to co-operate with the United Nations by the submission of reports, and by the transmission of petitions in conformity with the procedure of the Mandates System. This sort of situation was provided for by the statement in the Court's Opinion of 1950 that the degree of supervision to be exercised by the General Assembly "should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations."

In conclusion, the Court holds 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 on South West Africa to petitioners who had already submitted written petitions: provided that the General Assembly was satisfied that such a course was necessary for the maintenance of effective international supervision of the administration of the Mandated Territory.