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**President: Mr. Eelco N. VAN KLEFFENS**  
 (Netherlands).

**AGENDA ITEM 34**

**Question of South West Africa (*continued*)**

**REPORT OF THE FOURTH COMMITTEE (A/2747/Add.1)**

1. The PRESIDENT (*translated from French*): At the end of the morning's meeting the General Assembly took a decision on the preliminary question raised by the South African delegation concerning the draft resolution proposed by Guatemala and Lebanon [A/L.178], so that the Assembly now has before it five draft resolutions concerning the question of South West Africa: four of them are Fourth Committee recommendations and are included in its report [A/2747/Add.1]; the fifth is the proposal from the two delegations I have just named. In accordance with the General Assembly's usual practice and in deference to the Fourth Committee, I propose that we should begin with the draft resolutions of that Committee, and then discuss the draft resolution submitted by Guatemala and Lebanon.

2. Mr. OFTEDAL (Norway): My delegation would like to request, under rule 93 of the Assembly's rules of procedure, that the draft resolution submitted by Guatemala and Lebanon should be put to the vote before the draft resolutions contained in the Fourth Committee's report. The reasons for that request are obvious.

3. From the position taken by several delegations in the Fourth Committee, it is clear that the vote of those delegations in the Assembly will be influenced by, or will depend upon, the Assembly's decision on the draft resolution proposed by Guatemala and Lebanon. My delegation therefore believes that it would be more prudent for the Assembly to take a decision on the latter draft resolution before voting upon the substantive draft resolutions in the Fourth Committee's report.

4. I therefore respectfully request the President to put to the vote the following procedural proposal: that

priority should be accorded to the draft resolution presented by Guatemala and Lebanon.

5. The PRESIDENT (*translated from French*): The order of discussion which I proposed was dictated only by considerations of courtesy to the Fourth Committee, which has done a considerable amount of work. If for any reason a substantial number of delegations wish us to consider first the draft resolution proposed by Guatemala and Lebanon, I see no objection.

6. Does any delegation object to the proposal just made by the Norwegian representative? If there are no objections, we shall first of all consider the draft resolution proposed by Guatemala and Lebanon [A/L.178], and I shall call upon delegations which wish to explain their votes on this draft.

*It was so decided.*

7. Mr. CARDIN (Canada): The Canadian delegation will vote in favour of the draft resolution of Guatemala and Lebanon that an advisory opinion should be requested from the International Court of Justice on special rule F, relating to reports and petitions from South West Africa—a rule which the General Assembly adopted at its 494th plenary meeting, on 11 October 1954.

8. The reasons for making such a request are quite clear. As we have had occasion to point out elsewhere, it was never foreseen in the United Nations Charter 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<sup>1</sup> of July 1950. If, therefore, the Assembly is to discharge its functions with respect to the Territory in accordance with the terms of the Court's advisory opinion—if, that is, it is to ensure that it conforms as much as possible to the procedure followed, respectively, by the Council and the Permanent Mandates Commission of the League of Nations—I submit that the manner in which decisions affecting the Territory are to be taken must be settled once and for all. The Assembly cannot, if it has—as I believe it has—the Organization's prestige and responsibility at heart, leave forever in suspense the question whether, when it assumes functions not provided for in the Charter, it should vote as the League of Nations voted or should be governed by the terms of Article 18, paragraph 2, of the Charter.

9. It follows from what I have just said that the only way to remove the doubts on this matter—doubts which it is now clear are held by more than one delegation in the Assembly—is to refer special rule F to the International Court of Justice for a specific advisory opinion. Unless that is done, my delegation will be placed in the position of having to abstain from the vote on all draft resolutions concerning reports and

<sup>1</sup> *International Status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128.*

petitions relating to the Territory. Let me add immediately that we should have to follow that 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.

10. My delegation, however, has one remark to offer at this stage with regard to the draft resolution now before the Assembly. That remark refers to the sixth paragraph 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 the paragraph, however, what kind of agreement it is hoped might ensue between the United Nations and the Union of South Africa. If what is meant here is a trusteeship agreement, then I submit that that is not in conformity with the International Court's advisory opinion, which stated quite clearly that the United Nations had certain supervisory functions as regards South West Africa, but did not say that there was any obligation on South Africa's part to place the Territory under a trusteeship agreement.

11. In the circumstances, it seems to my delegation that the words "and pending the conclusion of an agreement between the United Nations and the Union of South Africa" should be deleted. If that is done, the Canadian delegation will be able to vote in favour of the sixth paragraph of the preamble, as well as the draft resolution as a whole. If, on the other hand, that is not done, the Canadian delegation will abstain from the vote on the sixth paragraph of the preamble, but will nevertheless vote in favour of the draft resolution as a whole.

12. The PRESIDENT: May I ask the representative of Canada whether he wishes to make a formal proposal that these words be deleted?

13. Mr. CARDIN (Canada): No, I merely made the suggestion.

14. Mr. JOUBLANC RIVAS (Mexico) (*translated from Spanish*): I wish to explain my delegation's views on the problem which arose at the 494th plenary meeting of the General Assembly on 11 October 1954, and also on the draft resolution proposed by Guatemala and Lebanon [A/L.178].

15. As the representative of Mexico on the Committee on South West Africa, I had the honour of serving on the small working group which prepared the special rules to be followed by the General Assembly in examining and voting upon reports and petitions relating to the Territory of South West Africa.

16. In the debate on the voting procedure which was laid down in what has now become special rule F, the Mexican delegation expressed the opinion that, in the cases to which the rules governing voting apply, the two-thirds majority rule should be observed in conformity with Article 18, paragraph 2, of the United Nations Charter.

17. The delegation of Mexico was, in fact, of the opinion that in giving its advisory opinion of 11 July 1950 the International Court of Justice must have borne in mind the voting procedure established by the Charter. There was, however, a dissenting opinion

in that working group, and the delegation of Mexico, to forestall any subsequent charge that it had not acted in strict accordance with the rules, and also with a view to presenting a unanimous report to the Committee on South West Africa, agreed that the adoption of special rule F, which stipulates a two-thirds majority, should be conditional on the concurrence of the Union of South Africa as the Mandatory Power responsible for the administration of the Territory.

18. Acting on the principles I have mentioned, my delegation also agreed that if the Union of South Africa did not accept special rule F, the International Court of Justice should again be asked for an advisory opinion on the interpretation which, for this purpose, had been placed on its advisory opinion of 11 July 1950.

19. Nevertheless, the representative of Mexico pointed out on several occasions, in the working group as well as in the Committee on South West Africa and in the Fourth Committee, that it regarded both the acceptance of special rule F by the Union of South Africa and the application to the Court as unnecessary.

20. The next stage was the 494th plenary meeting of 11 October last, when, as we all know, the General Assembly adopted special rule F without the concurrence of the Union of South Africa, and also decided that it was not necessary to put to the vote the draft resolution which the Committee on South West Africa had prepared to provide for that eventuality and which related to the request for a further advisory opinion from the Court on the correctness of the voting procedure laid down in special rule F. Thus, the views which my delegation had consistently upheld on this point were confirmed.

21. We now have before us the draft resolution sponsored by Guatemala and Lebanon, in the final paragraph of which it is again proposed that the International Court of Justice should be asked for an advisory opinion on the various questions referred to in draft resolution B on South West Africa [A/2747] which was not put to the vote at the plenary meeting—that is to say, for an advisory opinion on the correctness of the procedure laid down for future practice in special rule F and on the procedure which should be followed if the interpretation placed on the advisory opinion of 11 July 1950 should not be correct. My delegation desires to state the following.

22. We still maintain that this further application to the Court is unnecessary. That was the sense of the General Assembly's decision at its 494th plenary meeting in adopting special rule F unconditionally and resolving that it was not necessary to vote on draft resolution B, under which a further advisory opinion was to have been requested from the International Court of Justice.

23. Nevertheless, as a number of delegations, whose opinions we respect, have serious doubts as to the legality of the principle laid down in special rule F, the delegation of Mexico will not vote against that draft [A/L.178], but will, in deference to the opinions of various friendly countries, abstain from voting.

24. Mr. Ali KHAN (India): As far as my delegation is concerned, we have never felt that a reference of special rule F to the International Court was necessary. When the Court delivered its advisory opinion in 1950 on the question of South West Africa, it

must have been aware of the different voting procedures of the League of Nations and of the United Nations. It must also have realized that a recommendation made by the General Assembly is not identical in effect with a decision taken by the League.

25. Both the formal opinion of the Court and the arguments supporting it require interpretation in the light of this awareness. When they are so interpreted, they can only lead to the conclusion that the provisions of Article 80, paragraph 2, of the Charter apply fully to the examination of the reports and petitions relating to South West Africa. This is the view held by my delegation, and it is of course not held by ourselves alone but by the majority of the members of the Committee on South West Africa, and in fact by the majority of the Members of the United Nations.

26. When the Assembly at an earlier meeting adopted special rule F without any condition attached, it made it clear that the majority of its membership had no doubts about the legal validity of that rule. The proceedings on this item have made it evident, however, that certain delegations still have deep misgivings as to whether the course we are pursuing is a correct one. My delegation of course does not share these misgivings, but in order to set at rest the minds of certain members and to place the legal basis of our action beyond reasonable doubt, we had supported a reference of special rule F to the International Court of Justice earlier in this session and are prepared to do so again.

27. In the past there has been an impressive unity of purpose in this Assembly on the handling of the South West Africa question, and this unity has given to our decisions a force and authority which they could not otherwise have possessed. We would indeed be sorry to see this unity jeopardized. When members are of one mind on the action we should take with respect to South West Africa, it is most important that we should not be of two minds about the legal correctness of that action. It is to prevent this destructive division in what has been and should remain a community of intent that we urge support of the draft resolution before us. The members of the Assembly will also realize, I am sure, that if the Committee on South West Africa is to function as a fully effective instrument of the United Nations, it requires both an appropriate membership and the confidence of all United Nations Members in the procedure adopted to deal with these recommendations. This can only be achieved if we support the reference of special rule F to the International Court of Justice.

28. In some respects, it is unfortunate that the views regarding this rule held by a great majority of the membership were not sufficient to reassure the minority, but the minority is entitled to voice its misgivings and to have an answer. We therefore express the hope that this Assembly will adopt the draft resolution before us moved by the delegations of Guatemala and Lebanon. We trust that the opinion of the International Court of Justice will set at rest the doubts which have been formulated, and that it will enable us to proceed in the future to unambiguous and unanimous action on a question of deep concern to all of us.

29. Mr. HARARI (Israel): My delegation feels that it is its duty to question the procedure that we are following. The General Assembly has decided by majority that this is not a reconsideration according to

rule 83 of our rules of procedure. The President has made a ruling, which was not challenged, that this draft resolution was not a part of the report of the Fourth Committee. After all, rules are made to be complied with. Rule 67 of our rules of procedure states:

"The General Assembly shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received the report of a committee on that item."

This is quite clear. We did not receive any report on this draft resolution. This draft resolution was not discussed in the Fourth Committee; we were not given the possibility of expressing our views. We are also entitled to two votes on the draft resolution; we can vote first in the Committee and, according to the result of the vote in the Committee, we may change our views or our vote in the Assembly.

30. I should also like to stress that according to resolution 684 (VII), there was a recommendation of the General Assembly in paragraph 1 (a) that:

" . . . whenever any Committee contemplates making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter may, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the legal aspects and on the drafting of the request, or the Committee concerned may propose that the matter should be considered by a joint Committee of itself and the Sixth Committee."

No such possibility is given in a debate in the General Assembly. The Committee may refuse to follow this advice, but any Member can come to the Committee and propose such a course of procedure. In our humble submission, the drafting of the formulation to the International Court of Justice is not the proper formulation. We cannot come here and ask the advice of the Sixth Committee. I do not think that this is the proper place, here in the General Assembly, to make amendments and to have the debate that we must have in the Committee.

31. I should like to ask the President to make a ruling on my request.

32. The PRESIDENT (*translated from French*): The Israel representative has just expressed the view that the draft resolution under consideration should first of all be sent back to the Fourth Committee for study and report and he wishes me to rule on that question.

33. I would point out to the Israel representative that the President of the General Assembly is required to give a ruling in one case only and that is on a point of order; if any delegation thinks it necessary, such a ruling can be immediately referred, without discussion, to the General Assembly. In the case before us, however, there is no point of order. According to the definition given by a Committee set up by the General Assembly itself some years ago, a point of order is a motion on a point which it is the President's function to decide. The President does not have the competence to decide a question of referral; consequently, it is not for me to decide whether a draft resolution submitted to the General Assembly should or should not be sent back to a Committee. I may make a proposal but it will certainly not be in the nature of a decision. Moreover, such a proposal must



or can be discussed by the General Assembly before it takes any decision.

34. As I pointed out this morning to the Philippine representative, and this brings me to my second point, this would not be the first time that the General Assembly has discussed in plenary session proposals submitted by delegations only at that stage of the discussion, that is to say, when the question had already been included in the agenda of the plenary meeting. I have asked for examples to be furnished to me; I have none on hand at the moment but I shall be pleased to communicate them to the General Assembly later on, or to notify them to any delegations interested. However, from information which the competent departments have given me, there is nothing unusual and certainly nothing reprehensible in the fact that the plenary meeting of the Assembly should consider a draft resolution submitted to it.

35. If the general feeling of the Assembly is that for any reason the draft resolution proposed by Guatemala and Lebanon should be sent back to the Fourth Committee, it will be so decided. However, I have not hitherto had the impression that the majority of the Assembly favours such a decision. Nevertheless, since the question has been raised by two delegations, and although there are precedents for the consideration by the plenary meeting of draft resolutions submitted to it, I shall invite the Assembly to decide.

36. We have before us a motion by Israel to send back to the Fourth Committee the draft resolution submitted by Guatemala and Lebanon. I shall put that motion to the vote.

*The motion was rejected by 33 votes to 8, with 11 abstentions.*

37. The PRESIDENT (*translated from French*): We shall resume consideration of the report of the Fourth Committee [A/2747/Add.1].

38. Mr. SOLE (Union of South Africa): The attitude of the South African delegation towards the proposed request to the International Court for an advisory opinion on the question of voting procedure has been stated in Committee, and I do not propose to reiterate what I said there. Briefly, we regard the request to the Court as unnecessary because South Africa has not accepted the Court's earlier opinion that the supervisory functions of the League in respect of South West Africa have been transferred to the United Nations. It is also unnecessary because we are convinced that the Court, in rendering its earlier advisory opinion, could not have been unaware or unmindful of the voting procedure which would have to be applied by the United Nations if it were to exercise in respect of South West Africa the supervisory functions previously exercised by the Council of the League of Nations.

39. It will be recalled that the Court's opinion declared that the supervision to be exercised by the United Nations General Assembly "should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations".<sup>2</sup> But the Court also said that the degree of supervision should not "exceed that which applied under the Mandates System".<sup>2</sup> This statement, that the degree of supervision should not exceed that which applied under the mandates system, was not, I repeat not,

qualified by the phrase "as far as possible". The Court's opinion that the degree of supervision should not exceed that applicable under the mandates system was an absolute finding.

40. Permit me to re-emphasize this point. The qualifying phrase "as far as possible" applied only in respect of conformity to the procedure of the League Council, not to the finding that the degree of supervision should not exceed that which applied under the mandates system.

41. Now the Court must have been well aware that one of the primary and fundamental elements in the supervision exercised over the mandatory under the mandates system was constituted by the observations and recommendations of the League Council to the mandatory Power. The Court must equally have been aware—and this is the fundamental point—that the degree of supervision inherent in these observations or observations could be adopted by the League Council if the mandatory chose to cast a negative vote. Indeed, there is at least one example of which I am aware where a draft recommendation and observation was modified and amended because in its original form it would not have received the acquiescence of the Mandatory Power.

42. The Court must surely have realized in the circumstances that, in respect of resolutions relating to the exercise of supervision over South West Africa, to deprive the Administering Power of its right to have the unanimity rule applied in the General Assembly of the United Nations would have the effect of extending the supervision exercised by the General Assembly to a degree exceeding that which applied under the mandates system.

43. Accordingly, it is for my delegation inconceivable that on any legal grounds whatsoever the Court should have intended that the Union of South Africa should be deprived of its right to have the unanimity rule applied in circumstances where the General Assembly was to exercise in respect of South West Africa a degree of supervision not exceeding that which applied under the mandates system.

44. There is a further aspect to this matter. It has been said that the Court must have been well aware that there is no provision in the Charter for the application of the unanimity rule and that it must therefore have been the Court's intention that the voting procedure as laid down in the Charter should apply.

45. It is of course true that there is no provision in the Charter for a unanimity rule in the General Assembly. But equally so there is no provision in the Charter for the United Nations to exercise supervision over the administration of a mandated territory. The Court said:<sup>3</sup>

"... the Charter has contemplated and regulated only a single system, the International Trusteeship System. It did not contemplate or regulate a co-existing Mandates System."

46. Yet, in spite of this, the Court came to the conclusion that the United Nations has the right to exercise supervision over the administration of a territory which it regards as a mandated territory. If the Court was correct in its finding that the United Nations has this right, notwithstanding the absence of any provision in the Charter, it can equally be argued that the

<sup>2</sup> *Ibid.*, p. 138.

<sup>3</sup> *Ibid.*, p. 140.

United Nations, in exercising this supervision, has the right to apply the unanimity rule in respect of a mandate, again notwithstanding the absence of any such provision in the Charter.

47. If, as I have shown, the non-application of the unanimity rule would have the effect of making the degree of supervision exercised by the United Nations exceed that exercised by the League Council, the United Nations has not only the right but definitely also the duty to apply the unanimity rule if it wishes to respect the Court's opinion on this point. My delegation is convinced that on this basis the Court could have had no other intention but that the unanimity rule should be applied.

48. I have said that we regard reference to the Court as unnecessary in the circumstances which I have outlined. My delegation will accordingly cast a negative vote on the draft resolution before us. May I emphasize, however, that we would not wish our negative vote to be regarded in any way as a desire on our part to deny to the General Assembly the right which it possesses in terms of the Charter to approach the International Court for an advisory opinion.

49. Mr. RYCKMANS (Belgium) (*translated from French*): My delegation generally favours reference of questions in dispute to the International Court of Justice provided that they are properly formulated. In the present circumstances, the question does not appear to be adequately put before the Court. The Court has given its opinion that the degree of supervision of the administration of South West Africa "should not therefore exceed that which applied under the Mandates System". It considers that the procedure of the former mandates system should be followed "as far as possible".<sup>4</sup>

50. The question of interpretation which arises here is whether, in the Court's opinion, adoption by the General Assembly, in dealing with the question of South West Africa, of a voting procedure different from that which it follows in discharging its normal duties under the Charter exceeds what the Court expresses in the words "as far as possible".

51. Three interpretations of that phrase may be proposed: either the Court may consider that it is impossible to adopt different voting rules from those provided in Article 18 of the Charter, that is, simple majority or two-thirds majority, or right of veto; or it may consider that in the question of South West Africa the rule of the League of Nations may be applied, that is to say, the rule of unanimity; or, without going so far as to advocate the rule of unanimity, the Court may accept the two-thirds majority provided by Article 18, paragraph 2, of the Charter but at the same time, as the degree of supervision should not exceed that which was applied under the Mandates System, it might hold that the majority must include the affirmative vote of the Union of South Africa.

52. My delegation feels that the Court cannot answer the question put to it without analysing each of those three interpretations. As my delegation is not altogether satisfied with the way the question has been put, it will abstain from voting.

53. Mr. CARPIO (Philippines): I would just like to refer, in passing, to the procedure the President has been following in the discussion on this particu-

lar draft resolution. This morning I had the privilege of invoking what I believed to have been the pertinent rule governing the particular draft resolution, namely rule 67 of the rules of procedure which reads as follows:

"The General Assembly shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received the report of a committee on that item."

54. The President had ruled this morning that the draft resolution before us is not a part of the Committee's report and consequently it could not have been reported by the Fourth Committee. It is therefore the considered view of my delegation that that being the case, this is an item on the agenda of the present meeting which must be decided on, discussed and terminated finally only if the plenary meeting is going to so decide. Until the present time, however, there has been no such decision. I feel very strongly that if in the past there have been violations of this rule, repeated violations of a rule do not make those violations the rule and the rule itself an exception. The rules exist, and I agree with the representative of the Union of South Africa when he said this morning that he attaches the utmost importance to our due observance of our rules of procedure.

55. Unfortunately, there is no provision in our rules of procedure whereby we could for the time being set aside this rule. This is different from the rules of procedure of the Trusteeship Council, according to which, in certain circumstances, the rules of procedure may for the time being be set aside.

56. However, in addition to this aspect, I should like to express the views of my delegation on the substance of the draft resolution now before us. After hearing the statement of the representative of the Union of South Africa that, in his view, it is unnecessary to refer special rule F, which has been approved by the General Assembly, to the International Court of Justice for an advisory opinion, I am more than ever convinced that there is really no need for such reference to the International Court.

57. The General Assembly has now been discussing the question of the Territory of South West Africa each year for nine years. Time and again the General Assembly has pleaded with the Union Government to have this Territory placed under the International Trusteeship System. Of all the territories under mandate, the Territory of South West Africa is now the only territory that has not so far been brought under the International Trusteeship System. This is so despite the pleas of the General Assembly to the Union Government to place it under the International Trusteeship System. All these pleas have fallen on deaf ears.

58. However, over and above that, we have finally obtained the opinion of the International Court of Justice on the jurisdiction of the General Assembly in dealing with the mandated Territory of South West Africa. On that basis, a Committee was set up to enter into negotiations with the Union Government towards the end of placing that Territory under trusteeship. The Union Government has not only given a deaf ear to the General Assembly resolutions which have been adopted from year to year since the establishment of this Organization, but even more, it has completely ignored the opinion of the International Court of Justice.

<sup>4</sup> *Ibid.*, p. 138.



59. In the light of the foregoing, is there any chance that a second opinion by the International Court would be accepted by the Union Government? It is my candid opinion that there is none. I believe this to be so for a further reason. It would seem that even from the very beginning of the mandates system, the Union Government never intended to administer this area as a mandated territory, but rather to integrate it as a part of the Union Government's realm. For that reason, it contended, even during the mandates system, that it had full jurisdiction over the mandated territory. Here is an instance of a trustee, which, instead of complying with its duties as a trustee, now seems to be using the object of its trust for its own benefit. That is exactly the situation we have before us in the consideration of the Territory of South West Africa.

60. Furthermore, in view of the repeated assurances of the Union Government that it does not and will not recognize the competence of the United Nations to deal with the Territory of South West Africa, what practical benefit can we possibly expect to obtain from a second advisory opinion of the International Court of Justice? I see none. I see no rhyme or reason in now adopting this draft resolution and referring special rule F to the International Court of Justice for an advisory opinion.

61. It is my view that referring this rule to the International Court of Justice would simply put us in a position where we would be apt to lose everything, and gain nothing. Why do I say "lose everything"? For the simple reason that in the event the International Court of Justice should decide that special rule F was not in conformity with its previous opinion, then the Union Government would all the more harden in its intransigence towards the General Assembly resolutions and the advisory opinion of the International Court. Furthermore, if we should obtain an unfavourable opinion of the International Court of Justice that special rule F was not in conformity with its previous advisory opinion, where then shall we find ourselves? We certainly cannot adopt another rule of procedure, because Article 18 of the Charter provides that until that Article has been amended—and so far there is no hope of amending that Article—the General Assembly cannot possibly use any form of procedure other than the two-thirds majority vote. I do not conceive how, even should the International Court of Justice decide that special rule F is not in conformity with its previous opinion, the General Assembly could then adopt any other rule in contradiction with and contrary to the express provisions of Article 18 of the Charter.

62. For these reasons, it is the considered view of my delegation that it cannot support the draft resolution now before us.

63. The PRESIDENT (*translated from French*): Although the draft resolution before us had not been the subject of a Committee report, I wish to point out that its subject matter has been fully discussed in Committee. Under those conditions I should like to know whether there is any proposal to refer the draft resolution to the Fourth Committee. If not, I propose that the General Assembly should proceed to the vote on the draft resolution before us.

64. As there is no proposal to that effect, we shall proceed to the vote on the draft resolution submitted

by Guatemala and Lebanon [A/L.178]. A vote by roll-call has been requested.

*A vote was taken by roll-call.*

*Paraguay, having been drawn by lot by the President, was called upon to vote first.*

*In favour:* Saudi Arabia, Sweden, Syria, Thailand, United States of America, Yemen, Afghanistan, Brazil, Canada, Costa Rica, Cuba, Denmark, Egypt, Guatemala, Honduras, India, Iran, Iraq, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Panama.

*Against:* Philippines, Poland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, Uruguay, Argentina, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Israel.

*Abstaining:* Paraguay, Peru, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia, Australia, Belgium, Burma, China, Colombia, Dominican Republic, Ecuador, El Salvador, Ethiopia, France, Greece, Haiti, Indonesia, Liberia, Mexico, Nicaragua.

*The draft resolution was adopted by 25 votes to 11, with 21 abstentions.*

65. Mr. KHOMAN (Thailand): The General Assembly has just adopted the resolution submitted by Guatemala and Lebanon. In view of the fact that that resolution contains a request to the International Court of Justice for an advisory opinion, I formally move that the draft resolutions A and B, contained in the Fourth Committee's report [A/2747/Add.1], should not be acted upon until such time as the advisory opinion has been handed down to the General Assembly.

66. The PRESIDENT (*translated from French*): I think that the Assembly can now proceed to the vote on the four draft resolutions in the report, on the understanding that no action will be taken on draft resolutions A and B before an advisory opinion had been obtained from the International Court of Justice.

67. After the four draft resolutions have been voted upon, the Assembly will be able to vote on the motion raised by the representative of Thailand.

68. Mr. KHOMAN (Thailand): I would like to specify that my request was that draft resolutions A and B should not be acted upon.

69. Mr. RYCKMANS (Belgium) (*translated from French*): I think that the actual intent of the Thai representative's proposal was that draft resolutions A and B should not be put to the vote in view of the decision just taken by the General Assembly.

70. Mr. KOHMAN (Thailand) (*translated from French*): I requested that the General Assembly should not proceed to a vote on draft resolutions A and B in the report. If the General Assembly at its next session has received the advisory opinion of the International Court of Justice mentioned in the resolution just adopted, it will obviously have to vote on draft resolutions A and B. But what I am requesting now is that these two drafts should not be put to the vote today.

71. The PRESIDENT (*translated from French*): I thank the representatives of Belgium and Thailand for their explanations. I had at first misunderstood the Thai representative's request.

72. Mr. RODRIGUEZ FABREGAT (Uruguay) (*translated from Spanish*): My delegation feels that,

in view of our attitude in the Fourth Committee and the position we have adopted throughout the study of this question, it really must at this stage of the discussion say something about the problem that has just been raised before the General Assembly.

73. My delegation does not quite understand in virtue of what principle, or of what rule of procedure, the resolution just adopted by the Assembly could delay approval of the draft resolutions transmitted by the Fourth Committee. Actually, this point could well have been raised before the vote on the draft resolution which has just been adopted by the Assembly by 25 votes to 11, with 21 abstentions.

74. My delegation, which did not vote for the draft resolution that has just been adopted, does not understand why a further application to the Court should have the effect of delaying the work of the General Assembly, because, so far as one can see, the principles maintained in the draft resolutions now before us appear to have little to do with such an application. My delegation does not understand how or why, given the terms of the problem as stated in these draft resolutions, any step should be taken to suspend action.

75. Draft resolution A contains the words: "*Having accepted* the advisory opinion of the International Court of Justice on the question of South West Africa". Are we telling the Court to revise its previous opinion? Are we telling the Court that, in view of this debate, and in virtue of the 25 votes for, and 11 against, with 25 abstentions, it should revise its previous opinion? Are we saying to the Court that we for our part do not adopt the opinion it expressed previously at our request?

76. What does the draft resolution before us really say? It refers to a petition submitted, in accordance with the present rules of procedure, in keeping with the advisory opinion of the Court which the Assembly has accepted; and with reference to this petition draft resolution [A/2747/Add.1] states that the General Assembly

*"Is of the opinion that the withholding of a passport from a qualified student for the purpose of studying abroad is not only a direct interference in the educational and general advancement of an individual but a hindrance to the educational development of the Territory . . ."*

The fourth paragraph of the preamble reads:

*"Noting the petitioner's statement that a Native school principal of South West Africa has been unable to avail himself of a scholarship at Oxford University . . ."*

77. I was not going to refer to these facts; they are referred to in the draft resolution. But now I ask: Does the resolution which the Assembly has adopted by 25 votes—after deciding by a simple majority that it could review a previous decision—mean that we should also suspend our own judgment, our own power of decisions and our own opinion when confronted with the facts referred to in draft resolution A, facts which were brought to our attention after competent study by the Fourth Committee? We might say the same with regard to draft resolution B.

78. Now therefore, after taking part in the whole discussion of this matter, I would ask the President to give us some further enlightenment as to the cir-

cumstances in which the Assembly, acting in virtue of an opinion which the International Court of Justice has already given and of its own decision to accept and approve the Court's opinion, may not only approach the Court again after the delegation of the Union of South Africa has actually maintained its own views here against the advisory opinion of the Court but also suspend further action on our part.

79. My delegation would like a little more explanation of all this, since now that it is admitted, by a vote of the Assembly, that a previous decision may be reviewed by a simple majority, we are today confronted with what my delegation regards as a new, or at least newfangled, situation—a situation in which, on account of some earlier event, the Assembly may suspend its own decisions and its study of a particular question. I should like the President to give us more enlightenment on this question before it is put to the vote.

80. Mr. RIVAS (Venezuela) (*translated from Spanish*): Before I state my delegation's opinion on the point of procedure raised with regard to draft resolutions A and B [A/2747/Add.1], I should like to explain my delegation's vote on the various aspects of this item which have been dealt with by the General Assembly today.

81. In the first place, my delegation thought from the beginning that the President's decision not to put to the vote the original draft B [A/2747], which had been transmitted by the Fourth Committee, was a decision on a question of substance, since it implied a decision on the part of the General Assembly not to submit a further request for an opinion to the Court.

82. Later, this request to the Court was described by my delegation in the Fourth Committee as a request for the interpretation of an advisory opinion. However, when the matter came up again at a plenary meeting, my delegation thought that the draft resolution of Guatemala and Lebanon implied a review of the Assembly's decision to uphold the President's ruling on this point.

83. For this reason, my delegation was among those which voted in the sense that this proposal should be described as a proposal to review a decision by the General Assembly. My delegation was opposed to such a review because it foresaw the possible consequences of an excessively liberal decision on this point. Nevertheless, faithful to the consistent policy of Venezuelan representatives in such matters, my delegation was unwilling either to speak in the discussion or to vote against the draft submitted by Guatemala and Lebanon, for it did not wish to obstruct an action which might represent what, on other occasions, my delegation had described as a first step towards placing South West Africa under the trusteeship system, the system approved at San Francisco for territories under the League of Nations mandate.

84. The inevitable consequence in law of the Assembly's decision to adopt the draft of Guatemala and Lebanon is that we cannot vote on draft resolutions A and B, because these drafts presuppose a procedure on which the Assembly has decided to apply to the Court for another advisory opinion. My delegation is therefore of the opinion that in consequence of its own decision the Assembly cannot vote on these two draft resolutions until the advisory opinion of the Court has been obtained.

85. In view of these circumstances, my delegation, whose votes are in all respects in strict accordance with the rules, will have to refrain from voting on these draft resolutions.

86. Mr. KHOMAN (Thailand): I apologize for asking for permission to speak again. I have to do so because the representative of Uruguay has requested some clarification and because the representative of Venezuela has voiced some misgivings and doubts with regard to the motion which I have submitted. I shall not take up very much of the Assembly's time.

87. I should like to draw attention to the last paragraph of the resolution which the General Assembly has just adopted. It says that the General Assembly:

"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'—and I stress the word "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?'"

88. I wish to say that I have never maintained that the General Assembly has no right to vote on draft resolutions A and B; it has every right to do so. But in view of the fact that it has adopted the resolution submitted by the delegations of Guatemala and Lebanon, it is more appropriate, and indeed advisable, that draft resolutions A and B should not be acted upon now, particularly in the light of the last paragraph of that resolution. I hope that this brief clarification will be of some assistance.

89. The PRESIDENT (*translated from French*): I wish to point out to the Uruguayan representative that the rules of procedure do not necessarily cover all cases which may arise in the Assembly. However, the absence of a specific provision in the rules of procedure does not prevent the General Assembly from coming to a vote if a matter arises on which it must vote in order to do its work effectively.

90. I think that I can agree with what the representative of Thailand has just said regarding the meaning of his motion. I think that the motion is clear. Without challenging in any way the absolute right of the General Assembly to come to a vote immediately on the two draft resolutions A and B, the delegation of Thailand, for the reasons which it has just given, believes that the General Assembly should, as it is fully entitled to do, postpone a vote on the draft resolutions A and B for the time being.

91. I hope that this explanation will satisfy the Uruguayan representative, whose desire for further information before voting is quite understandable.

92. Mr. RODRIGUEZ FABREGAT (Uruguay) (*translated from Spanish*): I ask the President to forgive me for speaking again, and crave the indulgence of the Assembly for my reappearance on the rostrum in connexion with this item. Since, however, we are apparently faced with the necessity of taking certain decisions today I venture to voice some misgivings as to our procedure in this matter.

93. Under the resolution which has just been adopted by 25 votes in favour, 11 against and 21 abstentions as a consequence of the review of an earlier decision of the Assembly which, in its turn, was agreed to only by a simple majority, we have approved a text which requests a new advisory opinion from the International Court of Justice as to whether decisions of the General Assembly on questions concerning the Territory of South West Africa should be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter. We are still asking the Court whether this interpretation of its second advisory opinion is correct or not—and the Court knows we have adopted a procedure in this matter which is consistent with the Charter; as I say, we are asking the Court what voting procedure should be followed by the General Assembly in taking decisions on reports and petitions concerning South West Africa.

94. There are really, if I may so put it, two principles involved. One principle relates to the procedure which the Assembly has followed so far, particularly since the Court gave the advisory opinion which this Assembly has approved and which my delegation fully supported. In contrast with that principle we have the point of view maintained by the South African delegation, which seeks to turn the whole problem back to the system which operated under the Permanent Mandates Commission of the League of Nations, in which the unanimity rule prevailed.

95. In other words, the resolution just adopted may be regarded as asking the Court whether we should follow the unanimity rule, to which all of us are opposed in so far as it is incorporated in the Charter as part of the procedure of the United Nations Security Council, where it is known as the "veto". This is the problem with which we are faced. Let us suppose that it justifies our asking the Court for a further opinion. What is there to prevent the Assembly from expressing its opinion when this opinion is already expressed in the draft resolutions adopted by the Fourth Committee with regard to the fact that an inhabitant of the Territory of South West Africa has been unable to take up a scholarship granted to him by one of the universities which lead the world's thought, the University of Oxford? What is to prevent this Assembly from pointing out to the Government concerned how useful that fellowship would be, and how inexplicable it is that that Government should be unable to decide to allow that scholarship to be taken up?

96. I crave the President's indulgence. I appreciate that the rules of procedure cannot cover every possible case, but clearly this is not a trifling or unimportant matter. It is a matter which might signify the virtual paralysis of General Assembly procedure in respect of draft resolutions adopted by its Committees. What is proposed is a new reference to the Court, the first result of which is to delay our own work on questions as clear as those to which the Fourth Committee has addressed itself in consequence of petitions received.

97. Moreover, what has become of the system for dealing with petitions which is provided for in the Charter and which was followed in such cases even by the League of Nations? What, in essentials, were these petitions but petitions concerning rights, complaints concerning rights not granted or rights infringed, addressed to the United Nations, where such petitions and complaints must always be accorded the



reception due to a petition concerning rights under the principles of the Charter?

98. There are many things at stake here besides the question of whether we should vote on such a matter now, or defer a decision to a later date. Has the Fourth Committee not proceeded judiciously? Has it not studied this problem with the greatest care? Has it not devoted time and study to the clarification of this question? Have we not all spoken in that Committee, and am I not, at this very moment, disposing of the arguments put forward at that time? I ask the President to forgive me if, after he has just given his ruling on the question, I say in his presence that it is still not clear to me that this matter is one to which the rules of procedure do not apply, simply because the rules of procedure cannot cover every minor question arising in the General Assembly. This is not a minor question; what is at stake is the rights of a community, a population, a people, whose destinies were handed over to the trusteeship system and to the care of a State which undertook to lead them towards self-government. These are not minor matters in the eyes of the United Nations. I hope that after further clarification we shall perhaps be able to reach a final decision on this question, which I have taken the liberty of commending to the President's special attention.

99. The PRESIDENT (*translated from French*): I think that I can hardly give any further explanations. The question has been discussed in Committee, as the representative of Uruguay has pointed out. We all know exactly what the problem is. We have before us a perfectly clear motion by the representative of Thailand, and among the very discerning observations made—which will naturally be taken into account by representatives in voting—we have the arguments of the Uruguayan representative in favour of a vote on draft resolutions A and B. I do not think that the President can throw any more light on the question at issue, particularly as it has been discussed at length in the Fourth Committee in all its aspects.

100. Are there any other representatives who wish to speak before I put to the vote the preliminary motion raised by the representative of Thailand?

101. Since there are none, I call upon the General Assembly to vote on this motion, which reads as follows:

*"The General Assembly*

*"Decides not to put to the vote draft resolutions A and B contained in document A/2747/Add.1 until such time as it is seized of the advisory opinion of the International Court of Justice requested by the resolution [904 (IX)] adopted at the present meeting."*

*The motion was adopted by 27 votes to 18, with 8 abstentions.*

102. The PRESIDENT (*translated from French*): I now call upon the General Assembly to vote on draft resolution C in the report of the Fourth Committee [A/2747/Add.1].

103. Mr. SOLE (Union of South Africa): Special rule F, which was adopted on 11 October [494th meeting], states:

*"Decisions of the General Assembly on questions relating to reports"—I repeat the word "reports"—"and petitions concerning the Territory of South West Africa shall be regarded as important ques-*

*tions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations."*

104. Draft resolution C, which the President now proposes to submit to a vote in this Assembly, is a draft resolution the voting on which will involve a decision of the General Assembly on a question relating to a report on South West Africa. The question which I pose to the President is whether the voting on draft resolution C will take place in virtue of the application of special rule F.

105. The PRESIDENT (*translated from French*): In view of the report [A/2402] submitted at the eighth session of the Assembly by a special committee on what constitutes a point of order, I wonder whether the statement of the South African representative can be considered to be a point of order, as it is not for me to decide by what kind of majority a question shall be voted. The representative of the Union of South Africa is of course entitled to raise the question, but I had hoped that it would not be raised after the vote in Committee, and personally I should be very happy not to have to give a specific ruling on this very controversial subject.

106. However, if there are any doubts, we could decide what should be done. But I hasten to add that my advice to the Assembly is different. I am confident that in that case the question will not arise in view of the vote in Committee. However in order to allow the representative of the Union of South Africa the full exercise of his rights, I ask him whether he insists that we should first decide whether a two-thirds majority is required in this case.

107. Mr. SOLE (Union of South Africa): Strictly speaking, the point of order which I raised related not to whether or not a two-thirds majority was required, but to whether or not special rule F, adopted by the General Assembly on 11 October, was applicable to draft resolution C, dealing with a report concerning the Territory of South West Africa.

108. A moment ago, the representative of Thailand proposed that since special rule F was applicable to petitions, the Assembly should not vote on draft resolutions A and B until the International Court of Justice, to which the rule had been referred, had given its advisory opinion. As I have already stated, special rule F deals not only with petitions but also with reports, and draft resolution C now before the Assembly concerns a report.

109. I therefore would repeat my inquiry: Is special rule F applicable to the draft resolution on which the Assembly is about to vote? My own feeling is that, unless the Assembly takes the same action on draft resolution C as it took on draft resolutions A and B, the President will have no option but to state that special rule F, which has been adopted by this Assembly, is applicable.

110. The PRESIDENT (*translated from French*): I should like first of all to point out to the representative of the Union of South Africa that draft resolution C refers to the report of a Committee of the General Assembly, and not to a report on the Territory.

111. In any case, I do not know whether the South African delegation wishes to press this point. I thought at first that the South African representative's comments were more or less academic; but as he tells us that his delegation's position with regard to the draft

resolution will depend on the reply to be made to the question he has just raised, I shall ask the Assembly to decide. I can see no other way. It is not for the President to make a ruling in such a case. I have given the General Assembly all the additional information at my disposal.

112. I shall therefore ask for a vote on the following motion of the South African delegation:

*"The General Assembly*

*"Decides that special rule F is applicable in the present case."*

113. I call on the representative of Iraq on a point of order.

114. Mr. KHALIDY (Iraq): I am sorry to interrupt the President, but I must say that, in my delegation's opinion, there is absolutely no need to take the vote for which the President has just called. The explanation which he gave a few moments ago was quite correct.

115. Special rule F refers to reports and petitions from the Territory. The motion made by the representative of Thailand was quite in order, because the petitions dealt with in draft resolutions A and B concern the Territory, and special rule F is therefore applicable, just as it would be applicable to a draft resolution dealing with a report from the Territory.

116. Draft resolution C, however, cannot come under special rule F. We therefore maintain that the President's explanation was quite correct and should have terminated the matter. We do not believe that there is any need for a vote on that point.

117. The PRESIDENT (*translated from French*): I must first of all inform the representative of Iraq that his intervention does not constitute a point of order. This is what the Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly has to say on the subject in its report [A/2402, par. 41]:

*"A point of order is, basically, an intervention directed to the presiding officer to make him use some power inherent in his office . . ."*

I should like the Assembly to be quite clear regarding the definition of points of order, because otherwise all proposals will be classed as such, which would not be in the interests of the General Assembly.

118. Nevertheless, I can see the justification for the Iraqi representative's intervention, which will be of help to us in reaching our decision. Having heard it, I repeat that we must now decide whether or not special rule F is applicable to the present case. That is what the South African representative has just said we have to find out and that is the proposal which I am putting to the vote.

119. Mr. SOLE (Union of South Africa): I wish to speak on a point of order.

120. The PRESIDENT (*translated from French*): Has the representative of the Union of South Africa another proposal?

121. Mr. SOLE (Union of South Africa): Yes, I have.

122. The PRESIDENT (*translated from French*): In that case, I would ask the South African representative to explain to us exactly what his proposal is.

123. Mr. SOLE (Union of South Africa): I would ask the President to put to the vote the following motion:

*"The General Assembly*

*"Decides that special rule F is applicable to draft resolution C submitted by the Fourth Committee [A/2747/Add.1]."*

124. The PRESIDENT (*translated from French*): The South African proposal therefore refers only to draft resolution C.

125. I ask the Assembly to vote on that motion.

*The motion was rejected by 18 votes to 4, with 30 abstentions.*

126. The PRESIDENT (*translated from French*): I ask the Assembly to vote on draft resolution C [A/2747/Add.1].

*The draft resolution was adopted by 34 votes to 8, with 9 abstentions.*

127. The PRESIDENT (*translated from French*): I now ask the Assembly to vote on draft resolution D [A/2747/Add.1].

*The draft resolution was adopted by 40 votes to 3, with 11 abstentions.*

#### AGENDA ITEM 21

#### Admission of new Members to the United Nations:

##### (a) Report of the Committee of Good Offices

##### (b) Admission of Laos and Cambodia

#### REPORT OF THE AD HOC POLITICAL COMMITTEE (A/2793)

*Mr. Derinsu (Turkey), Rapporteur of the Ad Hoc Political Committee, presented the report of that Committee.*

*Pursuant to rule 68 of the rules of procedure, it was decided not to discuss the report of the Ad Hoc Political Committee.*

128. The PRESIDENT (*translated from French*): I shall call upon any representatives who so desire to explain their vote on draft resolution A contained in the Committee's report.

129. Since nobody apparently wishes to speak, and since draft resolution A was unanimously adopted by the Ad Hoc Political Committee, I shall, if there are no objections, consider it likewise adopted by the General Assembly.

*It was so decided.*

130. The PRESIDENT (*translated from French*): I now ask the Assembly to vote on draft resolution B contained in the Committee's report.

131. Mr. MENON (India): Draft resolution B now before the Assembly, like the previous resolution just adopted, pertains to a very important problem, namely, the admission of new Members. The Assembly has just adopted draft resolution A to refer all pending applications to the Security Council; this was adopted unanimously, in accordance with the procedure followed by the Committee.

132. My delegation considers that the whole of this problem turns upon the pending applications. The further draft resolution which is now listed as "B" was moved by the delegations of India and Indonesia. When that draft was debated, the Committee had be-

fore it four other draft resolutions which are listed in draft resolution B.

133. The situation at the present moment is that there are no draft resolutions before the Assembly other than draft resolution B. Resolution A has been adopted unanimously. In view of the importance of this item and the desirability of the Assembly agreeing on this important matter, it is the view of my delegation that we should take no further decision on the item on the admission of new Members to the United Nations. But this resolution is no longer one on which the Indian or Indonesian delegations have any special claim. It is a Committee draft resolution, and therefore we do not have the competence to withdraw it. I believe we have the competence to submit that it would be desirable for the Committee to agree not to press this draft resolution to the vote because nothing would be gained by so doing; it would only spoil the effect of the unanimous decision we have taken. In so far as the Indonesian and Indian delegations have an interest in the matter, we are submitting to the Assembly our view that the interests of the problem will be best served by our not pressing draft resolution B to the vote.

134. The PRESIDENT (*translated from French*): Would the Indian representative kindly tell me if I correctly understand his proposal, namely that in view of the vote taken on draft resolution A the General Assembly should take no vote on draft resolution B?

135. Mr. MENON (India): It was not my desire to create a procedural complication by tabling another motion. I simply made a suggestion; and there are precedents in the Assembly that a suggestion of this kind may, if put to the Committee and if the Committee agrees not to vote on it, require no further action. I

believe the same thing was done last year or the year before last in regard to the resolution on Korea.

136. However, if it is necessary, in the view of the President, to make a motion and if that motion is in order, I am quite prepared to move that the Assembly take no further action in regard to draft resolution B. But I am most anxious that we should not have a procedural wrangle about this question, and I am entirely in your hands, Mr. President.

137. The PRESIDENT (*translated from French*): If nobody wishes to speak on the Indian representative's motion, I shall put it to the vote. The motion is as follows:

*"The General Assembly,*

*"Taking into account the result of the vote on draft resolution A in the report of the Ad Hoc Political Committee [A/2793],*

*"Decides not to vote on draft resolution B in the same document."*

138. Mr. CROSTHWAITE (United Kingdom): I heard no objection to the motion of the representative of India, which would indicate that there is unanimous agreement. Is it necessary for us to proceed with a vote on the matter?

139. The PRESIDENT (*translated from French*): I am always prepared not to put a motion to the vote, but since this is a new suggestion and since we would be departing from the recommendation made by one of the Main Committees, I thought that it would be better to take a vote.

140. If, however, there are no requests that the motion be put to the vote, I shall consider it adopted.

*It was so decided.*

*The meeting rose at 5.10 p.m.*