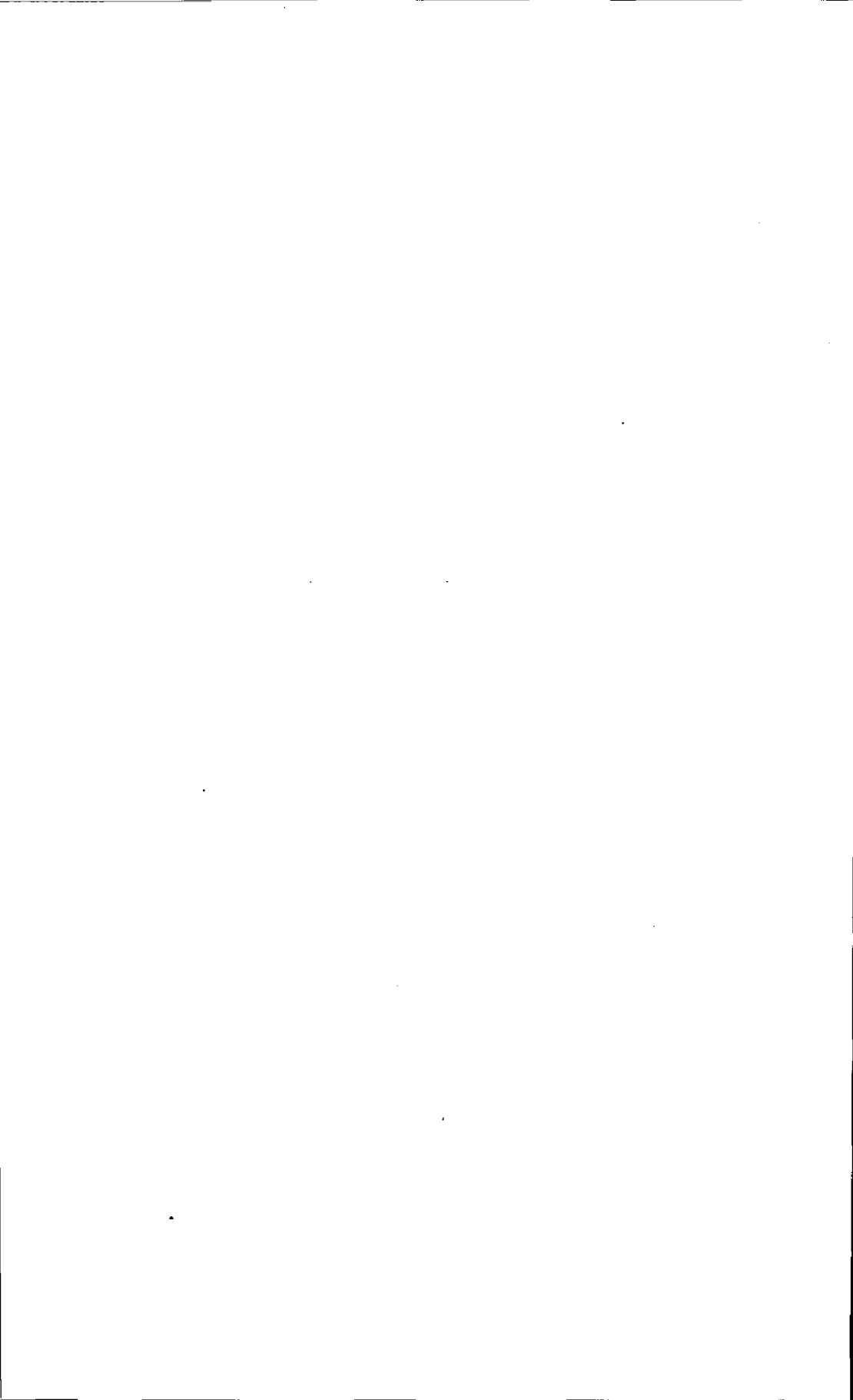


**CORRESPONDENCE**



**CORRESPONDANCE**



1. THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE  
INTERNATIONAL COURT OF JUSTICE  
(telegram)

29 July 1970.

I have the honour to inform you that the Security Council adopted this afternoon resolution 284 (1970) in which it decided to request the International Court of Justice, in accordance with Article 96 (1) of the Charter, to give an advisory opinion on the following question:

"What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"

Formal letter follows transmitting certified copies of resolution 284 (1970).

U THANT.

2. THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE  
INTERNATIONAL COURT OF JUSTICE<sup>1</sup>

29 July 1970.

[See I, pp. 3-4 and 6.]

3. THE UNDER SECRETARY-GENERAL FOR POLITICAL AND SECURITY COUNCIL  
AFFAIRS OF THE UNITED NATIONS TO THE REGISTRAR  
(telegram)

5 August 1970.

... Repeating hereunder texts English and French Security Council resolution (1970), certified copies of which mailed to President International Court of Justice from Secretary-General 30 July. Texts follow:

*"The Security Council*

*Reaffirming* the special responsibility of the United Nations with regard to the territory and the people of Namibia,

*Recalling* Security Council resolution 276 (1970) on the question of Namibia,

*Taking note* of the report and recommendations submitted by the *Ad Hoc* Sub-Committee established in pursuance of Security Council resolution 276 (1970),

*Taking further note* of the recommendation of the *Ad Hoc* Sub-Committee on the possibility of requesting an advisory opinion from the International Court of Justice,

*Considering* that an advisory opinion from the International Court of Justice

<sup>1</sup> Received on 10 August 1970.

would be useful for the Security Council in its further consideration of the question of Namibia and in furtherance of the objectives the Council is seeking

1. *Decides* to submit in accordance with Article 96 (1) of the Charter, the following question to the International Court of Justice with the request for an advisory opinion which shall be transmitted to the Security Council at an early date:

“What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?”

2. *Requests* the Secretary-General to transmit the present resolution to the International Court of Justice, in accordance with Article 65 of the Statute of the Court, accompanied by all documents likely to throw light upon the question.”

“*Le Conseil de sécurité,*

*Réaffirmant* la responsabilité spéciale de l'Organisation des Nations Unies en ce qui concerne le territoire et le peuple de la Namibie,

*Rappelant* la résolution 276 (1970) du Conseil sur la question de Namibie,

*Prenant note* du rapport et des recommandations présentés par le Sous-Comité *ad hoc* créé en application de la résolution 276 (1970) du Conseil de sécurité,

*Prenant note également* de la recommandation du Comité *ad hoc* touchant la possibilité de demander un avis consultatif à la Cour internationale de Justice,

*Considérant* qu'un avis consultatif de la Cour internationale de Justice serait utile au Conseil de sécurité pour continuer à examiner la question de Namibie et pour la réalisation des objectifs recherchés par le Conseil,

1. *Décide* de soumettre, conformément au paragraphe 1 de l'article 96 de la Charte, la question suivante à la Cour internationale de Justice en demandant qu'un avis consultatif soit transmis au Conseil de sécurité à une date rapprochée:

“Quelles sont les conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie, nonobstant la résolution 276 (1970) du Conseil de sécurité?”

2. *Prie* le Secrétaire général de transmettre la présente résolution à la Cour internationale de Justice, conformément à l'article 65 du Statut de la Cour, en y joignant tout document pouvant servir à élucider la question.”

KUTAKOV.

4. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN  
(télégramme)<sup>1</sup>

5 août 1970.

Me référant résolution Conseil de sécurité 284 du 29 juillet 1970 ai l'honneur vous faire connaître que vous ai adressé aujourd'hui communication spéciale et directe prévue par article 66 paragraphe 2 du Statut. Président a fixé au 23 septembre 1970 date limite pour présentation exposés écrits.

<sup>1</sup> Le même télégramme a été adressé à tous les autres Etats Membres des Nations Unies.

5. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN<sup>1</sup>

5 août 1970.

Il est connu de Votre Excellence que, par résolution du 29 juillet 1970, le Conseil de sécurité de l'Organisation des Nations Unies a demandé à la Cour un avis consultatif sur la question suivante:

«Quelles sont les conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie, nonobstant la résolution 276 (1970) du Conseil de sécurité?»

Cette résolution est parvenue au Greffe le 5 août 1970. Le Greffe se propose d'établir une édition imprimée de la requête pour avis consultatif, édition qui sera sans délai communiquée à Votre Excellence aux termes de l'article 66, paragraphe 1, du Statut.

Le paragraphe 2 du même article du Statut prévoit qu'à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par son Président si elle ne siège pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'audiences tenues à cet effet.

Appliquant cette disposition, j'ai l'honneur de faire connaître à Votre Excellence, par la présente communication spéciale et directe, qu'en l'espèce et à ce jour les Etats Membres de l'Organisation des Nations Unies ont été considérés par le Président comme susceptibles de fournir des renseignements sur la question; et, d'autre part, que la date à laquelle expire le délai pour la présentation d'exposés écrits a été, par ordonnance du Président du 5 août 1970<sup>2</sup>, fixée au 23 septembre 1970. La suite de la procédure est réservée.

Au cas où Votre Gouvernement désirerait se prévaloir de la faculté, qui lui est ainsi ouverte, de présenter un exposé écrit dans le délai fixé, j'attacherais du prix à en être informé aussitôt que possible. J'ajoute que l'exposé devrait être rédigé soit en français, soit en anglais, langues officielles de la Cour (article 39, paragraphe 1, du Statut).

6. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS  
(*telegram*)

5 August 1970.

Am informing States Members United Nations that pursuant Article 66 paragraph 2 of Statute President considers them likely to be able to furnish information and by Order 5 August has fixed 23 September 1970 as time-limit for submission written statements.

<sup>1</sup> La même communication a été adressée à tous les autres Etats Membres des Nations Unies.

<sup>2</sup> *C.I.J. Recueil* 1970, p. 359.

7. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN<sup>1</sup>

14 août 1970.

Comme suite à ma communication du 5 août 1970, j'ai l'honneur, en exécution de l'article 66, paragraphe 1, du Statut de la Cour, de faire tenir ci-joint à Votre Excellence un exemplaire, imprimé par les soins du Greffe, de la requête pour avis consultatif transmise à la Cour en vertu d'une résolution du Conseil de sécurité de l'Organisation des Nations Unies du 29 juillet 1970.

## 8. THE MINISTRY OF EXTERNAL AFFAIRS OF MALAWI TO THE REGISTRAR

14 August 1970.

I have the honour to refer to your letter No. 50143 of 5 August 1970, in which you invite the Government of Malawi to submit to the Registry of the Court a written statement in pursuance of the provision of Article 66, paragraph 1, of the Statute of the International Court of Justice concerning the subject of the legal consequences for States of the continued presence of South Africa in Namibia.

I am directed to inform you that the Government of Malawi does not wish to present any written statement on this subject.

(Signed) G. T. Katoki MWALILINO,  
for Secretary for External Affairs.

## 9. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

17 August 1970.

By your letter dated 29 July 1970, you were good enough to communicate to the Court one copy each of the English and French texts of resolution 284 (1970) whereby the Security Council of the United Nations, at its 1550th meeting held on 29 July 1970, requested the Court to give an advisory opinion. You added that, in accordance with Article 65 of the Statute of the International Court of Justice, you would transmit to the Court, as requested in paragraph 2 of the resolution, all documents likely to throw light upon the question.

In acknowledging receipt of your kind communication, which reached the Registry on 10 August 1970, I have the honour to inform you that on 14 August 1970 I notified all States entitled to appear before the Court of the request for an advisory opinion, as provided under Article 66, paragraph 1, of the Statute of the Court. I am attaching below, for your information, a copy in both languages of the printed text of your letter of 29 July 1970 and resolution

<sup>1</sup> La même communication a été adressée à tous les autres Etats Membres des Nations Unies et une communication analogue a été adressée aux Etats non membres des Nations Unies admis à ester devant la Cour.

284 (1970) of the Security Council, as they were transmitted to the aforementioned States<sup>1</sup>.

As you already know, on 5 August, the President of the Court had decided to fix 23 September 1970 as the time-limit for the submission of written statements by Governments in accordance with Article 66, paragraph 2, of the Statute of the Court. I am enclosing herewith, for your information, a copy of the Order made by the President to that effect. On the same day, on instructions from the President, I sent to the States Members of the United Nations the special and direct communication provided for in Article 66, paragraph 2, of the Statute. In addition, I immediately sent a telegram informing the Governments of the States Members of the United Nations and yourself of the President's decisions.

**10. THE SECRETARY FOR FOREIGN AFFAIRS OF SOUTH AFRICA TO THE REGISTRAR**

19 August 1970.

I have the honour to refer to your letter No. 50143 dated 5 August 1970, indicating that 23 September 1970 has, by an Order of the President of 5 August 1970, been fixed as the time-limit for the submission of written statements in connection with the advisory opinion requested by the Security Council in its resolution 284 (1970).

On behalf of the Government of the Republic of South Africa I hereby apply for an extension of this time-limit in terms of Rule of Court 37.4 read with Rule of Court 82.1. The grounds upon which this application is based are set out in the succeeding paragraphs.

The Republic of South Africa is the State most intimately concerned in this matter and should in the interests of justice be given a fair opportunity to present its views fully.

It is respectfully suggested that a full presentation by the Republic of South Africa might also serve to lighten the Court's task in this matter. By reason of my Government's particular acquaintanceship with and interest in the whole matter of South West Africa, it might well be in a position to adduce highly relevant material which might not be available, or so readily available, to others, or might not in fact be adduced by others.

It is apparent that the question put to the Court raises a number of difficult and important matters which would require detailed investigation with a view to presenting a full statement to the Court. I list a number of such matters below, without suggesting that they are the only ones or that all these matters would necessarily be pursued in any statement which my Government might submit:

- (a) The circumstances in which the Court should accede to a request for an advisory opinion;
- (b) The validity of Security Council resolutions (such as the said resolution 284 (1970) as well as resolution 276 (1970) mentioned therein) which were passed despite the abstention of certain of the permanent members;
- (c) The force of Security Council resolutions which do not fall under Chapter VII of the Charter;
- (d) The validity of General Assembly resolution 2145 (XXI) which forms the

<sup>1</sup> See I, pp. 3-6.

basis of the said Security Council resolution 276 (1970). This aspect opens up a vast field covering the powers of the General Assembly under the Charter, the question of United Nations succession to powers previously exercisable by the League of Nations in respect of mandates, the extent of the powers of the latter body, and the factual basis underlying the purported exercise of these powers by the General Assembly in resolution 2145 (XXI).

In view of all these circumstances my Government would find it impossible to submit a written statement giving proper attention to the important matters at issue before 31 January 1971. In stating this date, it is borne in mind that the Security Council requested an opinion at an early date. It is respectfully submitted, however, that an acceleration of the procedure of the Court in terms of Rule of Court 82.2 should always be accompanied by a full regard for the requirements of justice.

On behalf of the Government of the Republic of South Africa, I therefore respectfully apply for an extension of the time-limit for the submission of a written statement to 31 January 1971.

(Signed) B. G. FOURIE.

## II. LE GREFFIER AU CHEF DU GOUVERNEMENT DU LIECHTENSTEIN <sup>1</sup>

21 août 1970.

Par lettre du 14 août 1970, j'ai fait tenir à Votre Excellence, en exécution de l'article 66, paragraphe 1, du Statut de la Cour, un exemplaire de la requête pour avis consultatif transmise à la Cour en vertu d'une résolution du Conseil de sécurité de l'Organisation des Nations Unies en date du 29 juillet 1970.

Le paragraphe 2 du même article du Statut prévoit qu'à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par son Président si elle ne siège pas, susceptibles de fournir des renseignements sur la question le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'audiences tenues à cet effet.

Appliquant cette disposition, j'ai l'honneur de faire connaître à Votre Excellence, par la présente communication spéciale et directe, que les Etats non membres de l'Organisation des Nations Unies mais admis à ester devant la Cour ont été considérés par le Président comme susceptibles de fournir des renseignements sur la question. D'autre part, par ordonnance du Président du 5 août 1970, dont je vous communique ci-joint copie, la date d'expiration du délai pour la présentation d'exposés écrits a été fixée au 23 septembre 1970; la suite de la procédure est réservée.

Au cas où Votre Gouvernement désirerait se prévaloir de la faculté, qui lui est ainsi ouverte, de présenter un exposé écrit dans le délai fixé, j'attacherais du prix à en être informé aussitôt que possible. J'ajoute que l'exposé devrait être rédigé soit en français, soit en anglais, langues officielles de la Cour (article 39, paragraphe 1, du Statut).

<sup>1</sup> La même communication a été adressée aux autres Etats non membres des Nations Unies admis à ester devant la Cour.



12. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS  
(*telegram*)

21 August 1970.

Re request for advisory opinion am informing States not members United Nations but entitled to appear before Court that pursuant Article 66 paragraph 2 of Statute President considers them likely to be able to furnish information.

13. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN<sup>1</sup>

28 août 1970.

Me référant à ma lettre du 5 août 1970 relative à la demande d'avis consultatif formulée par le Conseil de sécurité de l'Organisation des Nations Unies, j'ai l'honneur de faire savoir à Votre Excellence que, par ordonnance datée de ce jour<sup>2</sup>, le Président de la Cour a prorogé jusqu'au 19 novembre 1970 la date d'expiration du délai dans lequel des exposés écrits peuvent être présentés conformément à l'article 66, paragraphe 2, du Statut de la Cour. La suite de la procédure est réservée.

Le texte imprimé de l'ordonnance sera transmis à Votre Excellence dès que possible.

14. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS  
(*telegram*)

28 August 1970.

Re request for advisory opinion am informing all States entitled to appear before Court that President has extended to 19 November 1970 time-limit for submission written statements. Letter follows.

15. THE DEPUTY LEGAL ADVISER TO THE MINISTRY OF FOREIGN AFFAIRS OF THE  
NETHERLANDS TO THE REGISTRAR

28 August 1970.

In reference to your letter of 5 August 1970, I have the honour to submit a written statement<sup>3</sup> by the government of the Kingdom of the Netherlands, pursuant to Article 66, paragraph 2, of the Statute of the Court, relating to the question that has been submitted to the International Court of Justice with the request for an advisory opinion by resolution 284 of the Security Council of 29 July 1970.

(*Signed*) C. W. VAN SANTEN.

<sup>1</sup> La même communication a été adressée aux autres Etats Membres des Nations Unies (sauf l'Afrique du Sud — voir ci-après n° 16) et une communication analogue a été adressée aux Etats non membres des Nations Unies admis à ester devant la Cour.

<sup>2</sup> *C.I.J. Recueil 1970*, p. 362.

<sup>3</sup> See I, pp. 350-353.

**16. THE DEPUTY-REGISTRAR TO THE AMBASSADOR OF SOUTH AFRICA TO THE NETHERLANDS**

3 September 1970.

By a letter of 19 August 1970, which Your Excellency was good enough to hand to me on 24 August, the Secretary for Foreign Affairs of South Africa requested the extension to 31 January 1971 of the time-limit for the submission of a written statement in accordance with Article 66, paragraph 2, of the Statute of the Court with regard to the advisory opinion requested of the Court by the Security Council under resolution 284 (1970) of 29 July 1970.

In acknowledging the receipt of that communication, I have the honour to confirm that, as Your Excellency has already been informed, the President of the Court has, by an Order of 28 August 1970, extended to 19 November 1970 the time-limit within which written statements may be submitted in accordance with Article 66, paragraph 2, of the Statute of the Court.

I am enclosing herewith a copy of the Order of 28 August 1970.

**17. THE DEPUTY-REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS**

3 September 1970.

I have the honour to refer to my letter of 17 August 1970 concerning the advisory opinion requested of the Court by the Security Council under resolution 284 (1970) of 29 July 1970, and to confirm the information given in the two telegrams which I sent you on 21 and 28 August respectively.

In the first place, on 21 August, I notified those States which are not members of the United Nations but which are entitled to appear before the Court that, in accordance with the terms of Article 66, paragraph 2, of the Statute, the President of the Court considered them as likely to be able to furnish information on the question submitted to the Court for an advisory opinion. These States are Liechtenstein, San Marino, Switzerland, the Federal Republic of Germany and the Republic of Viet-Nam.

Furthermore, by an Order of 28 August 1970, the President has extended to 19 November 1970 the time-limit within which written statements may be submitted in accordance with Article 66, paragraph 2, of the Statute of the Court. I attach to the present letter, for your information, a copy of the Order made by the President, one of the recitals of which refers to a letter of 19 August 1970 by which the Secretary for Foreign Affairs of South Africa requested the extension to 31 January 1971 of the time-limit in question.

**18. PROFESSOR REISMAN TO THE REGISTRAR**

Yale University Law School, New Haven, 10 September 1970.

Because I am deeply concerned about the trend of events in Namibia and because I feel that critical legal issues are raised by the question posed to the Court by the Security Council, I should like to explore the possibility of submitting some form of *amicus curiae* brief to the International Court.

I appreciate that this has not been done before, though there appears to be some faint precedent in the Court's willingness to accept a document from the International League for the Rights of Man in 1950. On the other hand, there seems to be no explicit bar in the Statute or Rules to accepting a document from an interested group or individual, despite the fact that such group or individual could neither initiate a case nor plead orally.

In common law countries, the *amicus curiae* brief, has been an institution which has provided useful information to courts, permitted private parties who were not litigating to inform the court of their views and the probable effects the outcome might have on them and, overall, has served as a means for integrating and buttressing the authority and conflict-resolving capacities of domestic tribunals.

May I pose the following questions to the Registry?

1. Would the Court accept and consider a document, in the form of a memorial, from an individual or group? If it would do so, what would be the appropriate form?

2. If the Court were reluctant to accept such a document, would it consider a document which, in addition to a discussion of the legal issues in the question posed for advisory opinion, also discussed the legality and advisability of international *amicus curiae* briefs?

(Signed) W. Michael REISMAN,  
Associate Professor.

19. L'AMBASSADEUR DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE AUX PAYS-BAS  
AU GREFFIER<sup>1</sup>

22 septembre 1970.

Me référant à votre lettre en date du 21 août 1970, adressée au ministère des affaires étrangères de la République fédérale d'Allemagne, j'ai l'honneur de vous faire savoir que mon gouvernement n'a pas l'intention de fournir des renseignements concernant la requête pour avis consultatif transmise à la Cour en vertu de la résolution du Conseil de sécurité de l'Organisation des Nations Unies en date du 29 juillet 1970.

(Signé) ARNOLD.

20. THE DEPUTY-MINISTER FOR FOREIGN AFFAIRS OF POLAND TO THE REGISTRAR

22 October 1970.

I have the honour to transmit to you, for communication to the President and Judges of the International Court of Justice, a written statement<sup>2</sup> of the Government of the Polish People's Republic on the question of the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*. This statement is submitted in accordance with Article 66, paragraph 2, of the Statute of the Court and the Orders made by the President of the Court on 5 August 1970 and 28 August 1970.

(Signed) Józef WINIEWICZ.

<sup>1</sup> Une communication analogue a été reçue du Gouvernement de Saint-Marin.

<sup>2</sup> See I, p. 354.

## 21. THE REGISTRAR TO PROFESSOR REISMAN

6 November 1970.

I only yesterday returned to my office at The Hague after a somewhat prolonged visit to U.N. Headquarters and I now reply belatedly to the letter dated 10 September 1970 in which you enquire as to the possibility of participation, on an *amicus curiae* basis, in the written phase of the Court's proceedings on the recent request by the Security Council for an advisory opinion.

Your questions concern the attitude which the Court would adopt in relation to the submission of certain documents to it. Nevertheless, I understand that your letter is not addressed to the Registrar in his capacity as the regular channel of communication to the Court (in accordance with Article 21 of its Rules) but it is intended rather to ascertain the views of the Registry with regard to the points raised in the light of decisions taken in the past by the Court.

You refer to the Court's willingness in 1950 to receive a written statement from the International League for the Rights of Man and suggest that this may constitute some faint precedent for the submission of an *amicus curiae* brief. With regard to this I should point out that, in its request to be granted the right to furnish a written statement, the League based its claim to be so entitled on its fulfilling the conditions of Article 66, paragraph 2, of the Statute, that is, as being an international organization which could be considered by the Court as likely to be able to furnish information on the question (*I.C.J. Pleadings, International Status of South West Africa*, p. 324). In these circumstances the decision cannot be regarded as a precedent for the participation of individuals in the proceedings on a request for advisory opinion. Indeed, in the same case requests by individuals to submit written or oral statements were not acceded to (*ibid.*, pp. 328, 329, 340-342), and in 1954, in connection with the proceedings on the Effect of Awards of compensation made by the United Nations Administrative Tribunal, counsel who had represented staff members of the United Nations in proceedings before the U.N. Administrative Tribunal which had resulted in awards of compensation which were referred to in the General Assembly Resolution deciding to request an advisory opinion, asked for an opportunity to file a memorandum and to appear and participate in oral argument before the Court (*I.C.J. Pleadings, Effects of Awards of Compensation made by the United Nations Administrative Tribunal*, pp. 394-395). In reply, they were informed which States and which organization had been considered by the President as likely to be able to furnish information on the question and it was also stated that should the Court feel the need for further information it could again exercise the faculty conferred upon it by Article 66, paragraph 2, of the Statute, but that it "would, in any event, be bound by the limitations set forth in that clause and would therefore not be authorized to request or receive written or oral statements either from your clients or on their behalf from the counsel who represented them before the Administrative Tribunal".

I should also refer to the proceedings on UNESCO's request for an advisory opinion with reference to decisions of the ILO Administrative Tribunal. The interpretation of Article 66 of the Statute cited above would appear to be confirmed by the procedure agreed to by the Court, in accordance with which the observations of counsel for the staff members affected the decisions of the Tribunal were transmitted to the Court by the organization which disputed the validity of the decisions—see *Judgments of the Administrative Tribunal of*

the ILO upon Complaints made against UNESCO, *Advisory Opinion, I.C.J. Reports 1956*, p. 77 at p. 80. With reference to your suggestion that there seems to be no explicit bar in the Statute or Rules to accepting a document from an interested group or individual, the Court's view would seem to have been that the expression of its powers in Article 66, paragraph 2, is limitative, and that *expressio unius est exclusio alterius*—see the separate opinions, in the above-mentioned case, of Judge Winiarski, Judge Klaestad (*ibid.*, p. 109 *in fine*) and Judge Sir Muhammad Zafrulla Khan (*ibid.*, p. 114, fourth paragraph).

For these reasons, and also because I believe that the Court would be unwilling to open the floodgates to what might be a vast amount of proffered assistance, in my opinion a negative answer must be given to your first question, whatever justification for describing the volunteer as an *amicus curiae* may exist.

As regards the second question which you put, I do not believe that the Court would be any more willing to accept a document discussing the legal issues involved in the question posed for advisory opinion, by reason of the fact that it also contained a discussion of the legality and advisability of international *amicus curiae* briefs.

22. THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE INTERNATIONAL LEAGUE  
FOR THE RIGHTS OF MAN TO THE REGISTRAR  
(telegram)

10 November 1970.

We are sending today registered airmail a statement on the Namibia case with the request that the Court grant permission for it to be received as in 1950.

International League for the Rights of Man by  
John CAREY Chairman of the Board.

23. THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE INTERNATIONAL LEAGUE  
FOR THE RIGHTS OF MAN TO THE REGISTRAR

10 November 1970.

The International League for the Rights of Man, an international organization with consultative status with the United Nations, herewith requests permission of the Court to submit a written statement on the question put to the Court by the Security Council in its resolution 284 of 29 July 1970.

The League has been concerned with the issue of South West Africa (Namibia) for many years, and is in a position to furnish information likely to assist the Court in its examination of the legal questions put to it by the Security Council in its request for an advisory opinion. The League was granted permission by the Court in 1950 to submit a written statement on the legal questions put to the Court by the General Assembly in its request for an Opinion on the *Status of South West Africa*. See *I.C.J. Pleadings, 1950*, pp. 324, 325, 327, 343, 344, 346.

The League is enclosing herewith a written statement<sup>1</sup> that it wishes to

<sup>1</sup> Not reproduced.

submit to the Court should permission be forthcoming. Arrangements for its printing at Leiden will be made immediately should the Court decide favourably on our request.

If the Written Statement is accepted by the Court, the League requests further, in accordance with Article 66 (4) of the Court's Statute, that it be granted permission to comment on the statements made by other States or organizations. Should the Court decide to hold a public sitting to hear oral statements relating to the question, the League requests permission to be represented by counsel at such public sitting for purposes of making an oral statement to the Court.

(Signed) John CAREY.

24. THE DIRECTOR GENERAL (UN) OF THE MINISTRY OF FOREIGN AFFAIRS OF  
PAKISTAN TO THE REGISTRAR

11 November 1970.

With reference to your letters of 5 and 28 August 1970, I am directed to say that the Government of Islamic Republic of Pakistan has the honour to submit to the International Court of Justice the written statement<sup>1</sup> enclosed herewith on the question of the *Legal Consequences for States of the Continued Presence of South Africa in Namibia, notwithstanding Security Council Resolution 274 (1970)* on which a request for advisory opinion has been transmitted to the Court under the resolution 284 (1970) of the Security Council.

(Signed) Niaz A. NAIK.

25. THE LEGAL ADVISER TO THE DEPARTMENT OF STATE OF THE UNITED STATES  
OF AMERICA TO THE REGISTRAR

12 November 1970.

In accordance with Article 66, paragraph 2, of the Statute of the International Court of Justice and the Order of the President of the Court dated 28 August 1970, I have the honor to submit herewith ten copies of the written statement<sup>2</sup> of the Government of the United States of America relating to the request by the Security Council for an advisory opinion concerning *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.

(Signed) John R. STEVENSON.

<sup>1</sup> See I, pp. 355-358.

<sup>2</sup> See I, pp. 843-888.

## 26. THE SECRETARY FOR FOREIGN AFFAIRS OF SOUTH AFRICA TO THE REGISTRAR

13 November 1970.

I have the honour to submit herewith the written statement<sup>1</sup> of the South African Government in the pending advisory proceedings concerning South West Africa. I wish to inform you that it is the intention of the South African Government to be represented at all subsequent stages of the proceedings, and, in particular, to exercise its right under Article 66, paragraph 4, of the Statute of the Court to comment on any statements made by other States or organizations. Whilst appreciating that the form in which such comment is to be presented is a matter falling within the discretion of the Court or the President, the South African Government would nevertheless suggest that the present question raises matters of such importance and complexity that both written and oral comments would be justified.

In regard to the composition of the Court, I wish to refer you to Chapter IV of the South African written statement. As you will note, that Chapter contains the submission that the Court as a whole, and certain of its individual members, have been involved in the political issues which form the background to the present proceedings in a manner and to an extent which, in the view of the South African Government, render it impossible for the Court to exercise its judicial function properly. The South African Government requests that the position of the individual Judges who are mentioned in the said Chapter be considered separately with a view to determining whether they should participate in any part of the present proceedings whatsoever, including that concerned with the appointment of an *ad hoc* judge (to which reference is made below) and that relating to the question whether the Court as a whole should not, as a matter of judicial propriety, decline jurisdiction. Should the Court so require, the South African Government will be prepared to present further written or oral argument in support of this request.

You will also note that it is contended in Chapter IV that the question on which the Court is now asked to advise, forms the subject of disagreement and controversy between the South African Government and certain other States Members of the United Nations, including States nationals of which are Members of this Court. It is accordingly submitted that the question upon which the Court is now asked to advise should be regarded as "a legal question actually pending between two or more States" within the meaning of Article 83 of the Rules of Court, and that the South African Government is therefore entitled to choose an *ad hoc* judge in terms of Article 31, paragraph 2, of the Statute. Indeed, as will also appear from the said Chapter IV, the legal question now pending represents merely a continuation of the disagreement which was characterized by the Court in 1962 as a legal dispute between, on the one hand, South Africa, and, on the other, the then Applicants "and the other Members of the United Nations holding identical views with the Applicants" (p. 345).

If the above contention concerning the applicability of Article 31, paragraph 2, of the Statute were to be doubted or disputed, the South African Government requests an opportunity to address the Court orally on this matter. If not, it hereby designates The Honourable Jacques Theodore van Wyk, whose qualifications are well known to the Court, to act as judge *ad hoc* in the present proceedings.

(Signed) B. G. FOURIE.

<sup>1</sup> See I, pp. 377-829.

27. THE PERMANENT REPRESENTATIVES TO THE UNITED NATIONS OF BURUNDI, NIGERIA, SIERRA LEONE, UNITED ARAB REPUBLIC AND ZAMBIA TO THE REGISTRAR

Executive Secretariat of the Organization of African Unity  
to the United Nations, New York, 13 November 1970.

We have the honour to inform you that it is the wish of the Governments of Burundi, Nigeria, Sierra Leone, the United Arab Republic and Zambia, acting in concert with certain other African States to submit to the International Court of Justice a joint written statement in connexion with the request for the advisory opinion entitled *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.

Our Governments very much regret, as do the other African Governments concerned, that it has not proved possible to complete this joint statement; relating to a most important subject on which a vast quantity of documentation exists, within the time-limit of 19 November 1970 for the filing of written statements, fixed by the President of the Court in an Order of 28 August 1970. Our Governments are fully aware of the concern of the Court that it be permitted to proceed in any contentious case or advisory opinion with the utmost expedition, but our Governments wish to stress their very strong hope and desire that an extension may be granted to permit the African States concerned to file their joint written statement.

Our Governments trust that you fully appreciate the element of time involved in the preparation of a joint statement by a number of African Governments, owing to the process of consultations required in such a situation.

We are therefore instructed by our Governments to request for an extension to be granted, and that the time-limit for the filing of written statements be extended until 31 December 1970.

(Signed) M. N. TERENCE  
E. O. OGBU  
Davidson NICOL  
M. H. EL-ZAYYAT  
V. J. MWAANGA.

28. THE ATTORNEY-GENERAL AND COMMISSIONER FOR JUSTICE OF NIGERIA TO  
THE REGISTRAR

Lagos, 13 November 1970.

I have the honour to present to you on behalf of the Organisation of African Unity the enclosed Memorandum<sup>1</sup> in connection with the request of the Security Council for an advisory opinion of the Court in accordance with Article 65 of the Statute of the Court.

Please acknowledge the receipt in due course.

Together with my colleague, Dr. Abdullah El-Erian of the U.A.R. Mission to the United Nations in New York, I caused a letter to be forwarded to you asking for an extension of the period in which to submit an adequate Memorandum.

<sup>1</sup> See I, pp. 889-897.



dum but, as we have not had the privilege of an acknowledgement of that letter or that our request for an extension has been granted, I decided to forward you this hurried Memorandum on the subject. The proof of authorisation so to submit this Memorandum on behalf of the Organisation of African Unity will be submitted to you in due course, if you should deem it necessary.

(Signed) T. O. ELIAS.

29. THE EXECUTIVE DIRECTOR OF THE AMERICAN COMMITTEE ON AFRICA TO THE REGISTRAR

13 November 1970.

In accordance with the provisions of Article 66 of the Statute of the Court the American Committee on Africa, an affiliate of the International League for the Rights of Man, is submitting herewith a statement<sup>1</sup> relating to the subject of the Advisory Opinion which the Court has been requested to give by Security Council resolution 284 (1970).

The Committee, founded in 1953, is the oldest organization in the western hemisphere devoted to the explanation and interpretation of African Affairs to the general public and to the realization of African self-determination. The Committee founded *Africa Today*, now published under the aegis of the Center on International Race Relations, University of Denver (Denver, Colorado) under the editorship of the first Director of the Committee. It also publishes at irregular intervals scholarly and popular studies of African problems, particularly in relation to southern Africa.

The Executive Board of the Committee, by resolution duly passed at a special meeting on 8 October 1970, authorized the Executive Director to submit a statement on its behalf on this subject of vital concern and interest to the Committee.

(Signed) George M. HOUSER.

30. THE ADDITIONAL SECRETARY AND LEGAL ADVISER OF THE MINISTRY OF EXTERNAL AFFAIRS OF INDIA TO THE REGISTRAR

14 November 1970.

I am directed by the Minister of External Affairs of the Government of India to acknowledge receipt of your communications Nos. 50143 and 50165 dated 5 and 14 August, respectively, addressed to him and forwarding a certified copy of the request for an advisory opinion transmitted to the Court pursuant to resolution 284 (1970) of 29 July 1970, of the Security Council of the United Nations and also requesting our Government to indicate whether it wishes to avail itself of the right to present a written statement on or before 23 September 1970. On 28 August 1970, the President of the Court extended to 19 November 1970, the time-limit for the submission of written statements by States. I have the honour to forward herewith the written statement<sup>2</sup> of the Government of India in connection with this request.

(Signed) K. Krishna RAO.

<sup>1</sup> Not reproduced.

<sup>2</sup> See I, pp. 830-842.

31. THE AMBASSADOR OF CZECHOSLOVAKIA TO THE NETHERLANDS TO THE  
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

16 November 1970.

[See I, p. 361.]

32. THE MINISTER FOR FOREIGN AFFAIRS OF FINLAND TO THE REGISTRAR

16 November 1970.

With reference to your letter No. 50143 of 5 August 1970, regarding the advisory opinion which the United Nations Security Council has requested the International Court of Justice to give on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)*, I have the honour to present, on behalf of the Government of Finland, the following statement<sup>1</sup>.

(Signed) Väinö LESKINEN.

33. THE EMBASSY OF HUNGARY TO THE NETHERLANDS TO THE INTERNATIONAL  
COURT OF JUSTICE

16 November 1970.

[See I, pp. 359-360.]

34. THE REGISTRAR TO THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE  
INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN

17 November 1970.

I acknowledge the receipt of your cable and letter of 10 November 1970 and of the statement enclosed with your letter.

I am directed by the President to inform you that your request will be laid before the Court for decision. I should add that it is not expected that the Court will be able to consider your request before the third week in January 1971.

35. THE REVEREND MICHAEL SCOTT TO THE REGISTRAR

The Hague, 17 November 1970.

I have been asked to deliver to you a statement on behalf of the American Committee on Africa in relation to the question of South West Africa-Namibia on which the Court has been asked for an advisory opinion.

<sup>1</sup> See I, pp. 370-376.

The American Committee whose covering letter<sup>1</sup> I enclose were anxious that you should receive their statement before 19 November as up to the time I left New York no word had been received of any extension of time. If that should be granted I would like to be able to inform them of the new date.

For my own part I should also like to enquire whether the Court would be able or willing to receive an oral or written statement from me.

It was at the request of the Herero chiefs Frederick Mahareru, Hosea Kutako and others than I appealed to the U.N. in 1946 and conveyed their petition there in 1947.

I was first granted a hearing by the Committee on Trusteeship in 1949 after my credentials had been examined by a special committee of the U.N. appointed for the purpose and found to be worthy of "full faith and credit".

I would like to refer to the persistent confidence of these African people in the judicial process and the obligations which are owed to them by the international community and member States of the U.N. and should be grateful if this courtesy can be extended to me.

I enclose also copies of a publication<sup>2</sup> on the subject of Namibia by the Africa Bureau in London to which I contributed a section.

(Signed) Reverend G. Michael SCOTT.

36. THE LEGAL ADVISER OF THE UNITED NATIONS TO THE REGISTRAR  
(telegram)

18 November 1970.

We have been asked by Permanent Representatives Burundi, Nigeria, Sierra Leone, the United Arab Republic and Zambia to transmit urgently to you by cable letter addressed to "S. Aquarone, Registrar, International Court of Justice, Peace Palace, The Hague, Netherlands" and dated "New York, 13 November 1970". Text reads as follows:

[See No. 27, supra.]

The letter airmailed today.

STAVROPOULOS.

37. THE REGISTRAR TO THE ATTORNEY-GENERAL AND COMMISSIONER FOR JUSTICE  
OF NIGERIA  
(telegram)

18 November 1970.

Re your letter 13 November no request for extension of time-limit had been received when your letter arrived but today I received notice of despatch of a letter from Permanent Representatives of Burundi, Nigeria, Sierra Leone,

<sup>1</sup> See No. 29, *supra*.

<sup>2</sup> Not reproduced.

United Arab Republic and Zambia requesting extension of the time-limit to 31 December to enable those States acting in concert with certain other African States to submit joint statement. President however is not disposed to grant any extension but intends to inform all recipients of special and direct communication that Court will be prepared to hear oral statements from them in the course of hearings to be held at date subsequently to be notified at present envisaged not before end January. Organisation African Unity was not considered by President as likely to be able to furnish information on question. Whereas under Article 66 paragraph 3 of Statute a State which has not received special communication referred to in paragraph 2 may express desire to be heard, this does not apply to organizations. If organization as such perseveres with its intention its request will have to be submitted to Court itself for decision which not likely before third week in January. Your Memorandum can be accepted as properly submitted within time-limit if it is promptly established that it is presented nominally by all five or any one or more of aforementioned States.

38. LE DIRECTEUR DES AFFAIRES JURIDIQUES DU MINISTÈRE DES AFFAIRES  
ÉTRANGÈRES DE FRANCE AU GREFFIER

18 novembre 1970.

J'ai l'honneur de vous adresser ci-joint l'exposé écrit<sup>1</sup> des vues du Gouvernement français sur certains aspects de la question posée, pour avis consultatif, à la Cour internationale de Justice par le Conseil de sécurité dans sa résolution n° 284 (1970).

(Signé) GUY DE LACHARRIÈRE.

39. LE SECRÉTAIRE D'ÉTAT SUPPLÉANT AUX AFFAIRES ÉTRANGÈRES DE LA  
RÉPUBLIQUE SOCIALISTE FÉDÉRATIVE DE YOUGOSLAVIE A LA COUR  
INTERNATIONALE DE JUSTICE

18 novembre 1970.

[Voir I, p. 898.]

40. THE PERMANENT REPRESENTATIVE OF NIGERIA TO THE UNITED NATIONS TO  
THE REGISTRAR  
(telegram)

20 November 1970.

Have honour to confirm that Memorandum on Security Council resolution 284 (1970) in respect of Namibia already submitted to you by Dr. Elias, Attorney-General of the Federation and Commissioner of Justice of Nigeria is sponsored by the Government of the Federal Republic of Nigeria.

Edwin OGBU.

<sup>1</sup> Voir I, p. 362-369.

## 41. THE REGISTRAR TO THE REVEREND MICHAEL SCOTT

23 November 1970.

Thank you for your letter of 17 November 1970 concerning the subject of your visit to me on the same day. I am enclosing for your information a copy of my reply to the letter of 13 November 1970 from the Executive Director of the American Committee which you delivered to me.

With regard to your own request, I regret to have to inform you that as paragraph 2 of Article 66 of the Statute provides for the Court receiving written statements, or hearing oral statements, from States or international organizations considered by the President as likely to be able to furnish information on the question, but not from individuals, it will not be possible for the Court to receive a written or oral statement from you personally.

## 42. THE REGISTRAR TO THE EXECUTIVE DIRECTOR OF THE AMERICAN COMMITTEE ON AFRICA

24 November 1970.

I acknowledge receipt of your letter of 13 November 1970 and of the statement enclosed therein relating to the subject of the advisory opinion requested of the Court by the Security Council resolution 284 (1970).

As the American Committee on Africa is not an international organization it could not have been considered by the President of the Court as likely to be able to furnish information on the question, and was not sent a special and direct communication to that effect under paragraph 2 of Article 66 of the Statute of the Court. I regret to have to inform you that it is not possible for it to submit a written statement or to be heard on the question.

I am accordingly returning to you under separate cover the copy of the Statement of your Committee left with me on 17 November 1970 by the Reverend G. Michael Scott.

## 43. THE REGISTRAR TO THE PERMANENT REPRESENTATIVES TO THE UNITED NATIONS OF BURUNDI, NIGERIA, SIERRA LEONE, UNITED ARAB REPUBLIC AND ZAMBIA

24 November 1970.

I have the honour to acknowledge the receipt of your letter No. 98/OAU/70 of 13 November 1970, received in the Registry of the Court in the late afternoon of 19 November 1970, in which you express the desire of your Governments that an extension may be granted of the time-limit of 19 November 1970 fixed by the President of the Court for the filing of written statements on the question concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.

At your request the text of your letter had been cabled to me by the Legal Counsel of the United Nations on 18 November 1970.

Prior to the receipt of this telegram and of your letter, a letter dated 13 No-

vement 1970 had been received in the Registry on 17 November 1970 from Dr. T. O. Elias, Attorney-General of the Federation of Nigeria and Commissioner for Justice, purporting to present a written statement on behalf of the Organisation of African Unity and informing me: "Together with my colleague, Dr. Abdullah El-Erian of the U.A.R. Mission to the United Nations in New York, I caused a letter to be forwarded to you asking for an extension of the period in which to submit an adequate Memorandum but, as we have not had the privilege of an acknowledgement of that letter or that our request for an extension has been granted, I decided to forward you this hurried Memorandum on the subject."

By telegram dated 18 November 1970 I informed Dr. Elias that no request for an extension of the time-limit had been received when his letter arrived but that on the same day I received notice of the despatch of your letter of 13 November 1970 requesting an extension of the time-limit to 31 December 1970. I further informed Dr. Elias that the President was not disposed to grant any extension but intended to inform all recipients of the special and direct communication that the Court would be prepared to hear oral statements in the course of hearings to be held at a date subsequently to be notified, at present not envisaged before the end of January. I also informed Dr. Elias that the Organisation of African Unity had not been considered by the President as likely to be able to furnish information on the question and that whereas under Article 66, paragraph 3 of the Statute a State which had not received the special communication referred to in paragraph 2 might express the desire to be heard, this did not apply to organizations. If the organization as such persevered with its intention its request would have to be submitted to the Court itself for decision, which was not likely before the third week in January. His memorandum could be accepted as properly submitted within the time-limit if it were promptly established that it was presented nominally by all five or any one or more of the five States signatories to the letter of 13 November 1970.

On 21 November 1970 I received a telegram from the Permanent Representative of Nigeria to the United Nations, H.E. Mr. Edwin Ogbu, confirming that the memorandum submitted by Dr. Elias was "sponsored by the Government of the Federal Republic of Nigeria".

I am directed to inform you that in the circumstances the President has decided to consider the statement submitted by Dr. Elias as the written statement of the Government of Nigeria. He is thus not able to grant any extension of the time-limit for the submission of written statements on the question put to the Court for advisory opinion, already extended from 23 September 1970 to 19 November 1970 by his Order of 28 August 1970.

**44. LE GREFFIER AU SECRÉTAIRE D'ÉTAT SUPPLÉANT AUX AFFAIRES ÉTRANGÈRES  
DE LA RÉPUBLIQUE SOCIALISTE FÉDÉRATIVE DE YOUGOSLAVIE**

24 novembre 1970.

Par lettre du 18 novembre 1970, vous voulez bien me faire parvenir des observations écrites du Gouvernement de la République socialiste fédérative de Yougoslavie sur la question posée, pour avis consultatif, à la Cour internationale de Justice par le Conseil de sécurité dans sa résolution 284 (1970).

J'ai l'honneur d'accuser la réception de votre communication enregistrée

au Greffe le 24 novembre et de porter à votre connaissance que le Président de la Cour a décidé de l'accepter bien qu'elle soit parvenue après la date d'expiration du délai pour le dépôt des exposés écrits, fixée au 19 novembre par ordonnance du 28 août dernier.

45. THE PRESIDENT OF THE AMERICAN COMMITTEE ON AFRICA TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

25 November 1970.

On 17 November 1970, the American Committee on Africa submitted to the Registrar of the International Court of Justice a statement prepared by and on behalf of the Committee concerning the question:

What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?

The Registrar refused to receive the statement on the grounds that the Committee was not on the list of organizations to which a communication had been addressed concerning the request for an advisory opinion.

The Committee believes that the refusal to accept its statement was unwarranted in law, inconsistent with prior practice, and incompatible with the best interests of the Court and of the people of Namibia. It, therefore, requests the Court to exercise its discretion to receive the statement.

The rejection was unwarranted in law since Article 66 (2) of the Statute of the Court does not require the rejection of any statement, but merely specifies which ones the Court is bound to receive. No reasonable interpretation of the article compels the Court to reject valuable "information" merely because the Court was unaware of the existence of an organization prepared to present it.

The Committee is informed, moreover, that there does not appear to have been any formal communication addressed to the United Nations specifying the organizations from which a statement would be received. The Committee was aware only of a *general* notice concerning the request for the advisory opinion and the date for submission of statements (later extended by order of the Court); this notice was not addressed to any specified list of organizations, and the Committee had no reason to believe that any other communication had been sent out by the Court.

The refusal to accept the Committee's statement is inconsistent with the Court's past practice. In 1950 the International League for the Rights of Man (of which the Committee is an affiliate) was permitted to present a statement to the Court concerning the *International Status of South-West Africa, 1950, I.C.J. Pleadings*, page 327.

The refusal to accept the Committee's statement is, finally, incompatible with the best interests of the Court and of the people of Namibia. The American Committee on Africa is uniquely qualified to present to the Court information and insights which are unlikely to be presented in any other statement. The Committee, the oldest organization in the Americas dealing with African affairs, has been concerned with the problems of southern Africa since its founding in 1953. It has participated in nearly all international conferences on and in Africa in the last decade and a half, has sponsored projects in Africa, has aided African leaders and students in North America, and has regularly

presented testimony on southern African affairs before various committees of the United Nations—most recently this month. The Committee has published numerous scholarly and popular works on African affairs, as have members of its Executive Board, and it founded the publication *Africa Today* (now carried on by the Center on International Race Relations of the University of Denver, Colorado, USA).

Because the Committee is an international organization, not beholden to any government, it is able to bring insights and view-points to the Court which no State is likely to present. It is able to set forth specific data and to make concrete proposals without concern for domestic repercussions, and it has no bureaucratic inhibitions. The Committee believes that it is in the interest of the Court and of the people of Namibia that the Court receive formal representations of as broad and inclusive a nature as possible on a question of such far-reaching significance as that now before the Court.

The Committee, therefore, requests the Court to exercise its undoubted discretion under Article 66 of the Statute to receive the statement. The statement is being held in London, for resubmission, at the Court's pleasure. Additional copies can be supplied, at the Court's request, air-freight from New York.

(Signed) Peter WEISS.

46. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN<sup>1</sup>

27 novembre 1970.

Dans ma lettre du 5 août 1970, j'appelais l'attention de Votre Excellence sur le fait que le Conseil de sécurité de l'Organisation des Nations Unies avait demandé à la Cour un avis consultatif sur la question des conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain), nonobstant la résolution 276 (1970) du Conseil de sécurité. Le 28 août 1970, je vous ai fait savoir que la date d'expiration du délai dans lequel des exposés écrits sur la question pouvaient être présentés à la Cour, fixée à l'origine au 23 septembre 1970, avait été repoussée au 19 novembre 1970.

J'ai aujourd'hui l'honneur de faire connaître à Votre Excellence que des exposés écrits ont été reçus des Etats suivants: Pays-Bas, Pologne, Hongrie, Tchécoslovaquie, Pakistan, France, Finlande, Etats-Unis d'Amérique, Nigéria, Afrique du Sud, Inde et Yougoslavie.

En application de l'article 66, paragraphe 4, du Statut de la Cour, un volume contenant le texte des exposés écrits sera adressé aux Etats susmentionnés. J'ai en outre pour instruction de l'envoyer à tous les autres Etats qui ont été invités à présenter des exposés écrits. J'espère que le volume dont il s'agit pourra être distribué dans le courant du mois de décembre.

<sup>1</sup> La même communication a été adressée aux autres Etats Membres des Nations Unies n'ayant pas présenté d'exposés écrits (sauf Fidji — voir ci-après n° 48). Une communication analogue a été adressée le 27 novembre aux Etats ayant présenté des exposés écrits et le 30 novembre aux Etats non membres des Nations Unies admis à ester devant la Cour. Des copies des communications destinées à leurs gouvernements ont été adressées aux représentants permanents du Burundi, du Nigéria, de la République arabe unie, de la Sierra Leone et de la Zambie auprès des Nations Unies.



Je me permets de préciser que la Cour tiendra ultérieurement des audiences publiques afin d'entendre ceux des Etats invités à présenter des exposés qui désireraient prendre la parole devant la Cour. Je ne manquerai pas de vous faire connaître la date de l'ouverture des audiences dès qu'elle sera fixée mais je puis, d'ores et déjà vous dire que le début du mois de février 1971 est envisagé.

Au cas où votre gouvernement souhaiterait présenter un exposé oral pendant ces audiences, je vous serais obligé de bien vouloir m'en informer.

47. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

27 November 1970.

I have the honour to inform you that in connection with the request by the Security Council for an advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, written statements have been filed by the following States: the Netherlands, Poland, Hungary, Czechoslovakia, Pakistan, France, Finland, the United States of America, Nigeria, South Africa, India and Yugoslavia.

In accordance with Article 66, paragraph 4, of the Court's Statute, a volume containing the text of these written statements will be circulated as soon as possible; it is hoped that it will be available for distribution in the course of the month of December.

I have the further honour to state that the Court will hold public sittings in the matter in due course; the date of such sittings has not yet been determined, but it is envisaged that they will open at the beginning of February 1971.

48. THE REGISTRAR TO THE PRIME MINISTER AND MINISTER FOR FOREIGN AFFAIRS OF FIJI

30 November 1970.

I have the honour to inform Your Excellency that by its admission to membership of the United Nations, Fiji becomes entitled to receive from the International Court of Justice, in addition to such communications as are required to be made by virtue of Fiji becoming a party to the Court's Statute (as to which I am today addressing you a separate letter), such communications as the Registrar may be required to make to States Members of the United Nations by virtue of such membership.

In this connection, I have the further honour to inform you that the Court is at present seized of a request by the Security Council for an advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*. I enclose for your information a copy of this request, made by resolution 284 (1970). On 5 August 1970, on the instructions of the President of the Court, I sent to all member States of the United Nations what is known as a special and direct communication, provided for in Article 66 of the Statute of the Court, to

inform them that the President considered such States likely to be able to furnish information on the question before the Court.

The time-limit fixed by the President for submission by member States of written statements on the question expired on 19 November 1970. However, I have the honour to inform you that the Court will hold public sittings, at which it will hear oral statements by such of the States to whom the special and direct communication was addressed as may wish to avail themselves of the opportunity; and it will be open to the Government of Fiji to make a statement at such sittings should it so desire. The date on which the sittings will open has not yet been determined, but it is envisaged that this will be at the beginning of February 1971.

The following States have filed written statements on the question before the Court: the Netherlands, Poland, Hungary, Czechoslovakia, Pakistan, France, Finland, the United States of America, Nigeria, South Africa, India and Yugoslavia. In accordance with Article 66, paragraph 4, of the Court's Statute, a volume containing the text of these statements will be circulated to the States mentioned, and I am further directed to circulate the written statements to the other member States of the United Nations. It is hoped that this volume will be available for distribution in the course of the month of December.

Should Your Excellency's Government desire to take part in the oral proceedings, it would be appreciated if you would so inform me in due course.

49. THE REGISTRAR TO THE PRESIDENT OF THE AMERICAN COMMITTEE ON AFRICA

2 December 1970.

I am directed by the President to acknowledge the receipt of your letter of 25 November 1970, and to say that there is nothing to add to my letter of 24 November 1970 to Mr. George M. Houser, a copy of which is enclosed herewith for your information.

The correspondence on this subject will be brought to the attention of the Members of the Court.

50. THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

3 December 1970.

I have the honour to inform you that I have designated Mr. Constantin A. Stavropoulos, Under-Secretary-General, The Legal Counsel, as the representative of the Secretary-General in the proceedings of the Court concerning the request by the Security Council for an Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, made in resolution 284 (1970) of the Security Council, adopted on 29 July 1970.

Mr. Stavropoulos is authorized to present written or oral statements on behalf of the Secretary-General in the matter before the Court.

(Signed) U. THANT.

## 51. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

4 December 1970.

I have the honour to transmit herewith a letter of 3 December 1970 from the Secretary-General, addressed to the President of the International Court of Justice, authorizing me to present written or oral statements on behalf of the Secretary-General in the matter of the Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.

Pursuant to the above-mentioned authorization, I also have the honour to transmit herewith, for communication to the Court, one copy of a written statement<sup>1</sup> in the foregoing matter. A further forty-nine copies are being sent to you by air freight. At present the statement is available only in English but it is our intention to supply to you a French translation<sup>2</sup> as soon as this can be completed, probably early in January of next year.

The vast amount of material to be covered and to be compiled for the Court in the form of a dossier, as well as the exceptionally heavy demands of the General Assembly session on the occasion of the twenty-fifth anniversary of the Organization upon our rather small staff, rendered it impossible for us to complete as early as we had originally hoped, a statement which we considered would be the most adequate and useful which we could prepare for the assistance of the Court. We deemed that the most proper course of action was to complete our statement in the most adequate and useful manner, even though this regrettably required a short delay in presenting it to you.

(Signed) C. A. STAVROPOULOS.

## 52. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

7 December 1970.

By your letter dated 3 December 1970, you were good enough to inform the Court that you had designated Mr. Constantin A. Stavropoulos, Under-Secretary-General, The Legal Counsel, as your representative in the proceedings following the request made of the Court by the Security Council for an advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, and that Mr. Stavropoulos is authorized to present written or oral statements in the matter on your behalf.

I have the honour to inform you that I have today received from Mr. Stavropoulos a written statement in the matter which the President of the Court has decided to accept though it was received after the expiry of the time-limit fixed for the filing of written statements.

<sup>1</sup> See I, pp. 75-122.

<sup>2</sup> Received on 19 and 25 January. See I, pp. 207-259.

## 53. THE SECRETARY FOR FOREIGN AFFAIRS OF SOUTH AFRICA TO THE REGISTRAR

9 December 1970.

In connection with the advisory opinion requested by the Security Council in its resolution 284 (1970), I have the honour to inform you on behalf of the Government of the Republic of South Africa that it is the intention of my Government to participate in the oral proceedings before the Court both in regard to the merits and, if required in regard to the preliminary questions of the recusal of certain Judges and the appointment of an *ad hoc* judge.

Provisionally it is expected that my Government will be represented by the following persons:

Mr. J. D. Viall, Legal Adviser to the Department of Foreign Affairs, who is hereby appointed as Agent;

Mr. E. M. Grosskopf, S.C.

Dr. H. J. O. van Heerden

Mr. R. F. Botha

} Members of the South  
African Bar;

Professor M. Wiechers, Professor of Law in the University of South Africa;

Mr. F. D. Tothill

Mr. C. H. S. von Bach

} Members of the Department of  
Foreign Affairs

Oral statements will be presented in English.

In conclusion may I express the hope that the Court will be prepared to entertain representations regarding the date of the commencement of the oral proceedings on the merits if, after receiving and perusing the written statements of other Governments, or at a later stage, my Government should consider it necessary to make such representations.

(Signed) B. G. FOURIE.

54. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN<sup>1</sup>

14 décembre 1970.

J'ai l'honneur, me référant à ma communication du 27 novembre 1970, de transmettre sous pli séparé à Votre Excellence le texte des exposés écrits présentés par certains Etats et par le Secrétaire général des Nations Unies au sujet de la demande d'avis consultatif soumise à la Cour internationale de Justice par le Conseil de sécurité des Nations Unies sur les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique de Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité.*

Lesdits exposés écrits ayant été présentés dans l'une des deux langues officielles de la Cour, c'est-à-dire soit en français soit en anglais, des traductions dans l'autre langue ont été établies, pour la commodité des membres de la Cour, par le Greffe de la Cour en ce qui concerne les exposés des Etats et par le Secrétariat de l'Organisation des Nations Unies en ce qui concerne l'exposé du

<sup>1</sup> Une communication analogue a été adressée à tous les autres Etats admis à ester devant la Cour.

Secrétaire général. Je ne manquerai pas de transmettre à Votre Excellence, à mesure de leur achèvement, le texte des traductions en français des exposés présentés en anglais, tout en soulignant que ces traductions ne Lui sont communiquées qu'à titre d'information et n'ont aucun caractère officiel. Celles qui sont déjà prêtes sont jointes au paquet présentement adressé à Votre Excellence.

Ainsi que je l'ai indiqué dans ma lettre précitée du 27 novembre, la Cour tiendra à une date ultérieure des audiences publiques afin d'entendre tous exposés oraux que des Etats désireraient faire présenter. Au cas où il serait dans l'intention de Votre Gouvernement de participer à cette procédure orale, je serais obligé à Votre Excellence de me le faire connaître dès qu'il Lui sera loisible et au plus tard le 20 janvier 1971. J'attacherais en outre du prix à connaître en même temps le nom de la personne que Votre Gouvernement désignerait comme son représentant et à savoir dans laquelle des deux langues officielles de la Cour l'exposé serait présenté.

55. THE ATTORNEY-GENERAL AND COMMISSIONER FOR JUSTICE OF NIGERIA TO  
THE REGISTRAR

14 December 1970.

I have your air mail letter dated 27 November 1970, which arrived here only two days ago.

I have made a note of the fact that volumes of written statements of the twelve States that have made submissions to the Court will be made available in the course of this month, and that public sittings will be opened at the beginning of February 1971. Our present plan is to appear at the public hearing.

(Signed) T. O. ELIAS.

56. THE EXECUTIVE SECRETARY OF THE ORGANIZATION OF AFRICAN UNITY TO  
THE UNITED NATIONS TO THE REGISTRAR

14 December 1970.

I have the honour to inform you that the Assembly of Heads of State and Government of the Organization of African Unity on 24 August 1970 decided that representatives from certain African States should participate in the proceedings of the International Court of Justice in connection with the request by the Security Council for an advisory opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*. In the view of its member States, the Organization is able to furnish information on the question in accordance with paragraph 2 of Article 66 of the Statute of the Court.

I therefore have the honour to request that the Court decide that the Organization of African Unity be permitted in the oral proceedings. For the purpose of such participation, I have the honour to inform you that:

Dr. Taslim Olawale ELIAS, Attorney-General of Nigeria and  
Commissioner for Justice  
Dr. Abdullah EL-ERIAN, Deputy Representative of the  
United Arab Republic to the UN

have been appointed as representatives of the Organization of African Unity in these oral proceedings.

(Signed) Mamadou Moctar THIAM.

57. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

16 December 1970.

Further to my letter of 4 December 1970 with which I transmitted to you for communication to the Court the written statement in the matter of the Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, I have now the honour to transmit another document entitled "Review of the Proceedings of the General Assembly and of the Security Council relating to the Termination of the Mandate for Namibia and subsequent action"<sup>1</sup> which is also being submitted to the International Court of Justice on behalf of the Secretary-General.

This document traces actions of the General Assembly and the Security Council relating to Namibia from the twenty-first session of the General Assembly to date. The document also contains an annex concerning the effect of abstentions by permanent members of the Security Council. It is submitted for the information and convenience of the Court in view of the large quantity of documentation contained in the comprehensive multi-volume dossier of United Nations documents transmitted to the Court in accordance with Article 65 (2) of its Statute.

I have the honour to request that the attached document be treated as an addendum to the Statement which was submitted with my letter of 4 December 1970.

I wish to add that a further 150 copies are being airmailed to you under separate cover. It is our intention to supply a French translation<sup>2</sup> as soon as this can be completed.

(Signed) C. A. STAVROPOULOS.

58. LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE HAUTE-VOLTA AU GREFFIER<sup>3</sup>

17 décembre 1970.

J'ai l'honneur d'accuser réception de votre lettre n° 50616 datée du 27 novembre 1970 et relative à la demande d'avis consultatif du Conseil de Sécurité de

<sup>1</sup> See I, pp. 123-206.

<sup>2</sup> Received on 5 February. See I, pp. 260-349.

<sup>3</sup> Des communications analogues ont été reçues des Gouvernements des Etats suivants: Belgique, République fédérale d'Allemagne, Fidji, Chypre et Italie.

l'Organisation des Nations Unies à la Cour internationale de Justice concernant la question de la Namibie (Sud-Ouest africain).

En ce qui concerne les audiences publiques que la Cour tiendra ultérieurement afin d'entendre ceux des Etats invités à présenter des exposés qui désiraient prendre la parole devant la Cour, j'ai l'honneur de vous informer que mon gouvernement n'envisage pas pour le moment de présenter un exposé oral pendant ces audiences.

(Signé) Malick ZOROME.

59. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN<sup>1</sup>

8 janvier 1971.

Je vous ai annoncé dans ma lettre du 14 décembre 1970 l'envoi, sous pli séparé, de plusieurs volumes contenant les exposés écrits présentés à la Cour au sujet de la requête par laquelle le Conseil de sécurité de l'Organisation des Nations Unies demandait à la Cour un avis consultatif sur les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité*.

J'ai maintenant l'honneur d'adresser à Votre Excellence, sous pli séparé, le texte anglais d'un document intitulé *Review of the proceedings of the General Assembly and of the Security Council relating to the termination of the Mandate for Namibia and subsequent action* qui a été soumis à la Cour en tant qu'additif à l'exposé écrit présenté au nom du Secrétaire général de l'Organisation des Nations Unies (volume VI des exposés qui vous ont été transmis le 14 décembre 1970).

Je me permets de préciser en outre que le Secrétariat des Nations Unies doit nous fournir un texte français de ce document, qui vous sera adressé dès qu'il aura été reçu au Greffe.

60. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

8 January 1971.

I wish to refer to my letter of 29 July 1970 transmitting a request by the Security Council for an advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*.

In accordance with Article 65 of the Statute of the International Court of Justice, I have transmitted to you, in several instalments beginning 1 October 1970, to be made available to the Court, 30 dossiers in English and 30 dossiers in French containing documents<sup>2</sup> likely to throw light upon the question which has been submitted to the Court. I certify that all these documents are final official records of the United Nations or true copies thereof except for certain documents which exist in mimeographed form only and are so indicated in the

<sup>1</sup> La même communication a été adressée à tous les autres Etats admis à ester devant la Cour.

<sup>2</sup> Not reproduced.

Table of Contents of the dossier. A complete list of all documentation transmitted will be found in the Table of Contents<sup>1</sup> which is part of each dossier.

The Introductory Note<sup>2</sup> has been prepared with a view to facilitating the use of the dossier. The Secretary-General will be glad to provide the Court with any additional documentation or information in his possession which the Court might find useful in its consideration of the opinion requested by the Security Council.

(Signed) C. A. STAVROPOULOS.

**61. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR**

8 January 1971.

I have the honour to refer to your letter of 27 November 1970 by which you informed me, *inter alia*, that the date of the sittings of the Court in regard to the request by the Security Council for an Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia, notwithstanding Security Council Resolution 276 (1970)*, has not yet been determined, but that it is envisaged they will open at the beginning of February 1971.

I now write to inform you that I shall participate in the oral proceedings on behalf of the Secretary-General of the United Nations.

(Signed) C. A. STAVROPOULOS.

**62. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS**

11 January 1971.

The 150 copies of the English text of the document, referred to in your letter of 16 December 1970 and entitled "Review of the Proceedings of the General Assembly and of the Security Council relating to the termination of the Mandate for Namibia and subsequent action", submitted to the Court on behalf of the Secretary-General, have now been received in the Registry.

Copies of the document have been furnished to the Members of the Court, and it is also being transmitted to all States which have received the special and direct communication provided for in Article 66, paragraph 2, of the Statute of the Court.

**63. THE REGISTRAR TO THE EXECUTIVE SECRETARY OF THE ORGANIZATION OF AFRICAN UNITY TO THE UNITED NATIONS**

13 January 1971.

I have the honour to acknowledge the receipt of the letter of 14 December 1970 by which Your Excellency requests that the Court decide to permit

<sup>1</sup> See I, pp. 42-72.

<sup>2</sup> See I, pp. 9-41.



participation by the Organization of African Unity in the oral proceedings relating to the request by the Security Council for an advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.

Your Excellency was at the same time good enough to inform me of the names of those appointed as representatives of the Organization of African Unity for the purpose of participation in the oral proceedings.

I have not failed to communicate the contents of your letter to the Court.

**64. THE CHARGÉ D'AFFAIRES A.I. OF SOUTH AFRICA TO THE NETHERLANDS TO THE REGISTRAR**

14 January 1971.

I have the honour to inform you that Mr. J. D. Viall, Legal Adviser to the Department of Foreign Affairs of the Government of the Republic of South Africa will be arriving in The Hague on 15 January 1971 and that from that date all communications to the Representation of the Government of South Africa relating to the advisory opinion requested by the Security Council in its resolution 284 (1970) should be addressed to Mr. Viall at the Ambassador Hotel, Sophialaan 2, The Hague.

(Signed) E. MYBURGH.

**65. THE REPRESENTATIVE OF THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR<sup>1</sup>**

14 January 1971.

I refer to your letters of 27 November 1970 and 14 December 1970, and the letter of 9 December 1970 addressed to you on behalf of my Government and now have the honour to make certain submissions on behalf of my Government concerning the course of the further proceedings in this matter.

In particular I hereby make formal application that the question of the Court's jurisdiction and the propriety of its furnishing the Opinion requested of it (*vide* Chapters III and IV of the South African written statement), be dealt with as preliminary points.

It is submitted that it is in accordance with basic principles of Justice and of practical convenience that these essentially preliminary points should be considered separately and at the outset, and that only after they have been determined should arrangements be made for any further proceedings which may be necessary.

As Rosenne states, where in advisory proceedings the Court

<sup>1</sup> See pp. 22 and 27, *supra*.

"is being asked to make a judicial settlement of a dispute or a question actually pending between two or more States, or between the Organization and a State . . . the analogy with the contentious procedure becomes close enough to warrant the introduction of a formal preliminary objection procedure. Considerations of justice would seem to require that the respondent State should not be called upon to make any pleading, written or oral, on the merits if the competence of the Court should be disputed by it until the preliminary question has been judicially decided. Conversely, the same considerations require that States in the position of respondents, or quasi-respondents, in this type of proceedings, should be enabled to argue fully the question of jurisdiction in isolation from the argument on the merits." (Rosenne, S., *The Law and Practice of the International Court*, 2nd ed., Vol. II, p. 728.)

That the question on which the Court is asked to advise in the instant case concerns legal questions actually pending has been demonstrated in Chapter IV of the South African written statement. Whether the questions are regarded as pending between South Africa and other States, or between South Africa and the United Nations as an organization, is immaterial for purposes of the present application. The conflicting attitudes expressed in the various written statements before the Court further underline the basically contentious nature of the proceedings. This aspect appears self-evident but can be further developed if the Court entertains any doubt about it.

The considerations of justice mentioned by Dr. Rosenne in the above-quoted passage are particularly pertinent in the present case. Amongst the preliminary points raised by the South African Government is the contention that, by reason of the political background to the proceedings and the fact that the Court itself has become embroiled therein, the Court should decline to give an opinion. It would indeed be anomalous if, before the Court has considered this preliminary issue, there should be a full-scale examination of the merits of the dispute. In the present context it is apposite to note that in their written statements the Secretary-General of the United Nations, as well as certain States, have again indicated that they desire, and indeed expect, the Court to advance the political cause advocated by them rather than to exercise its judicial task in an impartial manner. This is particularly evident in the contention (raised mainly by the Secretary-General and the Government of India) that the Court should without investigation assume the illegality of the South African presence in South West Africa, and the legality of all relevant United Nations actions. (*Vide*, e.g., the written statement submitted by the Secretary-General, at pp. 788-792<sup>1</sup>.) In other words, the Court is asked not to determine the merits of the dispute, but to pronounce on the consequences that would follow if one of the parties were correct in its attitude. That such a contention is advanced in all apparent seriousness emphasizes the extent to which the Secretary-General and others regard the Court in the present matter as a handmaiden of the majority in the United Nations, rather than as an independent judicial organ.

For the reasons set out above, it is submitted that in the present case justice requires the adoption of a procedure similar to that applied in preliminary objections in contentious proceedings. As will be shown below, considerations of practical convenience lead to the same conclusion.

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<sup>1</sup> See I, pp. 75-78.

The essence of the dispute on the merits concerns the purported revocation by the General Assembly of South Africa's title to administer South West Africa. The issues are legal in so far as they relate to the powers of the General Assembly to take such a step. However, even if the Court were to hold that the General Assembly has such powers there are far-reaching factual issues relating to the ground upon which the General Assembly purported to act, viz., alleged violation by South Africa, through its policies and administration, of its trust obligations under the Mandate. Practical considerations dictate that before such a wide field of enquiry is embarked upon any preliminary points as to jurisdiction or propriety should first be disposed of.

Confirmation of the wide ambit of such an enquiry is provided by the written statements before the Court. A constant theme in many of them is that South Africa has contravened certain norms and standards said to have been laid down by the Mandate, the Charter and international law generally. Amongst these are norms concerning the promotion of self-determination and the prohibition of racial discrimination. Similar allegations have been made in the United Nations and elsewhere, and in the event of an enquiry into the merits, the South African Government would wish to avail itself of the opportunity of refuting them conclusively, once and for all. To do so, the South African Government would first need to give due attention to the general principles governing the establishment of rules of international law, with particular reference to the norms alleged to have been contravened. After having determined the exact content of these norms (whether they be regarded as legal or moral) the South African Government proposes to demonstrate that it has in fact complied with them. The Court will appreciate that the issues thus raised are extensive. By way of example may be mentioned the United States allegation that South Africa has contravened the Mandate by its general policy in South West Africa as well as by its conduct with regard to land distribution, political rights, freedom of movement, freedom of residence and rights to own land, freedom of employment, the right to family life and the right to education (pp. 63-71)<sup>1</sup>. The conclusion in the United States statement is that:

"the obligation to promote the well-being and social progress of the people of Namibia is violated when the Mandatory implements a systematic policy, as described in part above, to effect political, economic, social and educational repression" (at p. 70<sup>2</sup>).

In the statement of the Secretary-General it is contended that the people of South West Africa have in a number of respects not been permitted to exercise their rights of self-determination (*vide* pp. 807-811<sup>3</sup>). This contention involves, apart from an enquiry into the exact nature and ambit of the inhabitants' rights of self-determination, an investigation into the methods employed to give effect to such rights in South West Africa, and an examination of the accuracy and adequacy of the numerous United Nations documents cited in the statement (these include resolutions, statements by Petitioners, voluminous reports of Committees, etc.).

It will be apparent that the issues raised by the allegations outlined above (and these are but examples of those contained in the written statements) cover a vast field. A proper investigation of them would require extensive

<sup>1</sup> See I, pp. 864-871

<sup>2</sup> *Ibid.*, p. 870.

<sup>3</sup> *Ibid.*, pp. 88-92.

research into the proceedings of United Nations Organs, contemporary State practice in almost all aspects of political, economic, social and educational conditions, the question whether rules of international law (or standards of interpretation) have been established by such proceedings or practice, the precise content of any such norms or standards, and a comprehensive compilation of the true facts concerning South West Africa, in their proper context and with a formulation of the reasons for the policies applied by the Government of South Africa. Presentation to the Court of the material thus gathered may well require procedures other than those usually employed in advisory proceedings. Consideration will accordingly have to be given to the possible need for oral testimony, inspections *in loco*, and other methods of placing evidence before the Court.

From the nature of the disputes on the merits of which examples are given above, a number of consequences flow. The first has already been mentioned, namely that it would be inexpedient to embark upon such an extensive undertaking until the Court has satisfied itself both of its own jurisdiction, and of the propriety of the exercise thereof. The second consequence is that sufficient time for preparation should be permitted. It has been pointed out that in their nature the present proceedings, although in form advisory, relate in essence to an actual dispute, and should therefore attract the procedure laid down for contentious cases. This consideration would entail, *inter alia*, that time limits should be fixed in accordance with the principles applied in contentious proceedings, with due regard to the extensive ambit of the issues. Finally, to do justice to South Africa as a quasi-respondent, and also to permit of a workmanlike disposition of the case, some procedure would have to be devised whereby the vague and general allegations in the written statements are formulated in a manner which would enable the issues, particularly the factual ones, to be defined with reasonable precision. The way in which this should be done need not be considered now—possibly the Court itself could, were it to decide to give an opinion on the factual issues, define these issues on the basis of the written statements placed before it.

For the reasons set out above, I wish to apply formally on behalf of the Government of South Africa that, after the Court has decided upon its composition, the following procedure should be followed:

- (a) The Court should, before entering into the merits of the question before it, determine whether it has jurisdiction and, if so, whether it should exercise it. It is requested that an oral hearing should form a part of these preliminary proceedings.
- (b) If the Court were to hold that it has jurisdiction and should, as a matter of propriety, exercise it, or if it were to refuse the application set out in (a) above, it should
  - (i) in some way which it considers appropriate, cause the ambit of the issues to be defined;
  - (ii) fix a date for the further proceedings which is in accordance with practice in contentious cases and is commensurate with the ambit of the issues, as defined.

If the Court entertains any doubt about any of the matters dealt with in (a) and (b) above, the South African Government requests an opportunity to amplify this letter by way of an oral presentation.

Should the Court refuse the applications set out in (a) and (b) above, the South African Government would wish to make representations about the

period to be allowed for preparation for the further proceedings. In view of the nature and ambit of the factual allegations and legal contentions raised in the written statements before the Court and their lack of definition, an extensive period would be required. These aspects will, however, be further developed if and when they arise.

(Signed) J. D. VIALL.

66. THE AMBASSADOR OF FINLAND TO THE NETHERLANDS TO THE REGISTRAR

19 January 1971.

With reference to the letter No. 50715 of the International Court of Justice, dated 14 December 1970, to the Minister of Foreign Affairs of Finland I have the honour to inform you that the Government of Finland will participate in the oral proceedings before the Court concerning an advisory opinion of the Court on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*. The oral statement of Finland will be presented in French language by Professor Erik Castrén.

(Signed) Paul GUSTAFSSON.

67. THE ACTING LEGAL ADVISER TO THE DEPARTMENT OF STATE OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

19 January 1971.

Thank you for your letter of 14 December 1970.

I have the honor to inform you that it is the intention of my Government to present an oral statement to the Court in the advisory proceeding relating to *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*. The representative of the United States will be John R. Stevenson, the Legal Adviser. Mr. Stevenson will speak in English.

(Signed) Carl F. SALANS.

68. LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE BULGARIE AU GREFFIER  
(télégramme)

20 janvier 1971.

Prière informer date procédure pour pouvoir décider éventuellement sur participation ainsi que représentant.

69. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE BULGARIE  
(*télégramme*)

20 janvier 1971.

En réponse votre télégramme 20 janvier vous informe que date d'ouverture procédure orale n'est pas encore fixée. Vous avertirai dès que cette date sera connue.

70. LE SECRÉTAIRE GÉNÉRAL DU MINISTÈRE DES AFFAIRES ÉTRANGÈRES DES  
PAYS-BAS AU GREFFIER

20 janvier 1971.

J'ai l'honneur d'accuser réception de Votre lettre n° 50715 en date du 14 décembre 1970 ainsi que des documents dont elle était accompagnée.

Avant son départ en voyage, le Ministre des Affaires Etrangères m'a prié de Vous faire connaître la décision du Gouvernement néerlandais de charger Monsieur le Professeur W. Riphagen, Jurisconsulte du Ministère, de faire un exposé oral à l'occasion de l'audience publique que la Cour se propose de tenir afin d'entendre les exposés sur les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) notwithstanding la résolution 276 (1970) du Conseil de Sécurité des Nations Unies*. M. Riphagen se servira de la langue anglaise.

(*Signé*) E. L. C. SCHIFF.

71. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FINLANDE  
(*télégramme*)<sup>1</sup>

21 janvier 1971.

Au sujet avis consultatif demandé sur *Conséquences juridiques de présence continue Afrique du Sud en Namibie (Sud-Ouest Africain)* ai honneur vous informer que Cour tiendra audience à huis clos (article 46 Statut) mercredi 27 janvier 10 heures en vue entendre Afrique du Sud sur question désignation juge *ad hoc* (article 31 Statut).

72. THE AMBASSADOR OF INDIA TO THE NETHERLANDS TO THE REGISTRAR

21 January 1971.

This is with reference to our conversation of this morning on the question submitted to the International Court of Justice by the United Nations Security

<sup>1</sup> Le même télégramme a été adressé aux Gouvernements des Etats suivants: Afrique du Sud, Etats-Unis d'Amérique, Inde, Nigéria et Pays-Bas et au Secrétaire général des Nations Unies.

Council in its Resolution 284 (1970). I am writing to inform you that the Government of India intend to participate in oral hearings in Namibia case.

I shall be grateful if you kindly communicate dates of hearing.

(Signed) J. N. DHAMIJA.

73. THE REPRESENTATIVE OF THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

22 January 1971.

I have the honour to acknowledge receipt of your telegram of yesterday notifying me of the meeting of the Court which is to be held on 27 January to consider my Government's application for the appointment of a judge *ad hoc*. The telegram indicates that the meeting will be a closed one. As you are aware, it has in the past been only in highly exceptional cases that the International Court and its predecessor have held an oral hearing behind closed doors.

Indeed, in the past 50 years this has, to my knowledge, happened only twice and then in completely different circumstances. The hearing of the present application would in my submission, be a most inappropriate occasion for this unprecedented step and I would accordingly urge the Court to reconsider this aspect of the matter. In its written statement and in previous communications to the Court the South African Government has stressed the political background to the present proceedings and the extent to which the Court itself has become involved therein. In these circumstances hearings which are open to the public seem even more essential than in the ordinary run of cases—in the interests not only of my Government and other participants but also of the Court—and should not be denied unless there are imperative reasons therefor. If any such reasons exist (of which I am not aware), I would appreciate it if you would communicate them to me to enable me to advise my Government and to obtain instructions.

For practical reasons it would be highly appreciated if your reply could reach me not later than 6 p.m. on Monday 25th instant.

(Signed) J. D. VIALI.

74. THE REGISTRAR TO THE REPRESENTATIVE OF THE GOVERNMENT OF SOUTH AFRICA

25 January 1971.

I have the honour to acknowledge the receipt of your letter dated 22 January 1971.

I am directed to inform you that the Court has considered your letter carefully and has confirmed its decision of 21 January 1971, adopted under Article 46 of the Statute, to the effect that the hearing to be held on 27 January 1971 will be a closed one.

75. LE GREFFIER A L'AMBASSADEUR DE TCHÉCOSLOVAQUIE AUX PAYS-BAS<sup>1</sup>

25 janvier 1971.

Me référant à notre correspondance antérieure relative à la requête par laquelle le Conseil de sécurité de l'Organisation des Nations Unies a demandé à la Cour un avis consultatif sur la question des *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité*, j'ai l'honneur d'adresser à Votre Excellence un volume contenant le texte<sup>2</sup> d'une note d'introduction jointe par le Secrétaire général des Nations Unies aux documents qu'il a transmis à la Cour conformément à l'article 65, paragraphe 2, du Statut de la Cour ainsi qu'une note indiquant la composition du dossier qui rassemble ces documents. Le volume correspondant, en anglais<sup>3</sup>, accompagne cet envoi.

## 76. THE REPRESENTATIVE OF THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

26 January 1971.

I refer to my letter of 22nd instant and your reply of yesterday in which you informed me that the Court has confirmed its decision that the hearing to be held on 27 January 1971 will be a closed one. This letter serves to register my Government's strong protest against the Court's decision, which is not only contrary to the Court's own practice in the past but is inconsistent with basic principles of justice.

In the Permanent Court of International Justice an oral hearing was "invariably held in public" (Manley O. Hudson, *The Permanent Court of International Justice 1920-1942*, at p. 563). In the present Court "hearings are in principle held in public" (S. Rosenne, *The Law and Practice of the International Court*, 2nd ed., Vol. II, p. 571). Only on two prior occasions has the Court departed from this principle. The first was in the *Temple of Preah Vihear* case where at the hearing of 19 March 1962, the Court withdrew and reassembled in private to attend in the presence of the parties the showing of a film filed by one of the parties. During the projection of the film an expert gave brief indications relating to points of fact (*vide I.C.J. Reports 1962*, p. 9). The reason for the private session was clearly one of practical convenience, and there is no indication of objection by either party. Moreover, the information disclosed during the private hearing was not subsequently treated as secret.

The second occasion on which the Court has held a private hearing, was during the *South West Africa* cases. The hearing concerned an application for recusal. The representatives of the parties were consulted prior to the hearing and agreed to its being held in private so as not to cause unnecessary embar-

<sup>1</sup> Une communication analogue a été adressée aux Gouvernements des Etats suivants: Afrique du Sud, Etats-Unis d'Amérique, Finlande, France, Hongrie, Inde, Nigéria, Pakistan, Pays-Bas, Pologne et Yougoslavie.

<sup>2</sup> Voir I, p. 25-72.

<sup>3</sup> Voir I, p. 9-24 et 42-72.



rassment to individuals. Even on this basis the secrecy of the proceedings aroused adverse criticism (*vide* S. Rosenne, "La Cour Internationale de Justice en 1964 et en 1965", *Rev. Gen. de Droit Int. Public* (70) 1966, p. 837 at p. 856).

It will be immediately apparent that the present application bears no resemblance to either of these two previous instances of private hearings. No consideration of practical convenience militates against a public hearing, nor does the nature of the subject to be dealt with. The purpose of the hearing is to debate whether the advisory opinion is requested upon a legal question actually pending between two or more States so as to entitle South Africa to the appointment of a judge *ad hoc*. There is clearly nothing secret or even confidential about such a discussion. And finally, in the present case, unlike the earlier two, the secrecy of the hearing was decided upon without prior consultation with States and is in fact strongly opposed by the State most directly concerned.

The Court's decision has the two-fold effect of preventing public attendance at the hearing and of excluding the record of the proceedings from the Court's published minutes. (Article 59, paragraph 2, of the Rules of Court.) In both aspects this is singularly unfortunate. The application for the appointment of an *ad hoc* judge raises matters fundamental to the protection of the interests of the State most vitally concerned in these proceedings: apart from the composition of the Court, it relates to the question whether the proceedings, though advisory in form, are not in essence quasi-contentious. The debate on this matter and the Court's decision may therefore have a crucial bearing on the manner in which all further steps in the proceedings will be regulated. Moreover the application is made against the background of violent political controversies in which the Court itself has not been spared. Yet the Court, without consultation and without giving reasons, ordains a closed session.

In general, the South African Government fears that the conclusions likely to be drawn would not serve to enhance the Court's reputation. And, in particular, it regrets to say that it is not reassured as to its own position in these proceedings.

(Signed) J. D. VIALL.

77. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS  
(telegram)

25 January 1971.

By three Orders 26 January 1971<sup>1</sup> Court decided not to accede to South African objections participation certain Members of Court in Advisory Proceedings *Legal Consequences Continued Presence South Africa in Namibia (Southwest Africa)*. Judges concerned and voting were President Zafrulla Khan unanimity (12 votes). Padilla Nervo unanimity (13 votes). Morozov 10 votes to 4.

<sup>1</sup> *I.C.J. Reports 1971*, pp. 3, 6 and 9.

78. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>1</sup>

27 January 1971.

With further reference to the request for advisory opinion made of the Court by the Security Council of the United Nations as to the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, I have the honour to forward to Your Excellency herewith a sealed copy of each of three Orders made by the Court on 26 January 1971.

79. THE REPRESENTATIVE OF THE GOVERNMENT OF SOUTH AFRICA  
TO THE REGISTRAR<sup>2</sup>

27 January 1971.

I refer to my letter number 151/60 dated 14 January 1971, in which I applied on behalf of my Government that the Court consider the preliminary questions of its jurisdiction and the propriety of its furnishing the opinion requested of it before, if at all, entering into the merits of the question upon which it is asked to advise. I also pointed out that the merits involve far-reaching factual issues, the determination of which might well require procedures other than those usually employed in advisory proceedings including the presentation of oral testimony, the possible holding of inspections *in loco* and other appropriate methods of placing evidence before the Court.

I now have the honour to inform you that my Government has again given careful consideration to this problem. The Court will recall that the basic ground advanced by the General Assembly for its purported termination of South Africa's title to administer South West Africa in its resolution 2145 (XXI) was that South Africa had failed to fulfil its obligations to ensure the moral and material well-being and security of the indigenous inhabitants. The factual issues here involved concern allegations repeated regularly over the years by delegations to the United Nations, and denied by South Africa, that South Africa's policies and practices in the Territory oppress and repress the indigenous inhabitants and deny them the right of self-determination.

These self-same allegations were, it is contended, effectively disproved and indeed abandoned by the Applicants in the *South West Africa* cases. Nevertheless they are still uncritically accepted at the United Nations and were indeed relied upon in resolution 2145 (XXI). They are again repeated in several of the written statements before the Court.

Against the background of an apparently incurable bias in the United Nations, and in order to refute these allegations once and for all, my Government has now authorized me to state that if and when the stage is reached of

<sup>1</sup> The same communication was sent to the Governments of the following States: Czechoslovakia, Finland, France, Hungary, Pakistan, Poland and Yugoslavia. Sealed copies of the Orders were also delivered to the representatives of the Governments of the following States: India, the Netherlands, Nigeria, South Africa and the United States of America.

<sup>2</sup> See p. 27, *supra*.

investigating the factual issues, it will have a proposal of overriding importance to make to the Court.

The proposal will seek to put the allegations of oppression, repression and denial of self-determination to the most fundamental test of all: that of the expressed will of the inhabitants of South West Africa themselves, by way of a plebiscite.

The object of the plebiscite will be to determine whether it is the wish of the inhabitants that the Territory should continue to be administered by the South African Government or should henceforth be administered by the United Nations. In the light of the existing international controversies, it will be proposed that the plebiscite be jointly supervised by the International Court of Justice and the South African Government. An appropriate method by which the Court could act in this respect, it will be suggested, would be the appointment, in accordance with its Statute, of a Committee of independent experts which together with representatives of the South African Government could actively supervise the plebiscite and then report back to the Court.

The detailed arrangements for the plebiscite, including the membership and terms of reference of the Committee, would be as agreed upon by the Court and the South African Government. My Government foresees no insuperable problems in this connection.

Although the further implications of this proposal can be more fruitfully discussed at a later and appropriate stage of the proceedings, the matter is nevertheless raised at this early stage to enable the Court to take it into account in planning its further proceedings, regard being had to the provisions of Article 49 of the Rules of Court.

(Signed) J. D. VIALL.

80. LE GREFFIER AU CHARGÉ D'AFFAIRES A.I. DE FINLANDE AUX PAYS-BAS<sup>1</sup>

27 janvier 1971.

J'ai l'honneur de vous adresser ci-joint, en un unique exemplaire, le compte rendu confidentiel<sup>2</sup> de l'audience à huis clos tenue aujourd'hui par la Cour sur la question du droit du Gouvernement de la République sud-africaine à désigner un juge *ad hoc* appelé à siéger dans la procédure relative à la requête par laquelle le Conseil de sécurité a demandé à la Cour un avis consultatif sur les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité.*

Une traduction française non officielle de ce compte rendu est en cours de préparation au Greffe et vous sera adressée, à toutes fins utiles, dès son achèvement.

<sup>1</sup> Une communication analogue a été adressée aux représentants des Gouvernements des Etats suivants: Afrique du Sud, Etats-Unis d'Amérique, Inde, Nigéria et Pays-Bas et au Secrétaire général des Nations Unies.

<sup>2</sup> Voir ci-dessus p. 3.

81. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FINLANDE <sup>1</sup>  
(télégramme)

29 janvier 1971.

Au sujet avis consultatif demandé sur *Conséquences juridiques présence continue Afrique du Sud en Namibie (Sud-Ouest Africain)* ai honneur vous informer que représentant votre Gouvernement est prié être à disposition Cour mercredi 3 février à partir de midi.

82. THE REGISTRAR TO THE EXECUTIVE SECRETARY OF THE ORGANIZATION OF  
AFRICAN UNITY TO THE UNITED NATIONS  
(telegram)

29 January 1971.

Re Advisory Opinion requested on *Legal Consequences Continued Presence South Africa in Namibia (South West Africa)* have honour inform you Court has decided that Organization of African Unity be permitted to participate in oral proceedings. Your representative requested be at disposal of Court as from noon Wednesday 3 February.

83. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS  
(telegram)

30 January 1971.

Re Advisory Opinion requested on *Legal Consequences Continued Presence South Africa in Namibia (South West Africa)* Court by Order 29 January<sup>2</sup> decided by 10 votes to 5 to reject South African application for appointment of judge *ad hoc* (Statute Articles 31 and 68 and Rules Article 83). Judges Fitzmaurice, Gros and Petrán annexed declaration reserving right to make known at later opportunity reasons for dissent since *ad hoc* question from some aspects related to substantive question. Judges Onyeama and Dillard annexed declaration dissenting on ground that although right not established under Article 83 Rules of Court appropriate to exercise discretionary power vested in Court by Article 68 Statute in view South African special interest in question.

84. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS <sup>3</sup>

1 February 1971.

With further reference to the request for advisory opinion made of the

<sup>1</sup> Le même télégramme a été adressé aux Gouvernements des Etats suivants: Afrique du Sud, Etats-Unis d'Amérique, Inde, Nigéria et Pays-Bas et au Secrétaire général des Nations Unies.

<sup>2</sup> *I.C.J. Reports 1971*, p. 12.

<sup>3</sup> A similar communication was sent to the representatives of the Governments of the Netherlands and Nigeria. Sealed copies of the Order were also delivered to the representatives of the Governments of the following States: Finland, India, South Africa and United States of America.

Court by the Security Council of the United Nations as to the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, I have the honour to forward herewith a sealed copy of the Order made by the Court on 29 January 1971, of which I communicated the purport to you in my cable seven of 30 January.

85. THE AMBASSADOR OF THE REPUBLIC OF VIET-NAM TO THE UNITED KINGDOM  
TO THE REGISTRAR

1 February 1971.

Further to your communication dated 14 December 1970 (reference 50710), which I have, as requested, transmitted to Saigon for my Government's decision, I have the honour now to inform you that the Government of the Republic of Viet-Nam wishes to present oral statements to the Court, and has appointed for this purpose, as its representative, Mr. Le Tai Trien, deputy attorney-general at the Supreme Court of Viet-Nam.

Mr. Le Tai Trien will make his oral statements in French.

(Signed) Le Ngoc CHAN.

86. THE CHARGÉ D'AFFAIRES A.I. OF PAKISTAN TO THE NETHERLANDS TO THE  
REGISTRAR

3 February 1971.

Apropos telephone conversation of 1 February 1971, my Government has decided to appear at the hearing on Namibia. Will you kindly let me know the date of hearing and its duration.

(Signed) N. D. AHMAD.

87. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS  
(telegram)<sup>1</sup>

4 February 1971.

Re Advisory Opinion requested on *Legal Consequences Continued Presence South Africa in Namibia (South West Africa)* Court will hold public sittings to hear oral statements (Statute Article 66 paragraph 2) beginning Monday 8 February 1971 at 3 p.m.

<sup>1</sup> A similar telegram was sent to the Government of Bulgaria and to the Executive Secretary of the Organization of African Unity to the United Nations. The same day, a similar communication was made orally by the President to the representatives of the following Governments: Finland, India, the Netherlands, Nigeria, Pakistan, South Africa and United States of America.

**88. THE REGISTRAR TO THE PRESIDENT OF THE AMERICAN COMMITTEE ON AFRICA**

4 February 1971.

By my letter of 2 December 1970 acknowledging your communication addressed to the President of the Court on 25 November 1970, I informed you that the correspondence concerning the desire of the American Committee on Africa to submit a written statement on the question referred to the Court by the Security Council for advisory opinion would be brought to the attention of Members of the Court.

The Court has had an opportunity of studying this correspondence and has endorsed the refusal to accept the Committee's written statement.

**89. THE REGISTRAR TO THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN**

4 February 1971.

I refer to the letter of 10 November 1970 in which, with reference to the request by the Security Council for an advisory opinion of the Court, you sought leave for the International League for the Rights of Man to submit a written statement on the question referred to the Court. Should such a written statement be accepted by the Court, you asked that the League be permitted to comment on the statements made by other States or organizations, and you also requested permission for the League to be represented by counsel at any public sitting that might be held, for the purpose of making an oral statement to the Court.

In my acknowledgement of 17 November 1970, I told you that I had been directed by the President of the Court to inform you that your request would be laid before the Court for decision.

I am now in a position to inform you that the correspondence above referred to has been placed before the Court, which has carefully considered the application on behalf of the League to participate in the written and oral proceedings, and has decided that it should not be acceded to.

**90. LE GREFFIER À L'AMBASSADEUR DE FINLANDE AUX PAYS-BAS<sup>1</sup>**

5 février 1971.

Me référant à la lettre que j'ai adressée le 27 janvier 1971 à Monsieur le Chargé d'affaires, j'ai l'honneur de vous faire savoir que la Cour a décidé de mettre à la disposition du public le compte rendu de l'audience à huis clos consacrée à la question du droit du Gouvernement sud-africain à désigner un juge *ad hoc* appelé à siéger dans l'affaire consultative dont la Cour est saisie.

Ce compte rendu paraîtra, le moment venu, avec le reste de la documentation

<sup>1</sup> Une communication analogue a été adressée aux représentants des Gouvernements des Etats suivants: Afrique du Sud, Etats-Unis d'Amérique, Inde, Nigéria et Pays-Bas et au Secrétaire général des Nations Unies.

relative à l'affaire, dans la série *Mémoires, plaidoiries et documents*, qui fait partie des publications de la Cour. Pour l'instant, je crois bien faire en vous adressant un exemplaire du compte rendu d'où toute indication relative au caractère confidentiel du document a été éliminée. Nous avons saisi cette occasion pour apporter au texte certaines modifications de détail demandées par le représentant de l'Afrique du Sud.

Je me permets de vous adresser également un nouvel exemplaire de la traduction française non officielle. Toute mention de sa nature confidentielle a été supprimée et des remaniements ont été apportés au texte antérieur pour l'aligner sur le texte anglais définitif.

91. THE REGISTRAR TO THE DIRECTOR OF THE DAG HAMMARSKJÖLD LIBRARY<sup>1</sup>

5 February 1971.

The International Court of Justice has given permission<sup>2</sup> to have the written statements in the proceedings concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* made available to the public.

As was done in the *South West Africa* cases in 1965, two sets of those statements in English and French were sent today to the Dag Hammarskjöld Library, so that the public may have access to them.

These documents are concerned with a case which is still *sub judice* and are quite separate from the publications in the stricter sense which are regularly sent by the Court to the Dag Hammarskjöld Library in accordance with your requests.

We have also written to Mr. Sloan and Mr. Powell in connection with the above.

92. THE REPRESENTATIVE OF THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

6 February 1971.

I refer to my letters of 14 January 1971 and 27 January 1971. I wish to place on record that, at a private meeting with the President and yourself during the morning of Thursday, 4 February 1971, Mr. D. P. de Villiers and I were informed by the President—

- (a) that the Court had refused the applications contained in my letter of 14 January 1971 for the disposal of the preliminary points prior to any oral proceedings on the merits, and for the ambit of the issues to be defined in some way considered appropriate by the Court;
- (b) that the Court had, without giving the South African Government the opportunity requested in the said letter for the making of representations

<sup>1</sup> A similar communication was sent *i.a.* to the Chief Librarian of the United Nations Office at Geneva.

<sup>2</sup> With the consent of the States having submitted written statements and of the Secretary-General of the United Nations.

- about further time-limits, fixed Monday, 8 February 1971, as the date of commencement of the oral proceedings;
- (c) that the Court had not in its deliberations concerning the future proceedings, taken account of the proposal for the holding of a plebiscite in South West Africa foreshadowed in my letter of 27 January, since such proposal had not yet formally been made—the letter having merely indicated an intention to make such a proposal if and when the appropriate stage in the proceedings is reached.

I also wish to place on record that a further meeting in the President's chambers on the afternoon of 4 February attended by representatives of various participating States, and at which my Government was represented by Mr. D. P. de Villiers, Mr. E. M. Grosskopf and myself, an opportunity was requested by Mr. de Villiers to make the formal application for a plebiscite at the commencement of the oral proceedings on Monday, 8 February 1971. He stated that in view of the Court's decision mentioned in paragraph (a) above, the appropriate stage for formally making the application had now been reached, and that it would be in the interest of all concerned to have the application presented at the commencement of the oral proceedings, so as to enable representatives of participating organizations and States to respond to it at the earliest opportunity in their oral statements to the Court. No other representative present at the meeting raised any objection to this request and the President undertook to convey it to the Court. On Friday afternoon (5 February 1971) Messrs. de Villiers and Grosskopf and I were informed by the President that this request had been refused. No reasons were given.

In view of the fundamental nature of the proposal for a plebiscite and of the far-reaching influence it may have on the future course of these proceedings, I am instructed by my Government to make it now by letter in substantially the same terms as would have been orally conveyed at the commencement of the proceedings. I am mindful of the offer made by the President at the meeting on 5th inst. to draw the attention of the participants to my letter of 27 January at the commencement of the hearing but this would not meet the above-mentioned objection that the said letter does not contain an actual proposal. I accordingly hereby apply formally that the Court take all necessary steps to put the following proposal into effect:

- (a) That a plebiscite of the inhabitants of South West Africa be held to determine whether it is their wish that the Territory should continue to be administered by the South African Government or should henceforth be administered by the United Nations.
- (b) That the plebiscite be jointly supervised by the International Court of Justice and the South African Government. It is suggested that the Court appropriately act in this respect through a committee of independent experts appointed in accordance with its Statute.
- (c) That the detailed arrangements for the plebiscite, including the membership and terms of reference of any committee appointed by the Court, be agreed upon by the Court and the South African Government.

These proposals are, it is submitted, self-explanatory and require little elaboration. Unfortunately, experience has shown that many people who profess concern for the inhabitants of South West Africa are in fact motivated by political considerations entirely unrelated to the well-being of the Territory or the wishes of its inhabitants. One can therefore expect that the proposal contained herein will be misrepresented in certain quarters, and that certain



people will examine it with great care in an attempt to find excuses for opposing it or for minimizing its significance. Indeed, a number of such reactions have already been noted in the press and elsewhere. In order to avoid all possibility of misrepresentation or misunderstanding I would accordingly add the following explanatory comment:

1. The immediate object of the proposal is to place relevant evidence before the Court. Acceptance of the proposal by the Court, or support for it by any State, person or organization, will be entirely without prejudice to the legal positions adopted by them, or to any contentions or findings which might later be advanced or made. Thus, for example, support for the proposal by the Secretary-General of the United Nations or by any State will not and cannot be interpreted as implying his or its recognition of the legality of South Africa's presence in the Territory, just as the making of this proposal in no way implies recognition of international accountability in respect of the Territory by South Africa.

2. The detailed procedures are to be a matter for discussion and agreement between the Court and the South African Government. I must emphasize that these matters are still entirely open as far as the South African Government is concerned. It is not opposed in principle to any method which could be fairly and practically employed to ascertain the wishes of the inhabitants of the Territory. In particular, the South African Government is definitely not committed, as has been suggested in certain quarters, to any procedure which would, as regards the indigenous inhabitants, be limited to consultations with chiefs of tribes.

3. The power of the Court to obtain information in the manner proposed in this application seems beyond doubt, but will be elaborated if necessary.

4. The relevance of the information to be obtained by means of the proposed plebiscite also seems beyond question. There are numerous allegations in the written statements before the Court to the effect that the indigenous inhabitants in South West Africa are being oppressed, ill-treated, etc. (*vide e.g.*, Hungary, p. 9<sup>1</sup>, Czechoslovakia, p. 10<sup>2</sup>, Pakistan, p. 14<sup>3</sup>, Finland, p. 28<sup>4</sup>, U.S.A., pp. 63 *et seq.*<sup>5</sup>, Nigeria, p. 99<sup>6</sup>, Secretary-General, paragraphs 63, 78, 80, 108 and 109). Moreover, the Secretary-General and others have placed great stress on the alleged denial by the South African Government of self-determination to the inhabitants of South West Africa. (See e.g., the written statements of the Secretary-General, particularly paragraphs 52 to 65; Netherlands, pp. 2, 3-4<sup>7</sup>; Poland, p. 5<sup>8</sup>; Hungary, pp. 7-9<sup>9</sup>.) The expressed wishes of the inhabitants of the Territory would clearly be relevant to both classes of allegations and could indeed be of decisive significance. This aspect also can be elaborated later if required.

I now turn to a further matter, which was also mentioned by Mr. de Villiers

<sup>1</sup> See I, p. 360.

<sup>2</sup> *Ibid.*, p. 361.

<sup>3</sup> *Ibid.*, p. 357.

<sup>4</sup> *Ibid.*, p. 371.

<sup>5</sup> *Ibid.*, pp. 864 ff.

<sup>6</sup> *Ibid.*, p. 893.

<sup>7</sup> *Ibid.*, pp. 350-353.

<sup>8</sup> *Ibid.*, p. 354.

<sup>9</sup> *Ibid.*, pp. 359-360.

at the meeting on the afternoon of 4 February as one which it was desired to include in the brief statement to the Court at the commencement of the oral proceedings. In my letter of 14 January 1971 which was circulated that afternoon to representatives of participating States, I referred to the wide ambit and lack of definition of the allegations of fact in the written statements. Voluminous documentation, mainly in United Nations proceedings, is referred to in support of broad allegations of violation by South Africa of her obligations, particularly in the statements by the Secretary-General and the United States, as cited in my earlier letter. When referring to the documents, one finds that their ambit is not only vast but that they are riddled with inherent contradictions and inconsistencies. Charges very popular at one stage, are apparently abandoned later—at any rate by most States, if not by all (e.g., militarization, genocide, etc.). This point could be considerably elaborated. Moreover, particular charges fail to indicate the ground of complaint, e.g., whether one of deliberate oppression; or failure in fact to promote well-being and progress; or violation of an alleged international obligation solely by reason of distinguishing between people on an ethnic basis. Unless some particularity is introduced into the statements to the Court, indicating both the areas of fact and the nature of the complaint relied upon, a proper traversal of the detailed factual field would be an almost impossible task, not only for South Africa but also for the Court. I therefore have to draw attention to this matter very specifically, particularly since the Court has, as indicated above, not acceded to my Government's request to cause these issues to be defined in some way.

In my Government's contention, however, the plebiscite proposal made herein could have an important and possibly decisive influence on this problem. The outcome of the plebiscite might well rule out the need for traversing the factual field in much further detail at all.

It would, accordingly, be of great assistance to my Government and, I am sure, the Court, if participants in the oral proceedings were to indicate clearly not only exactly what their factual allegations are, but also to what extent these allegations would or could be affected by the outcome of the proposed plebiscite. To put it more concretely, what would their attitude be if the plebiscite, held under conditions approved by the Court or its committee, showed that the overwhelming wish of the inhabitants was to remain under South African guidance in the exercise of their rights of self-determination? A clear and unambiguous answer to this question would be of great assistance to all concerned in these proceedings.

It would be appreciated if this letter were circulated<sup>1</sup> as soon as possible to all participants in the oral proceedings so as to enable them to bear its contents in mind when making their presentations.

(Signed) J. D. VIALL.

### 93. THE REVEREND MICHAEL SCOTT TO THE REGISTRAR

The Hague, 8 February 1971.

Further to my letter to you delivered at the Court on 17 November, I have received a renewed request from Chief Clements Kapuuo of the Hereros to

<sup>1</sup> Done on 8 February 1971 (see p. 27, *supra*).

represent them and should be very grateful if, without infringing the Court's due processes, the courtesy could be extended to me of making an oral or written submission to the Court.

(Signed) Michael SCOTT.

P.S. I enclose <sup>1</sup>:

- (1) a photostat copy of the above-mentioned letter from Chief Kapuuu;
- (2) a copy of a letter to the Secretary-General dated 27 November 1970;
- (3) Statement of today's date and report from London *Observer* dated 7 February 1971.

94. MESSRS. RIRUAKO, MBAHA, MBAEVA AND KERINA TO THE REGISTRAR

The South West Africa National United Front (SWANUF),  
Permanent Office at the United Nations, New York, 14 February 1971.

The undersigned, being indigenous inhabitants of the international Territory of SOUTH WEST AFRICA (NAMIBIA), (hereinafter referred to as "petitioners") hereby submit to the International Court of Justice an application on behalf of the indigenous people of South West Africa (Namibia) and/or our Agent and Legal Counsellor to be heard as "petitioners" by the Court on the question of South West Africa (Namibia) now before the International Court of Justice.

The subject of the Advisory Opinion as stated in United Nations Security Council resolution number 284 (1970), adopted on 29 July 1970 reads thus:

"What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"

Our right as indigenous inhabitants of South West Africa (Namibia) to petition has been established in the Statutes of the International Court of Justice, the Advisory Opinion of 1956 and the decisions of the United Nations General Assembly.

It is imperative that we as a NAMIBIA NATION, that is, a political and judicial entity and WARDS of the United Nations be heard by the International Court of Justice. By its technical judgment of 18 July 1966, the Court in effect conferred the "special legal interest" upon the people of South West Africa (Namibia).

MAY IT ALSO PLEASE THE COURT TO ACCEPT a copy of a preliminary press statement <sup>2</sup> issued by the South West Africa National United Front dated 9 February 1971 regarding the so-called "plebiscite" offer of the South African Government.

(Signed) Kuaima RIRUAKO.  
Kanepure MBAHA.  
Veive MBAEVA.  
Mburumba KERINA.

<sup>1</sup> Not reproduced.

<sup>2</sup> Not reproduced.

**95. THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN TO THE REGISTRAR**

16 February 1971.

In light of the decision of the Court set forth in your letter of 4 February 1971 regarding the request contained in our letter to you of 10 November 1970, we hereby request that the Court consider only that part of our initial proposal as relates to the submission of our Written Statement.

If agreeable to the Court, this would entail acceptance of the Written Statement by the Court, but without the right to comment on the other statements and without the right to be represented at the Court. This was the disposition of the Court in 1950 with regard to a similar request by the International League for the Rights of Man, and we are hopeful that it will be acceptable in this instance as well.

(Signed) John CAREY.

**96. LE REPRÉSENTANT DU GOUVERNEMENT FINLANDAIS AU GREFFIER**

23 février 1971.

[Voir ci-dessus p. 395.]

**97. THE REGISTRAR TO MESSRS. RIRUAKO, MBAHA, MBAEVA AND KERINA**

8 March 1971.

I have to acknowledge your letter of 14 February 1971 submitting an application to be heard as petitioners by the Court on the question of South West Africa (Namibia) referred to it for advisory opinion.

You refer to the Statute of the Court, its Advisory Opinion of 1956 and decisions of the General Assembly of the United Nations. None of these, however, provide for the hearing of petitioners by the Court. The Court is bound, in this connexion, by Article 66 of the Statute, paragraph 2 of which makes provision for the hearing by the Court of oral statements only by those States entitled to appear before it and those international organizations which have been notified by a special and direct communication that they have been considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question.

I should add that written statements are receivable by the Court subject to the same limitations, that is to say, they must emanate from States within the above-mentioned category, or international organizations, which have been notified that they have been considered as likely to be able to furnish information on the question.

98. THE REGISTRAR TO THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE  
INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN

18 March 1971.

I regret to see from your letter of 16 February 1971 that the last paragraph of mine of 4 February 1971 may have misled you. If this is so, I must ask you to accept my apologies.

The decision taken by the Court, to which I referred, was not that it should refuse to accede to all of the requests made in your letter of 10 November 1970, while leaving open the question whether it would be prepared to receive only a written statement on behalf of the International League for the Rights of Man. The Court in fact decided not to give leave to the League either to submit a written statement, or to participate in the oral proceedings.

99. THE LEGAL ADVISER TO THE DEPARTMENT OF STATE OF THE UNITED STATES  
OF AMERICA TO THE REGISTRAR

Geneva, 18 March 1971.

At the sittings held on 9 and 10 March 1971 in the matter of the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Judges Sir Gerald Fitzmaurice, Jiménez de Aréchaga, and Morozov addressed five questions<sup>1</sup> to me as the Representative of the United States of America.

The three questions posed by Judge Sir Gerald Fitzmaurice are dealt with in annexures A-C. The questions of Judges Jiménez de Aréchaga and Morozov are dealt with in annexure D.

I would be grateful if you would convey my replies<sup>2</sup> to Judges Sir Gerald Fitzmaurice, Jiménez de Aréchaga, and Morozov and to the other Members of the Court.

(Signed) John R. STEVENSON.

100. LE GREFFIER A L'AMBASSADE DE FINLANDE AUX PAYS-BAS<sup>3</sup>

26 mars 1971.

Sur l'instruction du Président de la Cour, j'ai l'honneur de vous adresser ci-joint, pour information, le texte des réponses faites par le représentant des Etats-Unis d'Amérique aux questions que sir Gerald Fitzmaurice, M. Jiménez de Aréchaga et M. Morozov lui ont posées aux audiences publiques des 9 et 10 mars 1971, à propos de l'avis consultatif demandé par le Conseil de

<sup>1</sup> See p. 506, *supra*.

<sup>2</sup> See p. 623, *supra*.

<sup>3</sup> La même communication a été adressée aux représentants des Gouvernements des Etats suivants: Afrique du Sud, Inde, Nigéria, Pakistan, Pays-Bas et République du Viet-Nam, du Secrétaire général des Nations Unies et de l'Organisation de l'unité africaine.

sécurité en ce qui concerné les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain), notwithstanding la résolution 276 (1970) du Conseil de sécurité.*

**101. LE PRÉSIDENT AU REPRÉSENTANT DU GOUVERNEMENT FINLANDAIS<sup>1</sup>**

14 mai 1971.

Dans la déclaration que j'ai faite à la fin de la procédure orale en l'affaire consultative relative au territoire de la Namibie (Sud-Ouest africain) le 17 mars dernier (C.R. 71/23, p. 54 [traduction française: p. 46-47]<sup>2</sup>), j'indiquais qu'il avait paru approprié à la Cour de remettre à plus tard sa décision sur les demandes du Gouvernement sud-africain tendant à ce que *a)* un plébiscite soit organisé dans ce territoire sous le contrôle conjoint de la Cour et du Gouvernement de la République; *b)* l'autorisation lui soit donnée de fournir à la Cour une documentation complémentaire sur les faits en ce qui concerne la situation dans le territoire.

J'ai l'honneur de vous faire connaître que, après avoir examiné la question, la Cour n'estime pas avoir besoin d'explications ou de renseignements complémentaires et a décidé de rejeter ces deux demandes.

**102. M. PADILLA NERVO AU GREFFIER**  
(*télégramme*)

Mexico, 9 juin 1971.

Medicos prohiben viaje. Imposibilitado asistir envío mi voto favorable opinión consultiva<sup>3</sup> y todas y cada una sus cláusulas operativas<sup>4</sup> rogandole someterlo consideración Corte cuya decisión ruegole comunicarme telegraficamente. Sigue carta confirmando mi voto favorable. Mi agradecimiento Presidente y miembros Cortes.

**103. M. PADILLA NERVO AU GREFFIER**

México, 9 junio 1971.

No obstante mis deseos y esfuerzos para estar presente allá durante la segunda lectura de la Opinión y en el momento en que se registra el voto de los

<sup>1</sup> La même communication a été adressée aux représentants des Gouvernements des Etats suivants: Afrique du Sud, Etats-Unis d'Amérique, Inde, Nigéria, Pakistan, Pays-Bas et République du Viet-Nam, du Secrétaire général des Nations Unies et de l'Organisation de l'unité africaine.

<sup>2</sup> Voir ci-dessus p. 604.

<sup>3</sup> C.I.J. *Recueil* 1971, p. 21-58.

<sup>4</sup> C.I.J. *Recueil* 1971, p. 58.

Señores Jueces, de acuerdo con el Artículo 80. del Reglamento Interno de la Corte, no me es posible asistir debido al estado de mi salud y a la prohibición de los médicos de que yo viaje en las condiciones en que actualmente me encuentro.

En vista de lo anterior, deseo declarar — como lo hice ya en la conversación telefónica que tuve hoy con usted — que *doy mi voto en favor de la Opinión y de todas y cada una de sus cláusulas dispositivas.*

Por medio de esta carta confirmo mi decisión comunicada a usted en esta fecha, en mi telegrama que a continuación transcribo:

[*Voir ci-dessus p. 680.*]

Confío en que habrá usted podido someter este asunto a la consideración del Señor Presidente y de mis distinguidos Colegas, a fin de que la Corte tome al respecto la decisión que proceda y que, me atrevo a esperar, sea en el sentido de tomar en cuenta mi voto, no obstante mi intempestiva e inevitable ausencia <sup>1</sup>.

#### 104. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS <sup>2</sup>

14 June 1971.

The Registrar of the International Court of Justice presents his compliments to the Legal Counsel and, with reference to Article 67 of the Statute of the Court and to the oral statement made on behalf of the Secretary-General of the United Nations in the proceedings concerning the request of the Security Council of the United Nations for an advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, has the honour to state that the Advisory Opinion of the Court will be delivered at a public sitting to be held at 10 a.m. on Monday, 21 June 1971.

#### 105. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS (telegram)

21 June 1971.

Advisory Opinion <sup>3</sup> delivered this morning. Court is of opinion by 13 votes to 2,

- (1) that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;

<sup>1</sup> Voir ci-dessus, p. 605.

<sup>2</sup> The same communication was sent to the representatives of the Governments of the following States: Finland, India, the Netherlands, Nigeria, Pakistan, Republic of Viet-Nam, South Africa and United States of America, and of the Organization of African Unity.

<sup>3</sup> *I.C.J. Reports 1971*, p. 16.

by 11 votes to 4,

- (2) that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration;
- (3) that it is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph (2) above, in the action which has been taken by the United Nations with regard to Namibia.

Declaration by President; Separate Opinions by Ammoun, Padilla, Petrén, Onyeama, Dillard, Castro; Dissenting Opinions by Fitzmaurice, Gros.

#### 106. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

21 June 1971.

I have the honour to send you by airmail, under separate cover, two copies of the Advisory Opinion given today by the International Court of Justice on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1976)*.

In pursuance of Article 85, paragraph 2, of the Rules of Court, one original copy of the Opinion, duly signed and sealed, is being sent to you by surface mail.

#### 107. LE GREFFIER ADJOINT AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN<sup>1</sup>

28 juin 1971.

Conformément à l'article 85, paragraphe 2, du Règlement de la Cour, j'ai l'honneur de transmettre sous ce pli un exemplaire certifié conforme de l'avis consultatif rendu par la Cour internationale de Justice sur les *Conséquences juridiques pour les États de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité*.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire conformément aux indications données à ce sujet par votre Gouvernement.

<sup>1</sup> Une communication analogue a été adressée à tous les autres États admis à ester devant la Cour et à l'Organisation de l'unité africaine.