

tional Court of Justice regarding the voting procedure to be followed by the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa,

Having noted that, in its advisory opinion⁴ of 7 June 1955, the Court was unanimously of the opinion that the rule⁵ that decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa should be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter was a correct interpretation of the advisory opinion⁶ of the Court of 11 July 1950,

Accepts and endorses the advisory opinion of 7 June 1955 of the International Court of Justice on voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa.

*550th plenary meeting,
3 December 1955.*

935 (X). Petitions and communications relating to the Rehoboth Community of South West Africa

The General Assembly,

Having accepted the advisory opinion⁷ of 11 July 1950 of the International Court of Justice on the question of South West Africa, including the opinion that petitions concerning the Territory of South West Africa are to be transmitted by the Government of the Union of South Africa "to the General Assembly of the United Nations, which is legally qualified to deal with them",

Having authorized the Committee on South West Africa, by resolution 749 A (VIII) of 28 November 1953, to examine petitions in accordance with the Mandates procedure of the League of Nations,

Having received a report from the Committee on South West Africa dealing with a petition, undated, from Mr. A. J. Beukes, Mr. P. Diegaard and Mr. A. van Wyk, members of the Rehoboth Community of South West Africa, and related communications from the Rehoboth Community, received on 22 November 1954, and from Mr. Jacobus Beukes, dated 27 November 1954,⁸

Noting that the Government of the Union of South Africa, by a letter⁹ dated 25 March 1954, has informed the Committee that it has "never recognized any obligation to submit . . . petitions to any international body since the demise of the League of Nations",

Noting that the petitioners request that their right of self-government under the Constitutions of the Rehoboth Community of 1870-1874 be restored, and seek an interpretation of the legal status of the Rehoboth Community; that they request that Proclamations Nos. 28 of 1923, 31 of 1924, 9 of 1928, 29 of 1929, 17 of 1932, 5 of 1935, 20 of 1935, 16 of 1938 and 22 of 1941, issued

⁴ *South-West Africa—Voting Procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955, p. 67.*

⁵ Special rule F adopted under General Assembly resolution 844 (IX) of 11 October 1954.

⁶ *International status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128.*

⁷ *Ibid.*

⁸ *Official Records of the General Assembly, Tenth Session, Supplement No. 12 (A/2913), chap. VIII and annex VI.*

⁹ *Ibid., Ninth Session, Supplement No. 14 (A/2666 and Corr. 1), annex I (c).*

by the Administrator of South West Africa and applied to the Rehoboth Community, be declared null and void in that Community, that the boundaries of the Rehoboth Community, as allegedly recognized by the German Government, be restored and that certain lands allegedly alienated unlawfully from the Rehoboth Community be returned to that Community.

I. *With respect to the status of the Rehoboth Community:*

Noting that a Treaty of Protection and Friendship was concluded in 1885 between the German Government and the Rehoboth Community, as an agreement between two Governments, whereby the German Government agreed to assume the protection of the Rehoboth Community, while recognizing the rights and freedom which the Rehobothians had established for themselves,

Noting that the German Government abrogated this Treaty in 1915, when the Rehobothians refused to join German forces and to provide men to guard captured Union of South Africa prisoners during the First World War,

Noting that the Administrator of South West Africa as representing the Government of the Union of South Africa on the one part and the *Kapitein* and members of the *Raad* of the Rehoboth Community for themselves and their lawful successors as representing the Rehoboth Community on the other part concluded an Agreement on 17 August 1923 "regulating the future administration by the Government of the Union of South Africa in its capacity as Mandatory of the territory situate within the district of Rehoboth occupied by the said Community known as the *Gebiet*", that this Agreement was ratified and confirmed by Proclamation No. 28 of 1923 and came into force on 1 October 1923,

Noting further that this Agreement provides, *inter alia*, that:

(a) Subject to the provisions of the Agreement, "the Administration concedes to the Rehoboth Community the right of self-government within the *Gebiet* according to the laws presently to be found in the Law Book of the *Raad* of the Rehoboth Community and such additions thereto or amendments thereof as may from time to time lawfully be enacted by the *Raad* of the Rehoboth Community", subject to the assent of the Administrator to any law passed by the *Raad* after 1 October 1923,

(b) "The Administrator shall, after consultation with the *Raad* of the Rehoboth Community, possess the power to legislate for the *Gebiet* and to extend thereto the operation of any law, whether at present in force in the Territory of South West Africa or hereafter enacted, if he considers such legislation or extension to be expedient or desirable in the interest of either the Territory of South West Africa or the *Gebiet*",

Noting that in 1924 political dissension within the Rehoboth Community gave rise to a situation which, in the view of the Administration, seriously endangered the maintenance of law, order and good government both within the *Gebiet* and in the Territory of South West Africa, and that as a consequence the Administrator issued Proclamation No. 31 of 1924, declaring that the *Kapitein* and *Raad* and all persons acting under their authority should cease to function within the *Gebiet* and vesting all their powers, functions and duties in the Magistrate of the Rehoboth District who was to exercise these powers, functions and duties "in accordance with

the laws of the said Community at present in force within the *Gebiet* and in conformity with the provisions" of the Agreement of 17 August 1923,

Noting further that, in the application of laws to the *Gebiet* subsequent to the issuance of Proclamation No. 31 of 1924, the Administrator in each instance cited the 1923 Agreement and referred to his power thereunder to apply laws to the *Gebiet* after consultation with the *Raad*, to the transfer of the functions and powers of the *Raad* to the Magistrate and, consequently, to his consultation with the Magistrate with respect to the application of the law in question,

1. *Decides* to inform the petitioners that the Territory of South West Africa remains a Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920, and that the provisions of the Mandate and of Article 22 of the Covenant of the League of Nations accordingly apply to the Rehoboth Community, which constitutes a part of the Mandated Territory;

2. *Considers* that, subject to the terms of the Mandate, the administration by the Union of South Africa of the territory known as the Rehoboth *Gebiet* continues to be regulated by the Agreement of 17 August 1923 concluded between the Administrator of the Mandated Territory as representing the Government of the Union of South Africa on the one part and the *Kapitein* and members of the *Raad* of the Rehoboth Community for themselves and their lawful successors as representing the Rehoboth Community on the other part;

3. *Considers* that the permanent transfer of powers, functions and duties from representatives of the Rehoboth Community duly elected under the laws of that Community to an official appointed as Magistrate of the Rehoboth District would not be in accordance with the terms of the Agreement of 17 August 1923;

4. *Further considers* that consultation by the Administrator with the Magistrate of the Rehoboth District for the purpose of applying laws to the Rehoboth *Gebiet* subsequent to 1924 does not fulfil the condition of the Agreement of 17 August 1923 for consultation with the *Raad* of the Rehoboth Community;

5. *Recommends therefore* that the Union of South Africa, as the Mandatory Power, take the necessary steps to correct this situation;

II. *With respect to the boundaries of the Rehoboth Gebiet*:

Noting that the boundaries of the Rehoboth *Gebiet* were defined in the schedule to the Agreement of 17 August 1923 and appear to have been accepted by the *Kapitein* and members of the *Raad* of the Rehoboth Community for themselves and their lawful successors as representing the Rehoboth Community,

Is of the opinion that any claims which the Rehoboth Community may have regarding the alleged boundaries of the *Gebiet* prior to the Agreement of 17 August 1923 appear to have been resolved by that Agreement;

III. *With respect to the claims of the Rehoboth Community to certain lands within the Gebiet*:

Noting that these claims have been investigated by successive commissions of inquiry, the first of which was appointed in 1922,

Recommends that the Union of South Africa, as the Mandatory Power, make every effort toward an early and equitable settlement of these claims.

550th plenary meeting,
3 December 1955.

936 (X). **Petitions and related communications from Mr. Hosea Kutako, Mr. David Roos and Mr. Erastus Amgabeb concerning South West Africa**

The General Assembly,

Having accepted the advisory opinion¹⁰ of 11 July 1950 of the International Court of Justice on the question of South West Africa, including the opinion that petitions concerning the Territory of South West Africa are to be transmitted by the Government of the Union of South Africa "to the General Assembly of the United Nations, which is legally qualified to deal with them",

Having authorized the Committee on South West Africa, by General Assembly resolution 749 A (VIII) of 28 November 1953, to examine petitions in accordance with the Mandates procedure of the League of Nations,

Having received a report from the Committee on South West Africa dealing with a petition, dated 2 September 1954, from Mr. Hosea Kutako, Mr. David Roos and Mr. Erastus Amgabeb, and a related petition, dated 14 January 1955 from Mr. Hosea Kutako,¹¹

Noting that the petitioners request that the United Nations submit the question of the status of South West Africa to the International Court of Justice for its compulsory jurisdiction,

Noting further that the petitioners raise questions relating to the participation of the African people of the Territory in the political development of the Territory, the application of pass laws and racially discriminatory laws, educational facilities, and the alleged refusal on the part of the Administration to permit common meetings for all tribes,

1. *Decides* to inform the petitioners that, according to the advisory opinion of 11 July 1950 of the International Court of Justice:

(a) "South West Africa is a territory under the international Mandate assumed by the Union of South Africa on December 17th, 1920";

(b) "... 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";

(c) "... competence to determine and modify the international status of the Territory [of South West Africa] rests with the Union of South Africa acting with the consent of the United Nations";

and that the General Assembly, by its resolution 449 A (V) of 13 December 1950, accepted the advisory opinion of the International Court of Justice on the question of South West Africa;

Noting the observations of the Committee on South West Africa with respect to questions raised by the petitioners relating to conditions in the Territory of South West Africa,

¹⁰ *International status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128.*

¹¹ *Official Records of the General Assembly, Tenth Session, Supplement No. 12 (A/2913), chap. VIII and annex VII.*