

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

LEGAL CONSEQUENCES FOR STATES OF THE
CONTINUED PRESENCE OF SOUTH AFRICA IN
NAMIBIA (SOUTH WEST AFRICA)
NOTWITHSTANDING SECURITY COUNCIL
RESOLUTION 276 (1970)

VOLUME I

Request for Advisory Opinion, Documents, Written Statements

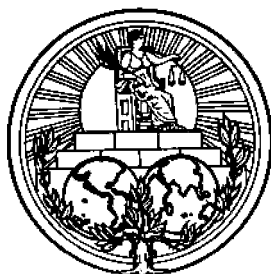
COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

CONSÉQUENCES JURIDIQUES POUR LES ÉTATS DE
LA PRÉSENCE CONTINUE DE L'AFRIQUE DU SUD
EN NAMIBIE (SUD-OUEST AFRICAIN)
NONOBTANT LA RÉOLUTION 276 (1970)
DU CONSEIL DE SÉCURITÉ

VOLUME I

Requête pour avis consultatif, documents, exposés écrits



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WRITTEN STATEMENTS

EXPOSÉS ÉCRITS

WRITTEN STATEMENT OF THE SECRETARY-GENERAL OF THE UNITED NATIONS

I. INTRODUCTION

The Question before the Court

1. By its resolution number 284 (1970), adopted on 29 July 1970, the Security Council decided to request an advisory opinion of the International Court of Justice 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)?”

2. The present statement will examine some of the principal issues to which this question gives rise.

The Meaning and Scope of the Question

3. The proposal to request an advisory opinion of the International Court of Justice on “the legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council resolution 276 (1970)” was among the recommendations¹ made by an *Ad Hoc* Sub-Committee of the Security Council which had been established on 30 January 1970² to study ways and means by which the resolutions of the Security Council concerning Namibia could be effectively implemented in accordance with the United Nations Charter, in the light of the flagrant refusal of South Africa to withdraw from Namibia. The proposed question to the Court was incorporated by the Security Council in operative paragraph 1 of its resolution 284 (1970) in the same words as had been proposed by the *Ad Hoc* Sub-Committee.

4. In order to determine the meaning and scope of the question as conceived by its authors, and the organ from which it emanated, it is therefore pertinent to note at the outset the principal intentions and interpretations which were expressed in the discussions of the Sub-Committee³ and of the Security Council⁴ which led to the formal adoption of the resolution of 29 July 1970.

5. The sponsor of the proposal⁵ which became the first operative paragraph of Security Council resolution 284 (1970), made it clear from the outset that the termination of the Mandate and the assumption by the General Assembly of direct responsibility for the Territory was not being called into question⁶. For this had been an “irrevocable step” and “consequently, the presence of South Africa in Namibia was now illegal and member States had pledged themselves to fulfil the responsibility which the United Nations had assumed”. The question to be presented to the Court therefore related to the legal con-

¹ S/9863, 7 July 1970.

² By Security Council resolution 276 (1970), of 30 January 1970, para. 6. This *Ad Hoc* Sub-Committee comprised the full membership of the Security Council.

³ *Ad Hoc* Sub-Committee established in pursuance of Security Council resolution 276 (1970), Summary Records of First to Seventeenth Meetings, inclusive (held between 4 Feb. 1970 and 7 July 1970), S/AC.17/SR.1 to S/AC.17/SR.17.

⁴ Security Council, 1550th Meeting, held on 29 July 1970, S/PV.1550.

⁵ Finland.

⁶ S/AC.17/SR.12 at p. 3, and S/AC.17/SR.17 at p. 8.

⁷ S/AC.17/SR.12 at p. 3.

sequences for States of the presence of South Africa in Namibia after these irrevocable changes had been brought about.

6. The sponsor of the resolution further suggested that the advisory opinion requested of the Court would "define in legal terms the implications for States of South Africa's continued presence in Namibia", and would help to define more precisely "the rights of Namibians", both those in Namibia and those residing abroad⁸. It was further suggested that the advisory opinion requested of the Court could underline the fact that South Africa has forfeited its Mandate over South West Africa because of its violation of the terms of the Mandate itself, because South Africa has acted contrary to its international obligations, contrary to the international status of the Territory and contrary to international law⁹.

7. The views of the sponsor of the resolution concerning the nature and scope of the question to be presented to the Court were not contested within the Sub-Committee by any member which supported the inclusion of the recommendation in the Sub-Committee's report to the Council. Moreover, the question to the Court which had been recommended by the *Ad Hoc* Sub-Committee was incorporated in the same words in the resolution which was adopted by the Security Council on 29 July 1970, by a vote of 12 in favour, 0 against and 3 abstentions¹⁰.

8. The understanding expressed by the sponsor of the resolution concerning the limited scope of the question to be addressed to the Court was reaffirmed in varying terms by several other members of the Council¹¹, particular emphasis being also placed on the effects of the non-compliance by South Africa with the pertinent resolutions of the Security Council, and with the responsibilities assumed by the United Nations toward Namibia and its people¹².

⁸ S/AC.17/SR.12 at p. 3; and S/PV.1550 at p. 18.

⁹ *Ibid.*

¹⁰ In favour: Burundi, China, Colombia, Finland, France, Nepal, Nicaragua, Sierra Leone, Spain, Syria, USA and Zambia. Against: None. Abstaining: Poland, USSR and UK. Immediately prior to the vote on the resolution as a whole, a separate vote was taken, at the request of the representative of France, on the inclusion of the words "... notwithstanding Security Council resolution 276 (1970)" occurring as the last phrase of operative paragraph 1 of the resolution. By a vote of 11 in favour, 0 against and 4 abstentions (France, Poland, USSR and UK) the Security Council decided to retain these words in the resolution; see S/PV.1550, at pp. 76 and 77-80.

¹¹ E.g., Colombia (to seek another advisory opinion "... would ... in no way challenge previous decisions taken by the Council and the General Assembly or delay their implementation", S/AC.17/SR.12, at pp. 5-6); Nepal ("... it will be our understanding that the International Court limit the scope of its advisory opinion strictly to the question put to it, and not review or examine the legality or validity of the resolutions adopted by both the General Assembly and the Security Council", S/PV.1550, at p. 37); Syria (the International Court of Justice "is not asked to rule on the status of Namibia as such; rather it is requested to elicit the scope of legal means at the disposal of States, which may erect a wall of legal opposition to the occupation of Namibia by the Government of South Africa," S/PV.1550, at p. 47); Burundi ("... the political decision of the General Assembly with regard to the status of Namibia is irrevocable, because the political nature of the Namibian problem is such that it is definitely within the sphere of political solutions to be imposed by the Security Council and the General Assembly, the most competent organs. Thus, it is in recognition of the primary role of these two organs, the Security Council and the General Assembly, that my delegation will vote in favour of the draft resolution submitted to us", S/PV.1550, at pp. 71-75).

¹² E.g., Spain (the request to the International Court of Justice for an advisory opinion would make the Security Council aware "of the international legal consequences of a failure to comply with resolutions of a United Nations body, in partic-

9. The three members¹³ of the Council who abstained when the resolution was adopted on 29 July 1970 likewise appear to have acknowledged, either tacitly or expressly, the assumption upon which the decision to request an advisory opinion of the International Court of Justice was predicated. Moreover, in one of these cases¹⁴, the member explained his decision to abstain on the ground that the acknowledged assumption underlying the question to the Court would unduly restrict the scope of the question¹⁵.

10. The only stated exception to the understanding shared by Council members as to the scope and purpose of the question to be presented to the Court appears to have emanated from one Council member¹⁶ who, while voting in favour of the resolution, nevertheless implied a preference for a wider interpretation of the question than that which had been, either expressly or tacitly, understood by other Council members¹⁷.

11. In general, therefore, from the record of the discussions of the Security Council and its Sub-Committee immediately preceding the adoption of Security Council resolution 284 (1970) it would appear that the question presented to the Court concerns the legal consequences for States of the continued presence of South Africa in Namibia, not as a professed or putative Mandatory Power, but as a State which, according to the provisions of Security Council resolution 276 (1970) was continuing to occupy Namibia illegally¹⁸, and in defiance of the relevant United Nations resolutions and the United Nations Charter¹⁹, notwithstanding that the Mandate for South West Africa has been terminated²⁰, the United Nations has assumed direct responsibility for the Territory until its independence²¹, and the Security Council had called upon the Government of South Africa immediately to withdraw its administration from the Territory²².

The Issues to Be Examined

12. It has been shown that in formulating the question now before the Court, the Security Council used the phrase "the continued presence of South

ular resolutions 264 (1969), 269 (1969) and 276 (1970) of the Security Council"; the Finnish proposal was expected to contribute to "... the defence of the interests and rights of the Namibians and respect for the decisions of the Organization in discharging its special responsibility toward the territory of Namibia", S/PV.1550, at pp. 65-67).

¹³ Poland, USSR and UK.

¹⁴ United Kingdom.

¹⁵ S/AC.17/SR.17, at p. 5; and S/PV.1550, at pp. 89-91 ("our support"—for a request for an advisory opinion from the International Court of Justice—"... depended upon the submission to the International Court of the issue of the status of South West Africa as a whole. The question before us does not appear to do this. It is based on certain assumptions about the legal status of South West Africa which, in the opinion of my Government, ought themselves to be examined by the Court. These assumptions are not expressly stated in the question itself but they do clearly emerge from some speeches of the sponsors made in the *Ad Hoc* Sub-Committee and also today . . .", S/PV.1550, at pp. 89-91).

¹⁶ France.

¹⁷ S/PV.1550, at pp. 86-88; cf. footnote 10 above concerning the Council's decision to retain the words "notwithstanding Security Council resolution 276 (1970)".

¹⁸ Security Council resolution 276 (1970), para. 2.

¹⁹ *Ibid.*, para. 4.

²⁰ *Ibid.*, 2nd and 3rd preambular paragraphs.

²¹ *Ibid.*, 2nd preambular paragraph.

²² *Ibid.*, 3rd preambular paragraph.

Africa in Namibia, notwithstanding Security Council resolution 276 (1970)" in order to denote the presence of South Africa after the Mandate had terminated and South Africa had ceased to have any right to be present as Mandatory Power.

13. It follows that the legal consequences for States of this continued presence are not those which resulted directly from the conduct of South Africa in its former capacity as Mandatory Power, but only the consequences of the continued South African presence after the cessation of the Mandatory relationship.

14. In the statement which follows, it will be shown that the continued presence of South Africa in Namibia—

- (a) has frustrated, altered or otherwise affected the fulfilment of pre-existing international rights and obligations owing by States, and by the international community, in respect of Namibia (including obligations assumed under the Covenant of the League of Nations and the mandates system, and also under the Charter of the United Nations and the relevant norms and principles of international law);
- (b) has led to additional obligations for States under the Charter of the United Nations, and by virtue of decisions taken by the Security Council with specific reference to the continued occupation by South Africa of Namibia; and
- (c) has created a situation in which relationships and transactions involving Namibia and other States, which hitherto could be legally entered into and executed, can no longer have any legal effect pending the re-establishment of a lawful administration and legal system within the Territory of Namibia.

15. Before setting out the factual and legal circumstances of the continued South African presence in Namibia, and the additional international obligations which have come into being as a result of that presence, this statement will first examine briefly the evolution since the inception of the mandates system of the principal international obligations which today engage the responsibility of the United Nations and its member States in consequence of the failure of the former Mandatory Power to discharge these responsibilities or to withdraw from the Territory when the Mandate terminated.

II. INTERNATIONAL OBLIGATIONS CONCERNING NAMIBIA

Obligations Derived from the Mandates System

16. The assumption of international responsibility for Namibia (formerly German South West Africa)²³ first found expression in Article 22 of the Covenant of the League of Nations, of which the first two paragraphs read as follows:

"1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world,

²³ For the purpose of this statement the term "South West Africa" meaning "Namibia" may be used when the context refers to historical developments concerning the Territory, before the name "Namibia" had been introduced.

there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League."

17. In consequence of the renunciation by Germany in 1919²⁴ of all her rights over South West Africa, and the establishment by the League of Nations in 1920, under Article 22 of the Covenant, of an international Mandate or "tutelage" for South West Africa to be exercised by South Africa as a Mandatory Power on behalf of the League²⁵, an overall, and still undischarged, responsibility was thereby assumed by the international community for the advancement and protection of the people and Territory of Namibia.

18. As stated by the Court in a previous advisory opinion, the mandates system was created by Article 22 of the Covenant of the League of Nations with a view to giving practical effect to two principles of paramount importance, namely "the principle of non-annexation and the principle that the well-being and development of such peoples form a 'sacred trust of civilization'²⁶". The Court further observed that "this new international institution did not involve any cession of territory or transfer of sovereignty to the Union of South Africa. The Union Government was to exercise an international function of administration on behalf of the League with the object of promoting the well-being and development of the inhabitants²⁷."

19. In Article 2 of the Mandate for "German South West Africa"²⁸ the grant of comprehensive administrative and legislative powers over the Territory was followed by the requirement that "the Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate".

20. By assuming the responsibilities of the Mandatory Power, South Africa thereby accepted the premises on which the Mandate was founded, and was thus precluded from claiming, at any future date, any territorial or sovereign rights in respect of South West Africa inconsistent with the Mandate, or arising from events antecedent to its creation.

21. The international responsibilities concerning Namibia, assumed as a "sacred trust of civilization" since 1920, were not dependent on the continued existence of the League of Nations, and remained in effect following the dissolution of the latter on 19 April 1946²⁹. Thus, it was determined by the Court

²⁴ Article 119 of the Treaty of Peace with Germany, signed at Versailles on 28 June 1919.

²⁵ Mandate for German South West Africa confirmed by the Declaration of the Council of the League of Nations of 17 December 1920.

²⁶ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 131.

²⁷ *Ibid.*, at p. 132.

²⁸ Declaration by the Council of the League of Nations of 17 December 1920.

²⁹ Resolution of the Council of the League of Nations adopted on 18 April 1946; see also *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at pp. 131-138 and 143; *South West Africa cases, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319, at pp. 330-335 and 347.

in a previous advisory opinion that, following the dissolution of the League, and notwithstanding the fact that no agreement was concluded placing the Territory of South West Africa under the United Nations trusteeship system, South West Africa remained a territory under international Mandate, and the Mandatory Power continued to have the international obligations stated in Article 22 of the Covenant of the League of Nations, and in the Mandate, as well as the obligation to transmit reports and petitions, and to submit to the supervision of the General Assembly of the United Nations³⁰.

22. With regard to the necessity for international supervision, the Court stated, *inter alia*, that "the effective performance of the sacred trust of civilization by the Mandatory Powers required that the administration of mandated territories should be subject to international supervision"³¹, and added, "the necessity for supervision continues to exist despite the disappearance of the supervisory organ under the mandates system"³². The Court also referred to the provisions of Article 80 (1) of the United Nations Charter, preserving the rights of States and peoples under existing international agreements, and observed in this connection that "the purpose must have been to provide a real protection for those rights; but no such rights of the peoples could be effectively safeguarded without international supervision and a duty to render reports to a supervisory organ"³³.

23. The essential basis for the Mandate for South West Africa was therefore to be found in its international status and international purpose³⁴, which resulted in the assumption by the United Nations of the responsibilities hitherto vested in the League of Nations, and the continuance, pending its fulfilment of a *sui generis* international trust.

Obligations derived from the Charter of the United Nations

24. On 24 October 1945, when the United Nations Charter entered into force, South Africa was administering the mandated Territory of South West Africa on behalf of the League of Nations³⁵, subject to the international obligations resulting from Article 22 of the Covenant of the League of Nations, and from the Mandate confirmed by the Council of the League of Nations on 17 December 1920, and from the rules (relating to petitions from mandated territories) adopted by the Council of the League of Nations on 31 January 1923.

25. However, upon the adherence by South Africa to the Charter of the

³⁰ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 143; re-affirmed in these respects in *South West Africa cases, Preliminary Objections, Judgment, I.C.J. Reports 1962*, pp. 319 et seq.

³¹ *Ibid.*, *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 136.

³² *Ibid.*

³³ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at pp. 136 and 137.

³⁴ "The object of the Mandate regulated by international rules far exceeded that of contractual relations regulated by national law. The Mandate was created, in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object—a sacred trust of civilization. . . . The international rules regulating the Mandate constituted an international status for the Territory recognized by all the Members of the League of Nations, including the Union of South Africa." *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 132.

³⁵ The League of Nations was formally dissolved on 19 April 1946, nearly six months after the United Nations Charter entered into force.

United Nations as an original member³⁶, South Africa, in common with other member States, thereupon assumed the obligations of Members of the United Nations set out in the Charter in addition to all previously existing obligations; and, in the event of any conflict with the latter, it was stipulated in Article 103 that Charter obligations shall prevail.

26. It therefore followed that, to the international obligations concerning South West Africa which existed prior to the entry into force of the United Nations Charter, there were added, in 1945, such further obligations as were contained in the latter, and which included, *inter alia*:

- (a) The obligation to respect the principle of equal rights and self-determination (see Articles 1 (2) and 55 of the Charter).
- (b) The obligation to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (see Articles 1 (3) and 55 (c) of the Charter) and the obligation to take action for the achievement of this purpose (see Article 56 of the Charter).
- (c) The acceptance by member States administering territories whose peoples have not yet attained a full measure of self-government of a sacred trust to promote the well-being of these peoples, together with the specific obligation to ensure their advancement, to develop self-government and to assist the inhabitants in the progressive development of their free political institutions (see Article 73 of the Charter; see also GA resolution 11 (I), Part I, 3rd paragraph).

27. The last-mentioned group of obligations (under Article 73 of the Charter) is included in Chapter XI of the United Nations Charter, entitled "Declaration regarding Non-Self-Governing Territories", which became immediately applicable³⁷ to the administration of all non-self-governing territories, whether or not formerly held under Mandate. It will be noted that these provisions incorporate and, in certain respects, enlarge the essential principles contained in Article 22 of the Covenant of the League of Nations. Subsequent elaborations of what constitutes a "non-self-governing territory"³⁸ need hardly be referred to at this stage to re-inforce the manifestly non-self-governing character of Namibia, and the resulting international obligations of South Africa to fulfil the requirements of Chapter XI of the United Nations Charter.

28. Included among the non-self-governing territories to which Article XI of the Charter referred were many territories in which sovereignty vested at that time in the administering States. Also included, however, were other non-self-governing territories (such as Namibia) which were administered as an international responsibility under a system of international supervision, which, in the case of the mandates system, had anteceded the United Nations Charter.

³⁶ South Africa became an original Member of the United Nations on 7 November 1945, being the date on which South Africa deposited its instrument of ratification of the United Nations Charter (see Art. 110 (4)).

³⁷ In a resolution unanimously adopted by the General Assembly on 9 February 1946, and supported by all States administering territories held under Mandate (including South Africa), the General Assembly drew attention "to the fact that the obligations accepted under Chapter XI of the Charter by all Members of the United Nations are in no way contingent upon the conclusion of trusteeship agreements or upon the bringing into being of the Trusteeship Council and are, therefore, already in full force". See General Assembly resolution 11 (I); A/64 at p. 13.

³⁸ General Assembly resolutions 567 (VI), 648 (VII), 742 (VIII) and 1541 (XV). See also paras. 58 and 59 below.

29. An "international trusteeship system" was established under Chapters XII and XIII of the Charter "for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements"³⁹, and it was initially anticipated that those territories still held under Mandate would be among the first to be placed under the trusteeship system. However, this required the prior conclusion of individual agreements by the States concerned⁴⁰. The Court has previously held that these Charter provisions did not impose upon Mandatory States the obligation to enter into such agreements⁴¹.

30. Thus, although the General Assembly, at its First Session, invited all States administering territories held under Mandate to undertake practical steps for the early conclusion of trusteeship agreements⁴², and although trusteeship agreements were duly concluded with all other member States which were Mandatory Powers, South Africa was unwilling to enter into such an agreement. It followed that all territories which had been held under the League of Nations mandates system, with the sole exception of Namibia, were placed under the United Nations trusteeship system, or else have achieved independence.

31. The case of Namibia therefore remained unique in that, although not the subject of a trusteeship agreement, it remained a non-self-governing territory under the mandates system, and subject to the continuing international responsibilities assumed thereunder, and subject also to the additional obligations assumed by member States under the United Nations Charter, and to the supervision of the General Assembly of the United Nations.

32. It has been shown above that the international obligations created by the United Nations Charter, and having application to Namibia, included, *inter alia*, the obligation to respect the right of the people of Namibia to equal rights and self-determination, and to promote in Namibia (as elsewhere) human rights and fundamental freedoms without distinction as to race, sex, language or religion, and to treat as paramount the interests of the inhabitants of the Territory, and to promote to the utmost their well-being, and develop self-government, and assist in the progressive development of their free political institutions.

33. These obligations were owing in the first instance by the member State which had, or assumed responsibilities for the administration of the non-self-governing, and then mandated Territory of Namibia, namely South Africa. Since, however, these obligations were embodied in the Charter, a multilateral convention, they were also legally owing between the States parties to that convention, and if any one of their number should default, it would be the right of the other member States to call the defaulting Member to account, and if necessary to seek compliance in accordance with the procedures provided for in the Charter. It follows, therefore, that all Members of the United Nations have an interest, under the Charter, in the fulfilment of these obligations.

34. This interest is particularly reinforced in the case of Namibia, where the beneficiary of the obligations in question, has not possessed at all material times the means or capacity or juristic status required to assert or enforce an international claim. In order that the rights attributed to the people and Territory of Namibia under Articles 1 (2), 1 (3), 55 and 73 of the Charter should

³⁹ Art. 75 of the United Nations Charter.

⁴⁰ Arts. 75 and 81 of the United Nations Charter.

⁴¹ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 140.

⁴² General Assembly resolution 11 (I), adopted on 9 Feb. 1946.

have practical meaning, they should be capable of being asserted against a party which would violate those rights. In such a case, therefore, there may be no other means of safeguarding such rights, pertaining to a territory under international responsibility, except through the exercise of the collective responsibility of the United Nations. It is accordingly submitted that the right to demand the performance of the obligations referred to is vested in the United Nations, on behalf of the people and Territory of Namibia, until such time as the latter is in a position to assert effectively its own international claims.

35. The Court has previously held that "the authority of the General Assembly to exercise supervision over the administration of South West Africa as a mandated territory is based on the provisions of the Charter"⁴³. This authority however, is exercised with concurrent reference to the different constitutional texts and sources of law upon which the existing international obligations concerning Namibia are founded.

36. When referring to the exercise by the General Assembly of powers formerly vested in the Council of the League of Nations, the Court has stated that "the degree of supervision to be exercised by the General Assembly should not therefore exceed that which applied under the mandates system, and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations"⁴⁴. It is submitted, however, that this finding related exclusively to the exercise of the powers of the Council of the League of Nations, and has no reference to the concurrent exercise of other powers derived from the United Nations Charter, or pursuant thereto.

37. Since Charter obligations having relevance to Namibia have been the subject of continued application and interpretation by the United Nations during the past 25 years, there will be examined in a separate section⁴⁵ some of the more significant of these developments which pertain to the present obligations of States resulting from the continued presence of South Africa in Namibia.

Other Sources of Legal Obligation

38. In addition to the sources of legal obligation concerning Namibia which have been mentioned in the foregoing, or will be elaborated in succeeding sections, it has also been incumbent on all States to ensure that their conduct in relation to Namibia complies with other applicable international obligations, whether deriving from treaty or customary law, or from recognized principles of general international application.

39. An example of a legal norm not deriving from the specific sources mentioned in the foregoing was cited by the Court in an earlier advisory opinion wherein it was found, *inter alia*, that the principles underlying the Genocide Convention⁴⁶ "are principles which are recognized by civilized nations as

⁴³ *Voting Procedure on Questions Relating to the Reports and Petitions concerning the Territory of South West Africa, Advisory Opinion, I.C.J. Reports 1955*, p. 67, at p. 76.

⁴⁴ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 138; and *Voting Procedure on Questions relating to the Reports and Petitions concerning the Territory of South West Africa, Advisory Opinion, I.C.J. Reports 1955*, p. 67, at p. 77.

⁴⁵ See paras. 40 to 67 below.

⁴⁶ *United Nations Treaty Series*, Vol. 78, p. 277. Approved by General Assembly resolution 260A (III), of 9 Dec. 1948; see also General Assembly resolution 96 (I).

binding on States, even without any conventional obligations"⁴⁷. Moreover, in referring to the legal interest of all States in the protection of these fundamental rights and obligations, the Court stated, *inter alia*, in a more recent judgment:

"... an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.

Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23); others are conferred by international instruments of a universal or quasi-universal character⁴⁸."

The Special Responsibilities of the United Nations Towards the People and Territory of Namibia

40. A fundamental premise of the actions and responsibilities undertaken by the United Nations and its Members in respect of Namibia has been that the United Nations has had, and continues to have special responsibilities towards the people and Territory of Namibia⁴⁹. That these special responsibilities differ in a number of basic respects from other responsibilities assumed by the United Nations, may be illustrated, *inter alia*, by the following factors peculiar to the Namibian situation:

- (a) Namibia has been an international responsibility for more than half a century, having been administered on behalf of the League of Nations until 1946, and thereafter on behalf of the United Nations. It remains an international territory, having an international status, and regulated by international rules⁵⁰.

⁴⁷ *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 15, at p. 23.

⁴⁸ *Case concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962), Judgment of 5 February 1970, I.C.J. Reports 1970*, at p. 32.

⁴⁹ These special responsibilities of the United Nations towards the people and territory of Namibia have been expressly and repeatedly re-affirmed both by the Security Council (see resolutions 245 (1968), 7th preambular paragraph, 246 (1968), 8th preambular paragraph, 264 (1969), 6th preambular paragraph, 283 (1970), final preambular paragraph), and by the General Assembly (see, *inter alia*, resolutions 1899 (XVIII), 14th preambular paragraph, 2074 (XX), 5th preambular paragraph, 2145 (XXI), 9th preambular paragraph, 2324 (XXII), 4th preambular paragraph, 2372 (XXII), 7th and 8th preambular paragraphs, 2403 (XXIII), 2nd preambular paragraph, 2498 (XXIV), 2nd and 3rd preambular paragraphs, and 2518 (XXIV), 1st preambular paragraph).

⁵⁰ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 132. The continued international status of Namibia has been re-affirmed both by the Security Council (see resolutions 246 (1968), 7th preambular paragraph, 276 (1970), 4th preambular paragraph and 283 (1970), 5th preambular paragraph), and by the General Assembly (see resolution 2145 (XXI), para. 2,

- (b) To the extent that South Africa failed or refused to honour the international obligations which were owing to the people and Territory of Namibia⁵¹, the United Nations was thereby prevented from discharging its responsibilities through the agency and co-operation of the administering State, and was obliged to seek additional or alternative ways of securing the performance of the international—and sacred—trust, for which it had the supervisory and ultimate responsibility.
- (c) In the exercise of these responsibilities for Namibia, the United Nations has been discharging a special duty, which is owing by and between all member States of the United Nations to a people and territory which is outside the national jurisdiction of all existing States, and depends exclusively on the United Nations for the international protection of its rights and interests.

The Role of the General Assembly

41. Decisions taken by the General Assembly concerning the implementation of the collective responsibilities of the United Nations towards the people and Territory of Namibia must therefore be distinguished from other General Assembly resolutions, and from recommendations calling for action within the sovereign authority of States. For in the absence of any intervening sovereign jurisdiction between the General Assembly and the people and Territory of Namibia (and pending the establishment of an independent and sovereign State of Namibia), no governmental authority exists other than the General Assembly and the Security Council having the competence to interpret and apply to Namibia the international obligations which are owing to the latter under the Charter of the United Nations and the former mandates system.

42. It follows that General Assembly resolutions adopted in fulfilment of the special responsibilities of the United Nations towards the people and Territory of Namibia have constituted, for the authority administering the Territory, the controlling decisions of the international community on whose behalf the Territory has been administered. The force of these General Assembly resolutions is particularly evident when they have declared, on repeated occasions, what the overwhelming majority of States consider their collective obligations in respect of Namibia to be.

43. These resolutions have also constituted, *inter alia*, an expression by the international community of its own responsibilities in respect of Namibia, and they accordingly govern all implementing action taken by or on behalf of the United Nations in the fulfilment of these responsibilities. Such resolutions may, in addition, be declaratory of general obligations of States under existing constitutional instruments, or under general principles or peremptory norms of international law.

44. Since under Article 56 of the United Nations Charter, member States are obligated to act in co-operation with the Organization for the achievement of the purposes set forth in Article 55 of the Charter (concerning economic and social co-operation and human rights), this provision requires of member States that they should co-operate in action initiated by competent organs of the United Nations for the achievement of these purposes in Namibia.

which re-affirmed "that South West Africa is a territory having international status and that it shall maintain this status until it achieves independence"; see also resolution 2325 (XXII), para. 4).

⁵¹ See paras. 58 to 63, and 79 below.

45. By adopting resolutions interpreting or applying the special responsibilities of the United Nations towards the people and Territory of Namibia under the United Nations Charter, member States of the United Nations thereby give expression not only to the principal obligations which have been assumed, but also to the basic standards and criteria by which these obligations should be interpreted.

46. It will be noted in this connection that some of the terms used under the mandates system and in the Charter of the United Nations (as, for example, "well-being"⁵², "social progress"⁵³, "equal rights and self-determination"⁵⁴, "advancement"⁵⁵, "just treatment"⁵⁶, "self-government"⁵⁷) imply an underlying consensus or contemporary norm as to the standards or criteria of interpretation to be applied. The continued and illegal presence of South Africa in Namibia has in no way lessened the function of the General Assembly in articulating this international consensus, or the duty of the international community to ensure that the people and Territory of Namibia are treated in accordance with established international standards.

47. Since we are here concerned with international, and not with internal municipal obligations, it would clearly not suffice for any one State (including an administering State) to impose on Namibia a unilateral standard of its own which is at variance with a standard adopted by the international community on whose behalf the Territory is being administered⁵⁸. It would also not suffice to rely only on a standard alleged to have been acceptable in a previous era when the obligation first originated, but which has since become inconsistent with the minimum international norms recognized at the time when the interpretation is made.

48. For even if there had been evidence of an intention to fix a comprehensive standard as valid for all time (which was not here the case), such a standard would, in any event, have been subsequently invalidated to the extent that it became inconsistent with overriding legal obligations derived from the United Nations Charter or from peremptory norms of international law (*jus cogens*)⁵⁹. In fact, moreover, the obligations here referred to were never circumscribed by a defined or immutable standard of 50 years ago, or 25 years ago, but, on the contrary, were intended to serve "a sacred trust of civilization"

⁵² Articles 55 and 73 of the United Nations Charter; Article 22 of the Covenant of the League of Nations ("well-being and development"), Article 2 of the Mandate contained in the Declaration of the Council of the League of Nations of 17 December 1920 ("material and moral well-being"). For the purposes of Article 55 of the United Nations Charter, the term "well-being" embraces not merely physical well-being, but includes economic, social, cultural, civil and political conditions of well-being or advancement; see, *inter alia*, General Assembly resolution 2200A (XXI).

⁵³ Article 2 of the Mandate, 17 Dec. 1920.

⁵⁴ Articles 1 (2), 55 and 73 of the United Nations Charter.

⁵⁵ Article 73 of the United Nations Charter.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ As, for example, the South African policy of "apartheid" applied in defiance of the determination by the Security Council and the General Assembly that this policy violates the United Nations Charter (and is abhorrent to the conscience of mankind): see, *inter alia*, Security Council resolutions 181 (1963), 182 (1963), 190 (1964), 191 (1964) and 282 (1970), and General Assembly resolutions 1761 (XVII), 2054 (XX), 2144 (XXI), 2202 (XXI), 2307 (XXII), 2396 (XXIII) and 2506 (XXIV).

⁵⁹ Vienna Convention on the Law of Treaties, Articles 53 and 64; doc. A/CONF. 39/27, 23 May 1969, and corrigendum I.

which, by necessary implication, is governed, *inter alia*, by contemporary norms and recognized principles of international law.

49. Since the acts of the territorial administration of Namibia have been based upon an international relationship, and have not been performed within the domestic jurisdiction of any existing State⁶⁰, it has followed that the internal affairs of the international Territory of Namibia are of direct international concern. Moreover, if the consent of the directly interested State were to be required for the application of an international obligation to Namibia, such consent would need to be given or withheld by the people of Namibia, and not by an alien administering power (now illegally present in the Territory), claiming, by its own unilateral decision, to bar the application to the people of Namibia of an otherwise accepted international rule or norm.

50. It is further submitted that a decision of the General Assembly interpreting an international obligation with reference to Namibia is not made any less effective by the absence of the consent of an administering State which has been repeatedly condemned by the General Assembly, and by the Security Council for its defiance of the authority and the decisions of the United Nations⁶¹. For whatever basis might be invoked for contesting the legal force of a General Assembly resolution, no such contestation could justify any State in refusing to apply to the international Territory of Namibia a contemporary interpretation of the United Nations Charter formally adopted and upheld by an overwhelming majority of member States.

51. The General Assembly has accordingly been entitled to expect of the territorial administration of Namibia that it should apply, and of member States of the United Nations that they should uphold the responsibilities which are owing by the international community to the people and Territory of Namibia, and which include, *inter alia*, the application of the principles set out in the United Nations Charter concerning self-determination, self-government, political, economic, social and educational advancement, and human rights and fundamental freedoms without distinction as to race, sex, language or religion⁶².

The Right of the People of Namibia to Self-Determination and Independence

52. One of the basic obligations contained in the United Nations Charter which the General Assembly has sought to apply to the international Territory of Namibia has been the duty of States to respect the principle of equal rights and self-determination of peoples⁶³. It is in application of this principle, that both the Security Council and the General Assembly have expressly and repeatedly asserted "the inalienable right of the people of Namibia to self-determination and independence"⁶⁴.

⁶⁰ South Africa's former authority to act on behalf of the international community as Mandatory Power at no time conferred sovereignty or permanent rights over the Territory (see para. 18 above), which legally, therefore, remains entirely outside, and independent of South African jurisdiction and sovereignty.

⁶¹ General Assembly resolutions 1899 (XVIII), para. 3, 2074 (XX), para. 4, 2145 (XXI), 6th preambular paragraph, 2324 (XXII), para. 1, 2325 (XXIII), para. 3, 2372 (XXII), paras. 6 and 7, 2498 (XXIV), para. 2, 2517 (XXIV), para. 3, and 2547 (XXIV), Part A, para. 4; see also Security Council resolutions 245 (1968), para. 1, 246 (1968), para. 1, 264 (1969), para. 6, 269 (1969), para. 2, and 276 (1970), para. 1.

⁶² Articles 1 (2), 1 (3), 55 and 73 of the United Nations Charter.

⁶³ Articles 1 (2) and 55 of the United Nations Charter.

⁶⁴ Security Council resolutions 246 (1968), 3rd preambular paragraph, 264 (1969),

53. In the case of Namibia, it is unnecessary to consider difficulties of interpretation such as might arise in other circumstances concerning such questions as the exact scope of the term "peoples" (in whom is vested the right to self-determination), and of what, in particular circumstances, constitutes "alien subjugation, domination and exploitation"⁶⁵ or the internal affairs of States or the free exercise by the people of their rights. For in the unique situation of Namibia, a people and territory exist⁶⁶, having a distinct status and being an international responsibility not under the sovereignty of any State.

54. Namibia is accordingly not subject to any competing territorial claims and cannot involve questions of secession from, or the domestic jurisdiction or sovereign rights of any existing State. On the contrary, the principal rights in the matter are possessed by the people and Territory of Namibia, and the ultimate obligation to secure the satisfaction of those rights lies with the international community.

55. The main area of application of the right of self-determination has been in respect of trust territories and non-self-governing territories, and their advancement toward self-government and independence. Within this context, the "Declaration on the granting of independence to colonial countries and peoples" was adopted by the General Assembly, without a dissenting vote, on 14 December 1960⁶⁷, and has since been re-affirmed or further elaborated in subsequent resolutions⁶⁸, the latest of which has incorporated the essential elements in a formal "Declaration on Principles of International law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations"⁶⁹.

56. Without considering here the legal effect on situations other than Namibia of such principles formulated by the General Assembly, it is clear that the latter, in the exercise of its supervisory powers in respect of Namibia, has declared that these principles are among the international rights and obligations concerning Namibia of which the international community has a duty to secure the fulfilment⁷⁰.

57. It follows that, "by virtue of the principle of equal rights and self-deter-

4th preambular paragraph, 276 (1970), 1st preambular paragraph, 283 (1970). 1st preambular paragraph; and General Assembly resolutions 1899 (XVIII), paragraph 2, 2074 (XX), paragraph 3, 2145 (XXI), first preambular paragraph, and para. 1, 2248 (S-V).I., first preambular paragraph, 2325 (XXII), 2nd preambular paragraph, 2372 (XXII), para. 5, 2403 (XXIII), para. 1, 2498 (XXIV), para. 1. and 2517 (XXIV), para. 1.

⁶⁵ General Assembly resolutions 1514 (XV), para. 1, and 2625 (XXV), Annex, 5th Principle, 2nd paragraph.

⁶⁶ General Assembly resolution 2625 (XXV), Annex, 5th Principle, 6th para.; "... such separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised their right of self-determination in accordance with the Charter . . .", *ibid.*

⁶⁷ General Assembly resolution 1514 (XV).

⁶⁸ E.g., General Assembly resolutions 1654 (XVI), 1810 (XVII), 1956 (XVIII), 2105 (XX), 2131 (XX), 2189 (XXI), 2326 (XXII), 2465 (XXIII), 2548 (XXIV) and 2625 (XXV).

⁶⁹ General Assembly resolution 2625 (XXV). In formulating the international covenants on human rights pursuant to Articles 1, 13 (1(b)), 55 and 56 of the United Nations Charter, the General Assembly also recognized the right of peoples and nations to self-determination as a human right, possessed, *inter alia*, by the peoples of non-self-governing territories; see General Assembly resolutions 421.D. (V), 545 (VI) and 2200A (XXI) and Annex.

⁷⁰ See resolutions cited in footnote 64, *supra*.

mination of peoples enshrined in the (United Nations) Charter", the people of Namibia "have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter" ⁷¹.

58. That the people of Namibia have not thus far exercised, or been permitted to exercise, their right of self-determination has been demonstrated in the successive reports on the situation in Namibia presented to and approved by the General Assembly ⁷². In particular, it has been shown that the people of Namibia have neither implemented, nor have they been permitted to implement any of the modes of self-determination which have been established as constituting the principle ⁷³.

59. In order to discharge the international obligation which was owing in this respect, it was incumbent on South Africa to apply this obligation to Namibia in a manner consistent with the basic principles adopted by the international community on whose behalf the Territory was being administered. It was therefore inconsistent with this obligation that the people of Namibia have thus far been denied the opportunity to achieve independence or any admitted mode of self-determination ⁷⁴. It was also incompatible with this obligation that representation in the South African Parliament was granted to a "white" minority within the Namibian population ⁷⁵ and that other racial, national or tribal groups, comprising the majority of the Namibian population, have been subjected to different and unequal laws and institutions, not of their own choosing, or under their control ⁷⁶.

60. Moreover, the institution by the Government of South Africa of local

⁷¹ General Assembly resolution 2625 (XXV), Annex, 5th Principle, 1st para., reaffirming and elaborating operative para. 2 of the Declaration incorporated in General Assembly resolution 1514 (XV); see also, *inter alia*, General Assembly resolutions cited in footnote 68 above.

⁷² See footnote 116 below.

⁷³ "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people . . ." General Assembly resolution 2625 (XXV), Annex, 5th Principle, 4th para.; these modes of implementing self-determination correspond closely with the modes by which a non-self-governing territory may reach a "full measure of self-government" for the purposes of Chapter XI of the United Nations Charter: *viz.*, General Assembly resolution 1541 (XV), Annex, Principle VI, which reads as follows: "A non-self-governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State."

⁷⁴ See, by analogy, "Factors indicative of the attainment of independence", approved by General Assembly resolution 742 (VIII), and General Assembly resolution 1541 (XV), Annex, Principle VII and Principle IX.

⁷⁵ South West Africa Affairs Amendment Act, No. 23 of 1949, secs. 26-33; South West Africa Constitution Act, No. 39 of 1946, sec. 12; Electoral Consolidation Act, No. 46 of 1946, sec. 3, and South African Citizenship Act, No. 44 of 1949, secs. 2-7.

⁷⁶ E.g., laws or institutions which impose or sanction racial discrimination; including laws which are directed at "non-whites" only, e.g., influx control laws, native administration laws, laws relating to the area north of the "Police Zone", native location regulations, and legislation relating exclusively to "coloureds"; also discriminatory provisions contained in legislation relating to identity documents, labour, social welfare, education, land and mining, etc.; see also, *inter alia*, documents E/CN.4/949/Add. 1, Nov. 1967; A/6700/Rev. 1, 1967; A/6897, 1967; A/7088, 1967;

assemblies and councils and other municipal bodies in Namibia, exercising a restricted and local authority subject to the overall executive and legislative control of South Africa⁷⁷, also cannot satisfy the right of the people of Namibia to self-determination, or even to a full measure of self-government⁷⁸. For such local institutions could only come within the principle of self-determination if the people of Namibia had first freely chosen to integrate with South Africa ("acting with full knowledge of the change in their status" and through the free expression of their wishes "impartially conducted and based on universal adult suffrage")⁷⁹. Since no such choice has been made, and universal adult suffrage is precluded by law⁸⁰, it follows that all powers and authority derived from the sovereign State of South Africa at all levels of government in Namibia (whether territorial, provincial, local, national, tribal or however defined), constitute direct extensions of the South African presence in Namibia, and do not relate to the exercise by the people of Namibia of their right to self-determination and independence.

61. The breach of international obligation which would be involved in any attempt to annex a part or the whole of the Territory of Namibia has been specially emphasized on a number of occasions by the General Assembly⁸¹, subsequently to its decision of 14 December 1946⁸² that it was unable to accede to the incorporation of the Territory in the Union of South Africa, as had been proposed by the latter⁸³. It has accordingly been a matter of special concern that, notwithstanding the pertinent resolutions of the General Assembly, South

A/7200/Rev. 1, 1968; A/7338 and Corr. 1, 1968; A/7623/Add. 2, 1969; A/7624/Rev. 1, 1969; and A/8024, 1970.

⁷⁷ E.g., Territorial Legislative Assembly (see South West Africa Constitution Act, No. 39 of 1968, as amended, secs. 11, 21-29, 31A); Legislative Councils and Executive Councils for separate "native nations" (see Development of Self-Government for Native Nations of South West Africa Act, No. 54 of 1968, secs. 3-6, 9-12); tribal, community and regional "authorities" for "less advanced native nations" (see *id.*, secs. 7, 8, 12); "Elected Coloured Council" (see "Establishment of an Elected Coloured Council for South West Africa" Ordinance, No. 29 of 1966, and South West Africa Constitution Act, No. 39 of 1968, sec. 22 (1) (*v*)), supplemented by South West Africa Affairs Act, No. 25 of 1969, sec. 14 (*d*)); Kaptein, Kapteinsraad, and Volksraad of the Rehoboth Gebiet ("Rehoboth Gebiet Affairs" Ordinance, No. 20 of 1961, and South West Africa Constitution Act, No. 39 of 1968, sec. 22 (1) (*v*)), supplemented by South West Africa Affairs Act, No. 25 of 1969, sec. 14 (*d*)); and see also S. V. Bock, 1968 (2) S. A. 658 (A.D.), and UN docs. A/7200/Rev. 1; A/7338 and Corr. 1; A/7623/Add. 2; A/7624/Rev. 1; and A/8024.

⁷⁸ "Self-determination" pursuant to Articles 1 (2) and 55 of the United Nations Charter; "Full measure of self-government" pursuant to Article 73 of the United Nations Charter.

⁷⁹ General Assembly resolution 1541 (XV), Annex, Principle IX.

⁸⁰ South West Africa Constitution Act, No. 39 of 1968, sec. 11; Union Proclamation No. 103 of 1939; Electoral Consolidation Act, No. 46 of 1946, sec. 3; South West Africa Affairs Amendment Act, No. 23 of 1949, sec. 34; South West Africa Constitution Act, No. 39, sec. 12 (1).

⁸¹ E.g., General Assembly resolutions 570.A.(VI), para. 3; 1899 (XVIII), 11th preambular paragraph and para. 4; 2074 (XX), paras. 5 and 6; and 2145 (XXI), para. 7.

⁸² General Assembly resolution 65 (I), of 14 Dec. 1946.

⁸³ Memorandum submitted on 17 Oct. 1946 by the South African Legation in Washington to the Secretary-General of the United Nations, and statement by the Prime Minister of the Union of South Africa made to the Fourth Committee of the General Assembly on 4 Nov. 1946; cited in *International Status of South West Africa. Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 135.

Africa has in fact brought about a large and still increasing measure of integration of its administration of Namibia with that of the Republic of South Africa.

62. Also incompatible with the right of self-determination is the division of the Territory or population of Namibia into separate regions, "native nations"⁸⁴, or "homelands"⁸⁵ which disrupt the national unity and territorial integrity of Namibia. For it is one of the principles of international law underlying the principle of self-determination that:

"Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country⁸⁶." Such action being "incompatible with the purposes and principles of the Charter"⁸⁷.

Moreover, the Security Council has expressly declared "that the actions of the Government of South Africa designed to destroy the national unity and territorial integrity of Namibia through the establishment of Bantustans are contrary to the provisions of the United Nations Charter"⁸⁸.

63. Also incompatible with the right of self-determination of the people of Namibia is the application by South Africa, both in law and practice, of racial discrimination⁸⁹, contrary to the United Nations Charter⁹⁰, in establishing the rights and duties of persons of different races and national and tribal origins among the Namibian population.

64. A further basic constituent of the right to self-determination is the principle of permanent sovereignty of peoples and nations over their natural wealth and resources⁹¹. This principle has particular relevance in the present context in so far as the continued South African presence in Namibia has resulted in the wealth or natural resources of the international Territory of Namibia being exploited or appropriated in disregard of the lawful rights or claims of the people of the territory to whom these resources belong, and towards whom the United Nations has assumed its special responsibilities.

65. Since the elements which constitute the right of self-determination are manifestly present in the unique situation of Namibia, and there is no basis for any contestation of this right by any State, it follows that to deny its application to Namibia would be tantamount to denying effect to the principle. It is therefore submitted that if these rights and obligations are to have even a minimal effect, then their application to the international Territory of Namibia cannot be in doubt.

⁸⁴ Development of Self-Government for Native Nations in South West Africa Act, No. 54 of 1968.

⁸⁵ See, *inter alia*, Report of the Commission of Enquiry into South West Africa Affairs, 1962-1963, published by the Government of the Republic of South Africa (R.P. No. 12/1964).

⁸⁶ General Assembly resolution 2625 (XXV), Annex, 5th Principle, 8th para.

⁸⁷ General Assembly resolution 2625 (XXV), Annex, 15th preambular paragraph.

⁸⁸ Security Council resolution 264 (1969), para. 4.

⁸⁹ See, *inter alia*, Reports cited in footnote 116 below, and Study of "Apartheid" and racial discrimination in Southern Africa, United Nations Commission on Human Rights, doc. 1/CN.4/949/Add. 1, Nov. 1967.

⁹⁰ Articles 1 (3) and 55 (c) of the United Nations Charter; see also, *inter alia*, General Assembly resolutions 217.A.(III), 1904 (XVIII), 2106.A.(XX), and resolutions of the Security Council and the General Assembly cited in footnote 58 above.

⁹¹ General Assembly resolutions 1314 (XIII), 1515 (XV), 1803 (XVII), 2158 (XXI), 2200.A.(XXI) and 2386 (XXIII).

66. Since, moreover, in the present case, the right to self-determination was vested in a people considered, at the material time, to be temporarily lacking in organized government or juristic personality such as could effectively assert international rights, it fell to the Mandatory Power, and, upon the latter's default, to the international community, on whose behalf the Territory was being administered, to take such measures as were necessary to safeguard the rights in question. Thus, in so far as the mutual obligations between member States contained in the United Nations Charter fall to be exercised on behalf of the people and Territory of Namibia, it is submitted that the right to demand the performance of these obligations likewise belongs to the United Nations, on behalf of the people and Territory of Namibia, until such time as the latter achieves independence, or is endowed with the capacity and the means to assert its own international claims.

67. It is therefore submitted that the duty which is owing under Articles 1 (2), 55 and 56 of the United Nations Charter to respect the principle of equal rights and self-determination of peoples (as interpreted and defined by the competent organs of the United Nations), should effectively safeguard the equal rights and the right to self-determination of the people of Namibia, a people not under the sovereignty of any State, but who remain the subject of a still unfulfilled international trust. It should therefore follow that States Members of the United Nations have been and remain obligated under the Charter to respect this principle in regard to Namibia and to regulate their actions in such a manner as to promote its fulfilment.

III. THE CONTINUED PRESENCE OF SOUTH AFRICA IN NAMIBIA

The Basis for the South African Presence

68. The only right or title which South Africa has possessed to be present in Namibia, or to exercise authority in any part of that Territory, was derived from the Mandate confirmed by the Council of the League of Nations on 17 December 1920, and was conditional upon the performance by South Africa of the obligations of the Mandatory Power thereunder. This basis for South Africa's presence continued only for so long as the Mandate remained in force, and South Africa remained the authorized Mandatory.

69. The inter-dependence between the rights and the obligations created by the Mandate has been specially emphasized by the Court in the following terms:

"The authority which the Union Government exercises over the Territory is based on the Mandate. If the Mandate lapsed, as the Union Government contends, the latter's authority would equally have lapsed. To retain the rights derived from the Mandate and to deny the obligations thereunder could not be justified ⁹²."

On another occasion the Court added:

"The rights of the Mandatory in relation to the mandated territory and the inhabitants have their foundation in the obligations of the Mandatory

⁹² *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at p. 133; this passage was cited with approval in the Judgment of the Court of 21 December 1962, *South West Africa Cases, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319 at p. 333.

and they are, so to speak, mere tools given to enable it to fulfil its obligations^{93, 94}

70. After South Africa had refused to place the Territory of Namibia under the United Nations trusteeship system⁹⁴, or to submit further reports on conditions in the Territory⁹⁵, or to acknowledge the continued existence of the obligations owing under the Mandate (claiming that the Mandate had lapsed upon the dissolution of the League of Nations, and that the United Nations had no responsibility or authority in the matter), the General Assembly requested⁹⁶ an advisory opinion of the International Court of Justice in order to obtain judicial clarification of the legal status of Namibia and of the continuing obligations owing under the Mandate.

71. In its Advisory Opinion given on 11 July 1950⁹⁷ the Court concluded, *inter alia*, that "South West Africa" remained a territory under international mandate, that the obligations of the Mandatory under the Mandate continued unimpaired, and that the supervisory functions in respect of the Mandate were exercisable by the United Nations (the General Assembly replacing in this respect the Council of the League).

72. The subsequent refusal of South Africa to accept or comply with these findings of the Court resulted, *inter alia*, in frustrating the repeated efforts made by the General Assembly to negotiate with South Africa the implementation of the international obligations owing in respect of Namibia⁹⁸, as well as severely limiting the effect of the General Assembly's supervision of the Mandate. In the meantime, after requesting⁹⁹ and receiving two further advisory opinions of the International Court of Justice¹⁰⁰ on procedural aspects of the supervi-

⁹³ *South West Africa Cases, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319, at p. 329; see also citation from this same judgment, at p. 334, in footnote 115 below, i.e., "to exclude the obligations connected with the Mandate would be to exclude the very essence of the Mandate".

⁹⁴ Contrary to the repeated recommendations and invitations of the General Assembly, see, *inter alia*, GA resolutions 11 (I), 65 (I), 141 (II), 227 (III), *et seq.*

⁹⁵ Document A/929 (11 July 1949), General Assembly Fourth Session; contrary to Article 6 of the Mandate, of 17 Dec. 1920, and Article 73, para. (e) of the United Nations Charter. See also General Assembly resolutions 227 (III), 337 (IV), 449 A (V) and 1142 A (XII), paras. 2 and 3.

⁹⁶ General Assembly resolution 338 (IV) of 6 Dec. 1949.

⁹⁷ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128.

⁹⁸ General Assembly resolutions 449 (V) and 570 (VI) establishing an *Ad Hoc* Committee "to confer with the Union of South Africa" concerning measures for implementing the Advisory Opinion of the International Court of Justice; General Assembly resolutions 749 (VIII) and 1061 (XI) establishing a Committee on South West Africa of which one of the tasks was to continue negotiations with South Africa (the Committee was dissolved by General Assembly resolution 1704 (XVI)); General Assembly resolution 1143 (XII) establishing a Good Offices Committee on South West Africa to discuss with the Government of South Africa a basis for agreement; and General Assembly resolution 1702 (XVI) establishing a Special Committee for South West Africa to achieve, "in consultation with the Mandatory Power" specified objectives; see also General Assembly resolution 1565 (XV) noting failure of negotiations by several committees.

⁹⁹ General Assembly resolutions 904 (IX) of 23 Nov. 1954 and 942 (X) of 3 Dec. 1955.

¹⁰⁰ *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South-West Africa, Advisory Opinion of 7 June 1955, I.C.J. Reports 1955*, p. 66; *Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion of 1 June 1956, I.C.J. Reports 1956*, p. 22.

sory function to be exercised under the Mandate (without the co-operation of the Mandatory Power), the General Assembly called for an assessment of the further legal action which remained open to organs and to Members of the United Nations, and to former members of the League of Nations, "to ensure that the Union of South Africa fulfils the obligations assumed by it under the Mandate pending the placing of the Territory of South West Africa under the trusteeship system"¹⁰¹.

73. On the basis of the resulting assessment¹⁰², the General Assembly drew to the attention of member States the possibility of such legal action by States, in accordance with Article 7 of the Mandate, read in conjunction with Article 37 of the Statute of the International Court of Justice¹⁰³ and, upon such legal action being initiated by the Governments of Ethiopia and Liberia, the General Assembly, on 18 December 1960, expressly commended these States for their action¹⁰⁴. There followed a Judgment rejecting preliminary objections raised by the Respondent in these cases, which was delivered by the Court on 21 December 1962¹⁰⁵.

74. Since however the final Judgment of the Court in these two contentious cases, delivered on 18 July 1966¹⁰⁶, was limited to the question of the legal right or interest of the applicant States in the subject-matter of their claims, these proceedings failed to produce any further judicial conclusion concerning the non-performance by South Africa of her obligations under the mandates system.

75. In support of its conclusion in this latest judgment, that the applicant States had no *locus standi* in the proceedings, the Court stated, *inter alia*, that it was the League of Nations itself (through its competent organs) and not any individual member State which had the right to call for the performance by the Mandatory of the terms of the Mandate in discharge of the sacred trust, and that it was to the League of Nations (through its competent organs), and not to any individual member State, that the Mandatory was answerable in respect of its administration of the Mandate¹⁰⁷. The Court also observed that, under the League of Nations mandates system, divergences of view concerning the conduct of the Mandate had been regarded as being matters that had their place in the political field, and the settlement of which lay between the Mandatory and the competent organs of the League¹⁰⁸. In addition, the Court held that it could not remedy a deficiency if, in order to do so, it had to exceed the bounds of normal judicial action¹⁰⁹ and if, in the absence of judicial remedy, there were found to be a necessity¹¹⁰ for an ultimate safeguard or security for the performance of the sacred trust under the Mandate, this lies in the political field, and does not constitute necessity in the eyes of the law¹¹¹.

¹⁰¹ General Assembly resolution 1060 (XI).

¹⁰² Document A/3625 (General Assembly, Twelfth Session).

¹⁰³ General Assembly resolutions 1142 A (XII) and 1361 (XIV).

¹⁰⁴ General Assembly resolution 1565 (XV) of 18 Dec. 1960.

¹⁰⁵ *South West Africa Cases, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319.

¹⁰⁶ *South West Africa Cases, Second Phase, Judgment of 18 July 1966, I.C.J. Reports 1966*, p. 6.

¹⁰⁷ *South West Africa Cases, Second Phase, Judgment of 18 July 1966, I.C.J. Reports 1966*, p. 6 at p. 26 (para. 25) and p. 29 (para. 33).

¹⁰⁸ *Ibid.*, at p. 45 (para. 84).

¹⁰⁹ *Ibid.*, at p. 48 (para. 91).

¹¹⁰ For definition of "necessity" argument, see *ibid.*, p. 46 (para. 85).

¹¹¹ *Ibid.*, at p. 47 (para. 89).

76. It will be noted therefore that the recourse to judicial action resorted to by, or with the commendation of the General Assembly over a period of some 16 years, while confirming, *inter alia*, the legal status of the Territory and a number of continuing basic international obligations relating thereto, did not remedy the situation resulting from the disavowal or non-fulfilment by South Africa of her international obligations owing in respect of Namibia. Moreover, inasmuch as the latest judgment of the Court had indicated that the non-performance of these obligations would now be a matter for political rather than judicial process, the responsibility for remedial action thereupon devolved upon the General Assembly, and subsequently the Security Council.

77. At the same time, and notwithstanding the General Assembly's continuous endeavours to exercise its supervisory responsibilities¹¹², both directly and through successive special committees on South West Africa¹¹³, the General Assembly finally had to consider that its efforts to induce the Government of South Africa to fulfil its obligations in respect of the administration of the Territory and the well-being and security of the inhabitants had been of no avail¹¹⁴. It accordingly remained for the General Assembly to give effect to the responsibility assumed by the organized international community to secure the performance of the sacred trust of civilization.

78. The general nature and scope of the obligations which were owing in respect of Namibia have been considered in the preceding sections, and it has also been shown that the right and authority of South Africa to continue to be present in Namibia was dependent upon her acceptance and fulfilment of these obligations. For, in the words of the Court, "to exclude the obligations connect-

¹¹² In the exercise of its supervisory responsibilities in respect of Namibia (South West Africa), the General Assembly has adopted at least 90 resolutions. A list of these is attached to this statement as Annex "A".

¹¹³ The following committees were established:

An *Ad Hoc* Committee, established on 13 Dec. 1950 (by General Assembly resolution 449 A (V), extended by General Assembly resolution 570 A (VI)).

A Committee on South West Africa, established on 28 Nov. 1953 (by General Assembly resolution 749 A (VIII), modified by General Assembly resolutions 1061 (XI), 1142 B (XII) and 1568 (XV) and dissolved by General Assembly resolution 1704 (XVI)).

A Good Offices Committee on South West Africa, established on 25 Oct. 1957 (by General Assembly resolution 1143 (XII)).

A Special Committee for South West Africa, established on 19 Dec. 1961 (by General Assembly resolution 1702 (XVI)) and dissolved by General Assembly resolution 1806 (XVII).

On 14 Dec. 1962 the General Assembly requested the Special Committee on the situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to discharge, *mutatis mutandis*, the tasks assigned to the Special Committee for South West Africa (General Assembly resolution 1805 (XVII)).

An *Ad Hoc* Committee, to recommend practical means by which South West Africa should be administered, established on 27 Oct. 1966 (by General Assembly resolution 2145 (XXI)), see para. 84 below.

A United Nations Council for South West Africa, established on 19 May 1967 (by General Assembly resolution 2248 (S-V)) subsequently renamed the United Nations Council for Namibia (General Assembly resolution 2372 (XXI)), see para. 84 below.

¹¹⁴ General Assembly resolutions 1568 (XV), fifth preambular paragraph, and 2145 (XXI), eighth preambular paragraph.

ed with the Mandate would be to exclude the very essence of the Mandate"¹¹⁵. It was therefore the task of the General Assembly, as the organ responsible for the international supervision of the administration of Namibia, and on the basis of the extensive factual information and official documentation¹¹⁶ obtained in the exercise of this responsibility, to determine the extent to which South Africa had repudiated, disavowed, violated or otherwise failed to fulfil these obligations.

79. Thus, after finding that South Africa had "failed and refused to carry out its obligations under the Mandate"¹¹⁷, and had administered the Territory in a manner contrary to the Mandate, the Charter of the United Nations, the Universal Declaration of Human Rights, the advisory opinions of the International Court of Justice, and the General Assembly's resolutions¹¹⁸, the General Assembly formally declared that:

"South Africa has failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa and has, in fact, disavowed the Mandate"¹¹⁹.

80. That South Africa had forfeited her rights under the Mandate was clearly evident. For, having repudiated and disavowed the continued existence of the Mandate, as well as having persistently violated or otherwise failed to fulfil her obligations thereunder, it was clearly not open to South Africa to assert any rights (including the right to administer or be present in the Territory) under a Mandate so disavowed and violated.

81. It only remained, therefore, to terminate the Mandate formerly exercised by South Africa in order to permit the fulfilment by the international community of its obligations toward the people and Territory of Namibia. The General Assembly accordingly decided that:

"... the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is therefore terminated, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations"¹²⁰;

82. This decision has since been repeatedly and expressly reaffirmed by the

¹¹⁵ *South West Africa Cases, Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962*, p. 319 at p. 334.

¹¹⁶ The facts of the violations by South Africa of her international obligations in respect of Namibia were set out, *inter alia*, in the reports submitted by successive committees to which special responsibilities in respect of Namibia were assigned by the General Assembly: docs. A/1901 and Add. 1-3; A/2261 and Add. 1; A/2475 and Add. 1-2; A/2666, Corr. 1 and Add. 1; A/2913 and Add. 1-2; A/3151; A/3626; A/3625; A/3900; A/3906; A/4191; A/4224; A/4464; A/4705; A/4926; A/4957; A/5212 and Add. 1-2; A/5446/Rev. 1; A/5800/Rev. 1; A/5840; A/6000/Rev. 1; A/6300/Rev. 1; A/6700/Rev. 1; A/6897; A/7088; A/7200/Rev. 1; A/7338 and Corr. 1; A/7623/Add. 2; A/7624/Rev. 1; A/8024.

¹¹⁷ General Assembly resolution 1565 (XV), para. 1 (see also General Assembly resolutions 1702 (XVI), seventh preambular paragraph, and 1899 (XVIII), tenth preambular paragraph).

¹¹⁸ General Assembly resolution 1568 (XV), fourth preambular paragraph, and 2145 (XXI), fifth preambular paragraph.

¹¹⁹ General Assembly resolution 2145 (XXI), para. 3.

¹²⁰ General Assembly resolution 2145 (XXI), para. 4.

Security Council¹²¹ as well as in subsequent General Assembly resolutions¹²². Thus, after noting¹²³ and taking into account¹²⁴ the General Assembly's decision terminating the Mandate, and "reaffirming . . . the international status of the Territory (of Namibia) now under direct United Nations responsibility"¹²⁵, the Security Council expressly recognized "that the United Nations General Assembly terminated the mandate of South Africa over Namibia and assumed direct responsibility for the territory until its independence¹²⁶" and, in each of its two later resolutions¹²⁷, again reaffirmed this decision.

83. Accordingly, in the absence of any right to administer or be present in Namibia, it was incumbent on South Africa to transfer the administration and withdraw from the Territory, in compliance with the resolutions of the General Assembly providing for the assumption of direct responsibility by the United Nations for its administration¹²⁸.

84. Having resolved on 27 October 1966¹²⁹ that the United Nations must discharge the responsibilities formerly exercised by the Mandatory Power in respect of Namibia¹³⁰, and having established an *Ad Hoc* Committee to recommend practical means by which Namibia should be administered¹³¹, the General Assembly, on 19 May 1967¹³², established a United Nations Council for South West Africa (subsequently renamed the United Nations Council for Namibia¹³³) to administer the Territory until independence¹³⁴, and requested the Council to assume its responsibilities, and called upon the Government of South Africa to facilitate the transfer of the administration of the Territory to the Council¹³⁵.

85. South Africa however refused from the outset to co-operate with the United Nations Council for South West Africa (Namibia), or to permit any steps to be taken for the transfer of the administration of the Territory to the Council, claiming, *inter alia*, that the pertinent resolutions of the General Assembly had been without effect¹³⁶.

86. Moreover, in spite of repeated demands, both by the Security Council¹³⁷

¹²¹ Security Council resolutions 264 (1969), para. 1; 276 (1970), second and third preambular paragraphs, and 283 (1970), second preambular paragraph.

¹²² General Assembly resolutions 2248 (S-V), third preambular paragraph; 2324 (XXII), first preambular paragraph; 2325 (XXII), third preambular paragraph; and 2547 B (XXIV), third preambular paragraph.

¹²³ Security Council resolution 245 (1968), first preambular paragraph.

¹²⁴ Security Council resolutions 246 (1968), second preambular paragraph; and 264 (1969), second preambular paragraph.

¹²⁵ Security Council resolution 246 (1968), seventh preambular paragraph.

¹²⁶ Security Council resolution 264 (1969), para. 1.

¹²⁷ Security Council resolutions 276 (1970), second and third preambular paragraphs; and 283 (1970), second preambular paragraph.

¹²⁸ General Assembly resolutions 2145 (XXI) and 2248 (S-V).

¹²⁹ General Assembly resolution 2145 (XXI).

¹³⁰ *Ibid.*, para. 5.

¹³¹ *Ibid.*, para. 6.

¹³² General Assembly resolution 2248 (S-V).

¹³³ General Assembly resolution 2372 (XXII), para. 3.

¹³⁴ General Assembly resolution 2248 (S-V), Part II, para. 1.

¹³⁵ General Assembly resolution 2248 (S-V), Part IV, paras. 2 and 4.

¹³⁶ Document A/6822, General Assembly, Twenty-second Session.

¹³⁷ Security Council resolutions 264 (1969), para. 3 ("Calls upon the Government of South Africa to immediately withdraw its administration from the territory"); 269 (1969), para. 5 ("Calls upon the Government of South Africa to withdraw its administration from the territory immediately and in any case before 4 October

and by the General Assembly¹³⁸, that South Africa withdraw its administration without delay, and repeated condemnations of the Government of South Africa for its refusal to comply with these demands¹³⁹, "in defiance of the authority of the United Nations"¹⁴⁰, "in . . . violation of (the) territorial integrity and international status"¹⁴¹ of Namibia, and "of the principles and obligations of the Charter of the United Nations"¹⁴², South Africa has nevertheless maintained her illegal presence and administration in Namibia, subjecting the people and the Territory to a usurpation of power and control, and forcibly preventing the United Nations from discharging its responsibilities.

87. Confronted with South Africa's illegal occupation of the Territory of Namibia over which she has no right or lawful authority, the Security Council has addressed itself on successive occasions to a number of basic legal consequences of this usurpation.

88. Thus, after reaffirming, *inter alia*, the international status of Namibia "now under direct United Nations responsibility"¹⁴³, the Security Council declared the continued presence of South Africa in Namibia to be illegal¹⁴⁴, "contrary to the principles of the Charter"¹⁴⁵, "an aggressive encroachment on the authority of the United Nations"¹⁴⁶, and "a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia"¹⁴⁷.

89. The Security Council further declared in its resolution 276 (1970) that, by reason of the continued illegal presence of South Africa in Namibia,

" . . . all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the mandate are illegal and invalid"¹⁴⁸.

In the same resolution, the Security Council reaffirmed, *inter alia*, that—

" . . . the extension and enforcement of South African laws in the territory together with the continued detentions, trials and subsequent sentencing of Namibians by the Government of South Africa constitute illegal acts and flagrant violations of the rights of the Namibians concerned, the Uni-

1969"); see also Security Council resolutions 276 (1970), third preambular paragraph and 283 (1970), fourth preambular paragraph.

¹³⁸ General Assembly resolutions 2325 (XXII) of 16 December 1967, para. 5, reads as follows: "Calls upon the Government of South Africa to withdraw from the Territory of South West Africa, unconditionally and without delay, all its military and police forces and its administration, to release all political prisoners and to allow all political refugees who are natives of the Territory to return to it."

General Assembly resolution 2372 (XXII) of 12 June 1968, para. 12, reads as follows: "Reiterates its demand that the Government of South Africa withdraw from Namibia, immediately and unconditionally, all its military and police forces and its administration."

¹³⁹ Security Council resolutions 264 (1969), para. 6; 269 (1969), para. 2; and 276 (1970), para. 1. General Assembly resolutions 2325 (XXII), para. 3; 2372 (XXII), para. 6; 2498 (XXIV), para. 2; 2517 (XXIV), para. 3; and 2547 (XXIV), para. 4.

¹⁴⁰ Security Council resolutions 269 (1969), para. 2. General Assembly resolutions 2403 (XXIII), para. 2; and 2498 (XXIV), para. 2.

¹⁴¹ General Assembly resolution 2325 (XXII), para. 4.

¹⁴² General Assembly resolution 2517 (XXIV), para. 3.

¹⁴³ Security Council resolution 246 (1968), seventh preambular paragraph.

¹⁴⁴ Security Council resolutions 264 (1969), para. 2; and 276 (1970), para. 2.

¹⁴⁵ Security Council resolution 264 (1969), para. 2.

¹⁴⁶ Security Council resolution 269 (1969), para. 3.

¹⁴⁷ *Ibid.*

¹⁴⁸ Security Council resolution 276 (1970), adopted on 30 Jan. 1970, para. 2.

versal Declaration of Human Rights and of the international status of the territory, now under direct United Nations responsibility¹⁴⁹”.

90. It is therefore in this context that the legal consequences for States of the continued presence of South Africa in Namibia have to be examined.

The Role of the Security Council.

91. It has been in the exercise of its primary responsibility for the maintenance of international peace and security, under Article 24 of the United Nations Charter, that the Security Council has, on successive occasions, considered the question of Namibia, following the refusal of South Africa to acknowledge the assumption by the General Assembly of direct responsibility for the Territory. Since first being seized of the question in January 1968¹⁵⁰, the Security Council has adopted seven resolutions concerning Namibia¹⁵¹, in each of which the Council has drawn attention to the direct responsibility of the United Nations for Namibia, and has condemned South Africa for its refusal to comply with the pertinent resolutions of the Security Council and the General Assembly¹⁵². In four of these resolutions¹⁵³, the Security Council has also called upon or requested States to carry out or refrain from specified actions.

92. The fundamental premise underlying the obligations of States resulting from the presence of South Africa in Namibia is the illegality of that presence since the termination of the Mandate. The decisions taken by the Security Council to recognize and reaffirm this legal premise¹⁵⁴ have made it incumbent on member States to accept this determination, and to regulate their actions in a manner consistent with it.

93. Since the specific measures concerning Namibia which the Security Council has called upon States to take¹⁵⁵ result very largely from this initial premise, it follows that the obligatory nature of the relevant individual clauses in the relevant resolutions¹⁵⁶ is in part derived from, as well as supported by the illegal character of the South African presence in Namibia since the termination of the Mandate, as determined by the Security Council.

94. These Security Council resolutions were concerned with and were intended to redress a situation involving a flagrant violation¹⁵⁷ of basic principles under the United Nations Charter and general international law, and which had

¹⁴⁹ *Ibid.*, fourth preambular paragraph.

¹⁵⁰ Document S/8355, of 24 Jan. 1968: Request by 53 member States for an urgent meeting of the Security Council following the decision of the South African Government to resume the illegal trial of 35 Namibians under arbitrary laws illegally extended to Namibia in defiance of General Assembly resolutions; see also Security Council resolution 245 (1968).

¹⁵¹ Security Council resolutions 245 (1968), 246 (1968), 264 (1969), 269 (1969), 276 (1970), 283 (1970) and 284 (1970).

¹⁵² The detailed provisions of the Security Council resolutions concerning Namibia are examined elsewhere in this statement, see paras. 86-89, 107, 117-119, 127 and 128-133.

¹⁵³ Security Council resolutions 246 (1968), 269 (1969), 276 (1970) and 283 (1970).

¹⁵⁴ Security Council resolutions 264 (1969), para. 2; 276 (1970), para. 2; and 283 (1970), second preambular paragraph.

¹⁵⁵ Security Council resolutions 246 (1968), para. 3; 269 (1969), paras. 7 and 8; 276 (1970), para. 5; and 283 (1970), paras. 1-8, 11 and 13.

¹⁵⁶ *Ibid.*

¹⁵⁷ Security Council resolutions 246 (1968), seventh preambular paragraph; 264 (1969), para. 2; 269 (1969), para. 3; and 276 (1970), fourth preambular paragraph.

been considered by the General Assembly, on repeated occasions, a threat to international peace and security¹⁵⁸, and in respect of which, the Security Council declared, *inter alia*, that "the defiant attitude of the Government of South Africa towards the Council's decisions undermines the authority of the United Nations¹⁵⁹".

95. That the Security Council was acting in the exercise of its powers as defined in Article 24 of the United Nations Charter is evident from the nature of the violation committed by South Africa of her international obligations, and of the measures which the Council found it necessary to take. Moreover, the intention to create an obligation for States to comply with these measures is evidenced by the fact that, without such a duty, their effect may be largely nugatory.

96. The powers and responsibilities conferred upon the Security Council are complemented by a specific corresponding obligation on the part of member States, under Article 25 of the United Nations Charter, "to accept and carry out the decisions of the Security Council in accordance with the present Charter¹⁶⁰". From this, *inter alia*, is derived the obligatory character of the Security Council's decisions calling upon the Government of South Africa to withdraw its administration from Namibia¹⁶¹, as well as the Council's decisions calling for supporting action by States¹⁶². Moreover, the Council expressly observed in its resolution of 12 August 1969 that it was:

"Mindful of its responsibility to take necessary action to secure strict compliance with the obligations entered into by States Members of the United Nations under the provisions of Article 25 of the Charter of the United Nations¹⁶³."

97. There is, in addition, a specific and supporting obligation of member

¹⁵⁸ General Assembly resolutions 1899 (XVIII), para. 6; 2372 (XXII), para. 11; and 2517 (XXIV), third preambular paragraph.

¹⁵⁹ Security Council resolution 276 (1970), para. 3.

¹⁶⁰ The records of the San Francisco Conference show that Article 25 of the Charter of the United Nations applies to all decisions of the Security Council. "The obligation of the Members to carry out the decisions of the Security Council applies equally to decisions made under Article 24 and to decisions made under the grant of specific powers"; see statement by the Secretary-General, Security Council, Second Year, No. 3, 91st meeting, pp. 44-45 (with reference to the obligations resulting from the acceptance by the Security Council of the responsibility for ensuring the integrity and independence of the Free Territory of Trieste, see Security Council, Second Year, 91st meeting, p. 60).

¹⁶¹ The Security Council declared that "the defiant attitude of the Government of South Africa towards the Council's decisions undermines the authority of the United Nations", see Security Council resolution 276 (1970), para. 3, and also noted "with great concern the continued flagrant refusal of the Government of South Africa to comply with the decisions of the Security Council demanding the immediate withdrawal of South Africa from the territory", see Security Council resolution 283 (1970), fourth preambular paragraph; see also letter to the President of the Security Council from the representatives of 49 States (S/9372 and Adds. 1 and 2), referring, *inter alia*, to the failure of South Africa to comply with Security Council resolutions 245 (1968), 246 (1968) and 264 (1969) in violation of its obligations under Article 25 of the United Nations Charter; see also references made by members of the Security Council to the violation by South Africa of its obligations under Article 25 of the Charter (S/PV.1497, p. 7; S/PV.1528, p. 46; S/PV.1528, pp. 63-65; S/PV.1528, pp. 8-10, 12; S/PV.1529, pp. 11, 38).

¹⁶² See footnote 155 above.

¹⁶³ Security Council resolution 269 (1969), third preambular paragraph.

States set forth in Article 2 (5) of the United Nations Charter which provides that:

“All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.”

The Illegal Occupation

98. It will be apparent from the facts set out in the preceding sections that the illegal and foreign occupation of Namibian territory by South Africa possesses a number of distinctive characteristics.

99. Thus, although the people and territory under illegal occupation had not previously exercised their sovereign independence in the form of a recognized and separate statehood, their right to self-determination and independence had nevertheless long been internationally recognized, and guaranteed as a sacred trust of civilization under the responsibility of the United Nations (acting on behalf of the organized international community). It was this assumption of international responsibility for a territory not under the sovereignty of any existing State which conferred upon Namibia the status of an “international territory”¹⁶⁴.

100. Accordingly, when, in the past, South Africa was authorized to be lawfully present in Namibia for the limited purpose of administering the mandated Territory on behalf of the international community, this presence did not derive from any inherent right or lawful acquisition on the part of South Africa but was derived solely from, and strictly limited to a “mandate”, or conditional licence or authority, given by the international community, subject to stipulated conditions and for the purpose of safeguarding and advancing the fundamental rights of the people and Territory of Namibia.

101. The continued and illegal occupation of Namibia by South Africa therefore consists essentially of a refusal to vacate the Territory following the cessation of the international grant or authority which constituted the sole legal basis for South Africa to be present in Namibia.

102. A refusal to withdraw from territory, after all legal justification for being there is extinguished, constitutes an unlawful seizure of territory to the same degree as would be the case if the occupying State had unlawfully entered and seized the territory without previously having been lawfully present.

103. Moreover, the illegal assumption by South Africa of the prerogatives of government over the people and Territory of Namibia has included the forcible imposition of executive, legislative and judicial authority, by means, *inter alia*, of the full coercive powers of police and military forces¹⁶⁵. This presence has thus been brought about and sustained by the illegal use of force against a people and territory over whom South Africa has no lawful jurisdiction.

104. Since the party directly injured by this violation of international legal obligations is not, at this time, an independent sovereign State, but rather an international territory under the responsibility of the United Nations, the remedies which are normally available to States in respect of such violations have had to be sought in this case directly by or through the United Nations.

¹⁶⁴ *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, pp. 128 *et seq.* See also, *inter alia*, General Assembly resolution 2145 (XXI), para. 2; Security Council resolutions 246 (1968), seventh preambular paragraph, 276 (1970), fourth preambular paragraph, and 283 (1970), fifth preambular paragraph.

¹⁶⁵ See, *inter alia*, reports cited in footnote 116 above.

105. It therefore follows that the continued presence of South Africa in Namibia violates the rights of the people and Territory of Namibia and, at the same time, directly interferes with the rights and duties of the United Nations and its member States, whose responsibility is and has been directly engaged in the fulfilment of the international trust assumed in respect of Namibia.

The Responsibility of South Africa

106. A legal consequence for South Africa of her continued and illegal presence in Namibia is therefore that this constitutes an internationally wrongful act (*fait internationalement illicite*), and a breach of international legal obligations owing by South Africa both to the United Nations and to the people and Territory of Namibia.

107. It will be recalled that the Security Council has characterized this wrongful act as "illegal"¹⁶⁶ and—

"... in defiance of the relevant United Nations resolutions and of the United Nations Charter¹⁶⁷"

and—

"... contrary to the principles of the Charter and the previous decisions of the United Nations and is detrimental to the interests of the population of the territory and those of the international community¹⁶⁸"

and—

"... constitutes an aggressive encroachment on the authority of the United Nations, a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia¹⁶⁹".

The Security Council also affirmed that—

"... the extension and enforcement of South African laws in the territory together with the continued detentions, trials and subsequent sentencing of Namibians by the Government of South Africa constitute illegal acts and flagrant violations of the rights of the Namibians concerned, the Universal Declaration of Human Rights and of the international status of the territory, now under direct United Nations responsibility¹⁷⁰",

and expressed its deep concern that—

"... the enforcement of South African laws and juridical procedures in the territory have continued in violation of the international status of the territory¹⁷¹".

The Security Council further declared that—

"... the defiant attitude of the Government of South Africa towards the Council's decisions undermines the authority of the United Nations¹⁷²".

¹⁶⁶ Security Council resolutions 264 (1969), para. 2, and 276 (1970), para. 2.

¹⁶⁷ Security Council resolution 276 (1970), para. 4.

¹⁶⁸ Security Council resolution 264 (1969), para. 2.

¹⁶⁹ Security Council resolution 269 (1969), para. 3.

¹⁷⁰ Security Council resolution 276 (1970), fourth preambular paragraph; see also Security Council resolutions 245 (1968), fifth preambular paragraph and 246 (1968), seventh preambular paragraph.

¹⁷¹ Security Council resolution 283 (1970), fifth preambular paragraph.

¹⁷² Security Council resolution 276 (1970), para. 3.

108. South Africa is accordingly obligated to cease these unlawful acts and to withdraw from Namibia (as directed by the Security Council and the General Assembly)¹⁷³. At the same time, South Africa has incurred and continues to incur international responsibility for her unlawful occupation and administration of Namibia and the consequences thereof, as well as for her non-compliance with the decisions taken by the Security Council in accordance with the United Nations Charter.

109. These liabilities, both under the United Nations Charter and also under general rules of international law concerning State responsibility, are in addition to the international responsibility incurred by South Africa by prior administrative or other acts and omissions in, or relating to Namibia in violation of the pertinent decisions of competent United Nations organs or of other applicable international obligations.

IV. THE LEGAL CONSEQUENCES FOR STATES

110. Before setting out the legal consequences for States of the continued presence of South Africa in Namibia, it has been necessary to survey briefly the principal international obligations owing in respect of Namibia, the failure of South Africa to perform obligations upon which her previous right to be present in the Territory depended, and the resulting illegality of the continued presence of South Africa in Namibia after the Mandate had been terminated, and she had ceased to have any right or authority to remain in the Territory.

111. It has also been noted that in Security Council resolution 276 (1970), apart from re-affirming, *inter alia*, the termination of the Mandate and the illegality of the South African presence, the Security Council expressly declared illegal and invalid "all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the mandate"¹⁷⁴.

112. The legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council resolution 276 (1970) therefore require to take into account, *inter alia*,

- (a) The international obligations and objectives concerning Namibia which States are pledged to support, and which require the implementation by the United Nations of its responsibilities for the international territory of Namibia, including, in particular, the duty of securing the withdrawal of the South African administration from Namibia, and the free and effective exercise by the people of Namibia of their right to self-determination and independence.
- (b) The measures affecting the obligations of States which have been adopted by the Security Council or by other competent organs of the United Nations with a view to bringing to an end the illegal presence of South Africa in Namibia, and
- (c) The impediments resulting from the absence of any lawful government or authority physically located in the territory of Namibia.

The Territorial Authority

113. It has been shown in the foregoing that, when the Mandate was

¹⁷³ Security Council resolutions 264 (1969), para. 3, and 269 (1969), para. 5, and 276 (1970), third preambular paragraph. General Assembly resolutions 2325 (XXII), para. 5 and 2372 (XXII), para. 12.

¹⁷⁴ Security Council resolution 276 (1970), para. 2.

terminated, the Territory of Namibia thereupon came under the direct responsibility of the United Nations. This was expressly re-affirmed¹⁷⁵ by the Security Council, which also recognized¹⁷⁶ and repeatedly re-affirmed¹⁷⁷ that the "General Assembly assumed direct responsibility for the territory until its independence".

114. For the purpose of discharging this responsibility the General Assembly entrusted the necessary powers and functions to the United Nations Council for Namibia¹⁷⁸ (which remains responsible to the General Assembly¹⁷⁹) and which, *inter alia*, was to proceed to the Territory to take over the administration¹⁸⁰. However, by refusing to permit the Council to enter Namibia or to recognize the Council's authority, and by forcibly retaining Namibia within its own exclusive occupation, South Africa has thereby prevented the Council (and the General Assembly), from exercising effective control or administrative responsibility within Namibia, with the result that the Council has thus far been obliged to base itself temporarily outside Namibia and to limit its activities accordingly¹⁸¹. The United Nations Council for Namibia was, however, requested by the General Assembly on several subsequent occasions to discharge "by every available means" the responsibilities and functions entrusted to it¹⁸².

115. States are therefore confronted with the simultaneous existence of an illegal régime within the Territory, and at the same time a lawful authority which, although temporarily outside the Territory, is the only authority since the termination of the Mandate legally empowered to represent and administer Namibia pending the attainment of its independence.

116. An immediate consequence for States is that any legal relation, of any kind, with or involving Namibia can only be entered into or maintained through the sole authority legally responsible for the administration of Namibia, namely the United Nations Council for Namibia, acting on behalf of the General Assembly. Conversely, any relation purporting to be with or to involve Namibia, which has been entered into or maintained through the Government of South Africa or the illegal South African administration in Namibia since the termination of the Mandate, is void and without legal effect.

Diplomatic, Consular and Other Relations

117. One of the consequences of the illegality of the South African presence

¹⁷⁵ Security Council resolution 245 (1968), 1st preambular paragraph.

¹⁷⁶ Security Council resolution 264 (1969), para. 1.

¹⁷⁷ Security Council resolutions 246 (1968), 2nd preambular paragraph, 264 (1969), 2nd preambular paragraph, 276 (1970), 2nd preambular paragraph, and 283 (1970), 2nd preambular paragraph.

¹⁷⁸ General Assembly resolution 2248 (S-V) (the Council was re-named by General Assembly resolution 2372 (XXII), para. 3).

¹⁷⁹ General Assembly resolution 2248 (S-V), Part II, para. 2.

¹⁸⁰ *Ibid.*, Part IV, para. 3.

¹⁸¹ In expressing its concern regarding the continued refusal of the Government of South Africa to comply with its obligations to the United Nations, the General Assembly observed, *inter alia*, that this was "making it impossible for the United Nations Council for South West Africa to perform effectively the functions that were entrusted to it by the General Assembly", and constituted a "flagrant defiance of the authority of the United Nations", see General Assembly resolution 2372 (XXII), 5th preambular paragraph.

¹⁸² General Assembly resolutions 2325 (XXII), para. 2, 2403 (XXIII), para. 6, and 2517 (XXIV), para. 6.

in Namibia, following the termination of the Mandate, is that States are precluded from establishing or maintaining any relation with Namibia—whether diplomatic, consular or other—through the Government of South Africa or the illegal South African administration in the Territory.

118. Thus, the Security Council has requested all States:

“... to refrain from any relations—diplomatic, consular or otherwise—with South Africa implying recognition of the authority of the South African Government over the territory of Namibia¹⁸³,”

and has also called upon all States maintaining diplomatic or consular relations with South Africa—

“... to issue a formal declaration to the Government of South Africa to the effect that they do not recognize any authority of South Africa with regard to Namibia and that they consider South Africa's continued presence in Namibia illegal¹⁸⁴,”

and—

“... to terminate existing diplomatic and consular representation as far as they extend to Namibia and to withdraw any diplomatic or consular mission or representative residing in the territory¹⁸⁵.”

119. It will be noted that the required withdrawal of representatives residing in the Territory is not confined to diplomatic or consular missions, but extends to every means by which a foreign State might place itself in the illegal jurisdiction of South Africa in Namibia, whether through an agent, employee, official or other representative. For a representative of a State to be present in the illegal jurisdiction, involves the receipt of protection and facilities inconsistent with the duty of non-recognition of the illegal régime.

International Treaties and Agreements

120. Similarly, international treaties or agreements, or amendments thereof, concluded with South Africa, or the illegal South African administration of Namibia, subsequent to the termination of the Mandate have no legal application to Namibia. This consequence results by operation of law from the fact that the Government of South Africa had no right or authority to act for Namibia at the material time, and consequently no act or signature by South Africa since the termination of the Mandate could engage the responsibility of Namibia or impose on the latter any new rights or obligations.

121. By the same token, the Government of South Africa has no authority after the termination of the Mandate to invoke or claim any rights or obligations on behalf of Namibia, under treaties between Namibia and other States concluded while the Mandate was still in force. However, although this may affect the capability of performance of some such treaty obligations, it would not lessen the legal validity of otherwise valid treaties as between the lawful parties thereto.

122. For treaties and agreements concluded with the Government of South Africa prior to the termination of the Mandate and having application to

¹⁸³ Security Council resolution 283 (1970), para. 1.

¹⁸⁴ *Ibid.*, para. 2.

¹⁸⁵ *Ibid.*, para. 3.

Namibia may not be invalidated solely by reason of the termination of the Mandate and the cessation of the authority of the Government of South Africa to act on Namibia's behalf. Such treaties and agreements may, however, be temporarily incapable of performance, or have become terminable as a result of a fundamental change in circumstances (*rebus sic stantibus*)¹⁸⁶ or conflict with a peremptory norm of general international law (*jus cogens*)¹⁸⁷. Moreover, it will be for the future lawful Government of Namibia to determine the extent of its continuing treaty relationships, arising from past as well as current treaties, in accordance with the relevant principles of international law.

123. If a treaty lawfully concluded while the Mandate was in force requires for its implementation a further act by the territorial government or administration at the time when the treaty is invoked, then even if such a treaty still remains in force, it could not be brought into operation by any further act of the South African Government or the illegal South African administration in Namibia after the termination of the Mandate.

124. For example, an extradition treaty purporting to extend to Namibia, however, lawfully it may have been concluded, would not obligate a State to deliver up any person to, or at the request of the illegal South African régime in Namibia, or a government (such as the South African Government) having no authority to invoke any treaty obligation in respect of Namibia. It is incumbent on States not to comply with such an unlawful request.

125. It is also a duty of States not to grant extradition for any act committed in furtherance of the struggle of the people of Namibia against foreign occupation (for which struggle, the Security Council requested all States to increase their moral and material assistance)¹⁸⁸, or for an offence under a South African law deemed to be illegal and invalid either by reason of inconsistency with or repugnance to the provisions of the United Nations Charter or peremptory norms of international law¹⁸⁹.

126. States which are parties to international treaties or agreements applicable to Namibia would also be precluded from accepting that any obligation owing thereunder to Namibia had been, or could be legally discharged by a payment to or settlement with the Government of South Africa, after the termination of the Mandate¹⁹⁰. For in these circumstances, the obligation would remain legally undischarged, and still owing to the lawful administration of Namibia (for the time being, the United Nations Council for Namibia, acting under the responsibility of the General Assembly).

127. In the meantime, with a view to obtaining more detailed information concerning international treaties to which Namibia is considered to be a party, the Security Council requested all States:

“... to undertake without delay a detailed study and review of all bilateral treaties between themselves and South Africa in so far as these treaties contain provisions by which they apply to the territory of Namibia¹⁹¹”.

¹⁸⁶ Cf. Vienna Convention on the Law of Treaties, doc. A/CONF.39/27, 23 May 1969, and Corr. 1, Art. 62.

¹⁸⁷ *Ibid.*, Arts. 53 and 64.

¹⁸⁸ Security Council resolution 269 (1969), para. 8.

¹⁸⁹ *Infra*, see paras. 145-147.

¹⁹⁰ E.g., tax payments made to the illegal régime would not constitute a legal basis for relief under double taxation agreements.

¹⁹¹ Security Council resolution 283 (1970), para. 8.

At the same time, the Security Council requested the Secretary-General to undertake a similar study and review of multilateral treaties ¹⁹².

"Dealings" and Commercial, Investment and Tourist Activities

128. The Security Council also called upon all States "to refrain from all dealings with the Government of South Africa purporting to act on behalf of the territory of Namibia ¹⁹³" and further called upon "all States, particularly those which have economic and other interests in Namibia, to refrain from any dealings with the Government of South Africa which are inconsistent with" the illegality of the continued presence of the South African authorities in Namibia, or with the resulting illegality and invalidity of all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate ¹⁹⁴.

129. The exclusion by the Security Council of "any relations" ¹⁹⁵ (diplomatic, consular or otherwise) as well as "any dealings" ¹⁹⁶ with the Government of South Africa purporting to act on behalf of Namibia, represents so wide a prohibition that for so long as South Africa maintains her illegal presence and administration in the Territory, it would appear not to be open to States to enter, or use, or carry on any activity in the Territory, or to trade or associate with it.

130. Pursuant to these general provisions, the Security Council further called upon all States—

"... to ensure that companies and other commercial and industrial enterprises owned by, or under direct control of the State, cease all dealings with respect to commercial or industrial enterprises or concessions in Namibia ¹⁹⁷"

and

"... to ensure that companies and other commercial enterprises owned by the State or under direct control of the State cease all further investment activities including concessions in Namibia ¹⁹⁸".

131. These requirements, which were already implicit in the general provisions calling on States to refrain from any dealings, make explicit the particular necessity for the cessation of the activities mentioned.

132. With regard to the acts of private individuals and corporate bodies not under direct government control, the Security Council called upon all States—

"... to withhold from their nationals or companies of their nationality not under direct government control, government loans, credit guarantees and other forms of financial support that would be used to facilitate trade or commerce with Namibia ¹⁹⁹";

and

¹⁹² *Ibid.*, para. 9.

¹⁹³ Security Council resolution 269 (1969), para. 7.

¹⁹⁴ Security Council resolution 276 (1970), para. 5.

¹⁹⁵ Security Council resolution 283 (1970), para. 1.

¹⁹⁶ See footnotes 193 and 194 above.

¹⁹⁷ Security Council resolution 283 (1970), para. 4.

¹⁹⁸ *Ibid.*, para. 6.

¹⁹⁹ Security Council resolution 283 (1970), para. 5.

... to discourage their nationals or companies of their nationality not under direct governmental control from investing or obtaining concessions in Namibia, and to this end withhold protection of such investment against claims of a future lawful government of Namibia²⁰⁰...

133. The Security Council also called upon all States "to discourage the promotion of tourism and emigration to Namibia"²⁰¹.

Correlative Obligations

134. It has been noted that the measures prescribed by the Security Council consist for the most part of consequences which flow naturally or automatically from the illegality of the presence of South Africa in Namibia, and the underlying obligations of States under the United Nations Charter, and in furtherance of the still undischarged international trust on behalf of the people and territory of Namibia, for which member States remain collectively responsible.

135. For it would clearly be inconsistent with this trust for any State to lend support, either directly or indirectly, to any illegal usurper of authority in Namibia, whose usurpation was denying or delaying the exercise by the people of Namibia of their rights enshrined in the United Nations Charter. Moreover, since, in the present case, the usurpation of authority by South Africa is in direct opposition to the action decided upon by the United Nations in the exercise of its responsibility for Namibia, and is forcibly preventing the execution of decisions taken both by the Security Council and by the General Assembly²⁰², it is therefore not open to any member State to recognize or deal with this usurper in any matter concerning the international Territory of Namibia.

136. It is at the same time a specific duty of member States under Article 2 (5) of the United Nations Charter "to give the United Nations every assistance in any action it takes in accordance with the... Charter"²⁰³.

137. It follows that no member State should permit any action to be taken engaging its international responsibility which would imply recognition of the authority illegally asserted by South Africa over Namibia, or would otherwise impede the efforts of the United Nations to fulfil its responsibilities in regard to the Territory.

138. The exclusion of trade as well as other relations and dealings with the illegal régime in Namibia has been noted above. To this should be added that all trade and transactions and communications with Namibia, or concerning goods or materials originating in Namibia, should likewise be excluded by the same principle in so far as these activities involve any licence, regulation or taxation, or title or interest, deriving from or owing to the illegal régime since the termination of the Mandate.

139. Also excluded should be all economic, scientific, military, administrative, professional or other activities involving the co-operation or participation, with other States, of the Government of South Africa and implying recognition of the illegal authority asserted by the latter over Namibia.

140. It also follows that States are precluded from recognizing any purported

²⁰⁰ *Ibid.*, para. 7.

²⁰¹ *Ibid.*, para. 11.

²⁰² Security Council resolutions 245 (1968), 246 (1968), 264 (1969), 269 (1969), 276 (1970) and 283 (1970); General Assembly resolutions 2145 (XXI), 2248 (S-V), *et seq.*

²⁰³ See also para. 97 above.

international representation of Namibia by South Africa, and, in general, any executive, legislative or judicial act by the Government of South Africa or its administration in Namibia, since the termination of the Mandate, purporting to have been taken on behalf of or concerning Namibia.

141. While noting the distinction made by the Security Council between companies and other commercial or industrial enterprises "owned by, or under direct control of the State", as compared with those which are not so owned or controlled²⁰⁴, it should nevertheless be borne in mind that actions by private individuals or companies not under the control of States do not usually acquire formal legitimacy without recourse to governmental authority or legal sanction under at least one system of municipal law. Consequently, although a State may be unable to control some private acts carried out by its citizens within Namibia under the protection of the illegal South African régime, the results of such private acts may nevertheless call for the participation or sanction of the State in order to acquire legal recognition outside Namibia.

142. Thus, since all titles, grants, concessions, charters, incorporations, and other rights in Namibia purportedly granted, transferred or vested by the Government of South Africa after the termination of the Mandate are void and without effect, no such rights or acts should be acknowledged or upheld in the jurisdiction of any State. It also follows, for example, that no sale or transfer of Namibian resources or other assets should be legally valid in the jurisdiction of any State if the title of the vendor was derived from an act of the South African Government after the termination of the Mandate. Needless to say, this principle divests of their claimed titles the putative owners of substantial interests and property in Namibia, and likewise divests of legal title those who have purchased or may purchase such property from them.

143. A further consequence of the continued presence of South Africa in Namibia is that any consent, licence or agreement, purportedly given by the South African authorities since the termination of the Mandate, for the use or exploitation of Namibian territory or resources (including Namibian territorial waters and air space) is without any legal effect. Accordingly, any party using or exploiting Namibian territory or resources on the basis of such invalid consent, licence or agreement is in the same position as a party who is acting without any legal authority.

144. The duties of States in regard to the activities of private citizens or companies which involve, or are calculated to involve dealings with the illegal régime in Namibia would also, as a minimum, exclude the provision of any support or facilities for such dealings. In particular, it would be incumbent upon States to deny to such activities all credit guarantees, loans, subsidies, government insurance, tariff preferences and quotas, tax benefits or other advantages. It would also be incumbent on States to take all reasonable steps to prevent or discourage all such activities inconsistent with the international obligations owing in respect of Namibia.

145. Since it would be incompatible with the obligations of States concerning Namibia to have recourse to, or to rely on any void laws or enactments illegally applied in Namibia, it should be noted that these include all legislative enactments and regulations and orders issued after South Africa ceased to have any legal authority over the territory²⁰⁵. It follows that this presently void legisla-

²⁰⁴ See para. 132 above.

²⁰⁵ In this context, legislative acts are defined to include Acts of the South African Parliament purporting to apply to Namibia exclusively, or to South Africa and Namibia (in the latter case only the purported extension to Namibia is included).

tion cannot validly create or abolish or change any rights, powers, interests or obligations properly belonging within Namibian jurisdiction, or have any legal effect.

146. It will be the prerogative of the future Legislative Assembly of Namibia (elected by the inhabitants of the Territory on the basis of universal adult suffrage)²⁰⁵ to decide whether, and to what extent, to recognize or validate any act undertaken under void laws during the illegal South African presence, or to grant retroactive validation to any such law having an otherwise acceptable content²⁰⁷. However, pending the establishment of the future territorial law and constitution of Namibia, no public or private acts may be allowed to prejudice or prejudge in any way the exercise by the future Namibian authority of its sovereign rights, and no right or obligation can be created against the present or future lawful administration of Namibia, by virtue of any act or claim or relationship or thing brought into existence under presently void laws.

147. References to valid Namibian laws at this time may comprise those which were lawfully enacted while the Mandate was in force and are not repugnant to the terms of the Mandate and the United Nations Charter, subject to, and supplemented by such laws, decrees or administrative regulations as may be promulgated by the United Nations Council for Namibia under specific powers conferred upon the latter by the General Assembly²⁰⁶. However, pending the institution of a lawful judiciary and law enforcement agency in Namibia, the means of securing the valid and effective application of current law remains unavoidably limited:

148. At the same time, the judicial and law enforcement organs maintained by South Africa in or for Namibia or purporting to exercise jurisdiction in Namibia, after the termination of the Mandate, have no legal authority or jurisdiction over any matter which properly belongs within Namibian jurisdiction. It follows that all acts of such judicial bodies relating to Namibia, or to persons or property or land in Namibia, undertaken after the termination of the Mandate are void and without legal effect²⁰⁹, unless subsequently validated by lawful process. Meanwhile, it is incumbent upon States and their judicial organs not to enforce, acknowledge or otherwise take cognizance of any such void judicial acts.

V. CONCLUSION

149. For the purpose of examining the legal consequences for States of the continued presence of South Africa in Namibia, this statement has sought to identify only those aspects of the South African presence from which the principal legal consequences for States ensue.

150. It has accordingly been shown, *inter alia*, that Namibia has been and remains an international territory with an international status, being a respon-

Sub-legislation, Proclamations, Ordinances of the Territorial Legislative Assembly, local sub-legislation and proclamations, and amendments to such enactments. A list giving examples of Acts of the South African Parliament purporting to apply to Namibia, and enacted, or purportedly extended to Namibia after October 1966, is attached to this statement as Annex "B".

²⁰⁵ General Assembly resolution 2248 (S-V), Part II, para. 1 (b).

²⁰⁷ Cf. Report of the United Nations Council for Namibia, *General Assembly Official Records*, 25th Session, Supplement No. 24, A/8024, para. 97, pp. 26-27.

²⁰⁶ General Assembly resolution 2248 (S-V), Part II, para. 1 (b).

²⁰⁹ Security Council resolution 276 (1970), operative para. 2.

sibility of the international community, as a sacred trust of civilization, pending the exercise by the people of Namibia of their right to self-determination and independence.

151. It has also been shown that the continued presence of South Africa in Namibia now constitutes an illegal usurpation of authority by reason of the fact that South Africa has had no right or justification to be present in the Territory following the termination of the Mandate, and has, on repeated occasions, been called upon by the Security Council to withdraw its administration from the Territory.

152. By continuing this illegal occupation of Namibia, South Africa continues to violate its international legal obligations under the United Nations Charter and principles of international law, as well as the obligations flowing from its specific undertakings as a former Mandatory Power. For those internationally wrongful acts, therefore, South Africa bears international responsibility.

153. The wider legal consequences for other States of the continued presence of South Africa in Namibia arise simultaneously from the continuing international obligations owing in respect of the people and Territory of Namibia, and from the specific obligations created by decisions of the Security Council and other competent organs of the United Nations, and, in addition, from the absence of any lawful authority presently in Namibia.

154. These consequences include the duty of refraining from acts or relations which would be inconsistent with the condemnation by the international community of the illegal occupation of Namibia by South Africa, or with the legal incapacity of South Africa to represent, or to exercise any lawful authority in or over Namibia, or with decisions taken by the Security Council or the General Assembly concerning Namibia, or, in general, with the responsibilities assumed by the international community concerning Namibia.

155. These consequences also include the affirmative duty of complying with decisions of the Security Council calling for action by States, as well as of assisting and co-operating with such measures as have been, or may be taken by the competent organs of the United Nations, for the purpose of giving effect to the international responsibilities owing to the people and Territory of Namibia, or to the provisions of the United Nations Charter and the relevant principles of international law.

156. Finally it has to be reiterated that the most pressing international obligation arising from the unlawful presence of South Africa in Namibia is that it should be brought to an end, thus making possible the effective implementation of the international responsibilities assumed on behalf of all Members of the United Nations, and the final exercise by the people of Namibia of their inalienable right to self-determination and independence.

Annex A

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY WITH SPECIFIC REFERENCE
TO NAMIBIA (SOUTH WEST AFRICA)

- 65 (I). Future Status of South West Africa.
- 141 (II). Consideration of proposed new trusteeship agreements, if any: Question of South West Africa.
- 227 (III). Question of South West Africa.
- 337 (IV). Question of South West Africa: reiteration of previous resolutions and submission of reports.
- 338 (IV). Question of South West Africa: request for an advisory opinion of the International Court of Justice.
- 449 (V). Question of South West Africa (item 35).
Resolutions of 13 December 1950.
- 570 (VI). Question of South West Africa (item 38).
Resolutions (A and B) of 19 January 1952.
- 651 (VII). Question of South West Africa (item 38).
Resolution of 20 December 1952.
- 749 (VIII). Question of South West Africa (item 36).
Resolutions (A and B) of 28 November 1953.
- 844 (IX). Procedure for examination of reports and petitions relating to Territory of South West Africa (item 34).
Resolution of 11 October 1954.
- 851 (IX). Report of the Committee on South West Africa (item 34).
Resolution of 23 November 1954.
- 852 (IX). Status of the Territory of South West Africa (item 34).
Resolution of 23 November 1954.
- 904 (IX). Voting procedure on questions relating to reports and petitions concerning Territory of South West Africa—request for advisory opinion from the International Court of Justice (item 34).
Resolution of 23 November 1954.
- 934 (X). Voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa—advisory opinion of International Court of Justice (item 30).
Resolution of 3 December 1955.
- 935 (X). Petitions and communications relating to the Rehoboth Community of South West Africa (item 30).
Resolution of 3 December 1955.
- 936 (X). Petitions and related communications from Mr. Hosea Kutako, Mr. David Roos and Mr. Erastus Amgabeb concerning South West Africa (item 30).
Resolution of 3 December 1955.
- 937 (X). Petition and related communication from the Reverend T. H. Hamtumbangela concerning South West Africa (item 30).
Resolution of 3 December 1955.
- 938 (X). Petition from Miss Margery F. Perham concerning South West Africa (item 30).
Resolution of 3 December 1955.
- 939 (X). Petition from Mr. Jariretundu Kozonguizi concerning South West Africa (item 30).

- Resolution of 3 December 1955.
- 940 (X). Status of the Territory of South West Africa (item 30).
Resolution of 3 December 1955.
- 941 (X). Report of the Committee on South West Africa (item 30).
Resolution of 3 December 1955.
- 942 (X). Question of the admissibility of oral hearings by the Committee on South West Africa; request for an advisory opinion from the International Court of Justice (item 30).
Resolution of 3 December 1955.
- 943 (X). Hearing of the Reverend Michael Scott (item 30).
Resolution of 3 December 1955.
- 1047 (XI). Admissibility of hearings of petitioners by Committee on South West Africa; advisory opinion of the International Court of Justice (item 38).
Resolution of 23 January 1957.
- 1054 (XI). Report of the Committee on South West Africa (item 37).
Resolution of 26 February 1957.
- 1055 (XI). Status of the Territory of South West Africa (item 37).
Resolution of 26 February 1957.
- 1056 (XI). Hearings of petitioners on conditions in the Territory of South West Africa (item 37).
Resolution of 26 February 1957.
- 1057 (XI). Petition and communications from Mr. Jacobus Beukes concerning the Territory of South West Africa (item 37).
Resolution of 26 February 1957.
- 1058 (XI). Petition from the Ukuanyama Tribal Congress concerning the Territory of South West Africa (item 37).
Resolution of 26 February 1957.
- 1059 (XI). Solution of the question of South West Africa (item 37).
Resolution of 26 February 1957.
- 1060 (XI). Study of legal action to ensure the fulfilment of the obligations assumed by the Mandatory Power under the Mandate for South West Africa (item 37).
Resolution of 26 February 1957.
- 1061 (XI). Composition of the Committee on South West Africa (item 37).
Resolution of 26 February 1957.
- 1138 (XII). Petitions and communications from Mr. Jacobus Beukes of the Rehoboth Community concerning the Territory of South West Africa (item 38).
Resolution of 25 October 1957.
- 1139 (XII). Petitions and communications from Mr. Johannes Dausab and others, Chief Hosea Kutako, Mr. Wilhelm Heyn and Dr. Joachim Seegert, and Mr. Jacobus Beukes concerning the Territory of South West Africa (item 38).
Resolution of 25 October 1957.
- 1140 (XII). Conditions in the Territory of South West Africa (item 38).
Resolution of 25 October 1957.
- 1141 (XII). Status of the Territory of South West Africa (item 38).
Resolution of 25 October 1957.
- 1142 (XII). Legal action to ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of the Territory of South West Africa (item 38).
Resolutions (A and B) of 25 October 1957.
- 1143 (XII). Establishment of a Good Offices Committee on South West Africa (item 38).
Resolution of 25 October 1957.

- 1243 (XIII). Report of the Good Offices Committee on South West Africa (item 39).
Resolution of 30 October 1958.
- 1244 (XIII). Petitions and communications in regard to the Territory of South West Africa (item 39).
Resolution of 30 October 1958.
- 1245 (XIII). Conditions in the Territory of South West Africa (item 39).
Resolution of 30 October 1958.
- 1246 (XIII). Status of the Territory of South West Africa (item 39).
Resolution of 30 October 1958.
- 1247 (XIII). Legal action to ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of the Territory of South West Africa (item 39).
Resolution of 30 October 1958.
- 1333 (XIII). Verbatim record of debate of the report of the Good Offices Committee on South West Africa (item 39).
Resolution of 13 December 1958.
- 1356 (XIV). Petitions and communications relating to South West Africa (item 38) (A/4272).
Resolution of 17 November 1959.
- 1357 (XIV). The Hoachanas Native Reserve (item 38) (A/4272).
Resolution of 17 November 1959.
- 1358 (XIV). Withdrawal of a passport from Mr. Hans Johannes Beukes (item 38) (A/4272).
Resolution of 17 November 1959.
- 1359 (XIV). Status of the Territory of South West Africa (item 38) (A/4272).
Resolution of 17 November 1959.
- 1360 (XIV). Question of South West Africa (item 38).
Resolution of 17 November 1959.
- 1361 (XIV). Legal action to ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of the Territory of South West Africa (item 38) (A/4272).
Resolution of 17 November 1959.
- 1362 (XIV). Report of the Good Offices Committee on South West Africa (item 38) (A/4272).
Resolution of 17 November 1959.
- 1563 (XV). Petitions relating to the Territory of South West Africa (item 43) (A/4643).
Resolution of 18 December 1960.
- 1564 (XV). Political freedom in South West Africa (item 43) (A/4643).
Resolution of 18 December 1960.
- 1565 (XV). Legal action to ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of the Territory of South West Africa (item 43) (A/4643).
Resolution of 18 December 1960.
- 1566 (XV). Assistance of the specialized agencies and of the United Nations Children's Fund in the economic, social and educational development of South West Africa (item 43) (A/4643).
Resolution of 18 December 1960.
- 1567 (XV). The Windhoek Location (item 43) (A/4643).
Resolution of 18 December 1960.
- 1568 (XV). Question of South West Africa (item 43) (A/4643).
Resolution of 18 December 1960.

- 1596 (XV). Question of South West Africa (item 43) (A/4721).
Resolution of 7 April 1961.
- 1702 (XVI). Question of South West Africa (item 47) (A/5044).
Resolution of 19 December 1961.
- 1703 (XVI). Petitions relating to the Territory of South West Africa (item 47) (A/5044).
Resolution of 19 December 1961.
- 1704 (XVI). Committee of South West Africa (item 47) (A/5044).
Resolution of 19 December 1961.
- 1705 (XVI). Special educational and training programmes for South West Africa (item 47) (A/5044).
Resolution of 19 December 1961.
- 1804 (XVII). Petitions and communications relating to the Territory of South West Africa (item 57) (A/5256).
Resolution of 14 December 1962.
- 1805 (XVII). Question of South West Africa (item 57) (A/5310).
Resolution of 14 December 1962.
- 1806 (XVII). Special Committee for South West Africa (item 57) (A/5310).
Resolution of 14 December 1962.
- 1899 (XVIII). Question of South West Africa (item 55) (A/5605).
Resolution of 13 November 1963.
- 1900 (XVIII). Petitions concerning the Territory of South West Africa (item 55) (A/5605).
Resolution of 13 November 1963.
- 1901 (XVIII). Special educational and training programmes for South West Africa (item 55 (b)) (A/5605).
Resolution of 13 November 1963.
- 1979 (XVIII). Question of South West Africa (item 55) (A/5605/Add. 1).
Resolution of 17 December 1963.
- 2074 (XX). Question of South West Africa (item 69) (A/6161).
Resolution of 17 December 1965.
- 2075 (XX). Petitions concerning South West Africa (item 69) (A/6161).
Resolution of 17 December 1965.
- 2076 (XX). Special educational and training programmes for South West Africa (item 70) (A/6161).
Resolution of 17 December 1965.
- 2145 (XXI). Question of South West Africa (item 65) (A/L.483 and Adds. 1-3, A/L.488).
Resolution of 27 October 1966.
- 2146 (XXI). Petitions concerning South West Africa (item 65) (A/L.489).
Resolution of 27 October 1966.
- 2235 (XXI). Question of the consolidation and integration of the special educational and training programmes for South West Africa, the special training programme for territories under Portuguese administration and the educational and training programme for South Africans (items 66 and 68) (A/6625).
Resolution of 20 December 1966.
- 2236 (XXI). Special educational and training programmes for South West Africa (item 66) (A/6625).
Resolution of 20 December 1966.
- 2288 (XXII). Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and territories under Portuguese domination and in all other territories

- under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in Southern Africa (item 24) (A/6939).
Resolution of 7 December 1967.
- 2324 (XXII). Question of South West Africa (item 64) (A/L.536 and Add. 1-4).
Resolution of 16 December 1967.
- 2325 (XXII). Question of South West Africa (item 64) (A/L.540 and Add. 1-2).
Resolution of 16 December 1967.
- 2349 (XXII). Question of the consolidation and integration of the special educational and training programmes for South West Africa, the special training programme for territories under Portuguese administration and the educational and training programme for South Africans (items 65, 67 and 68) (A/7010).
Resolution of 19 December 1967.
- 2372 (XXII). Question of South West Africa (item 64) (A/L.546/Rev. 1).
Resolution of 12 June 1968.
- 2403 (XXIII). Question of Namibia (item 64) (A/L.556 and Add. 1).
Resolution of 16 December 1968.
- 2404 (XXIII). Petitions concerning Namibia (item 64) (A/L.557).
Resolution of 16 December 1968.
- 2425 (XXIII). Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and territories under Portuguese domination and in all other territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in Southern Africa (item 68) (A/7423).
Resolution of 18 December 1968.
- 2431 (XXIII). United Nations Educational and Training Programme for Southern Africa (item 70) (A/7425).
Resolution of 18 December 1968.
- 2498 (XXIV). Question of Namibia (item 64) (A/7736).
Resolution of 31 October 1969.
- 2517 (XXIV). Question of Namibia (item 64) (A/7736/Add. 1).
Resolution of 1 December 1969.
- 2518 (XXIV). Petitions concerning Namibia (item 64) (A/7736/Add. 1).
Resolution of 1 December 1969.
- 2554 (XXIV). Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and territories under Portuguese domination and in all other territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in Southern Africa (item 68) (A/7858). Resolution of 12 December 1969.
- 2557 (XXIV). United Nations Educational and Training Programme for South Africa (item 70) (A/7872).
Resolution of 12 December 1969.

Annex B

ACTS OF THE SOUTH AFRICAN PARLIAMENT PURPORTING TO APPLY TO NAMIBIA,
AND ENACTED, OR PURPORTEDLY EXTENDED TO NAMIBIA AFTER OCTOBER 1966

- Administration of Estates Act, No. 66 of 1965. Sec. 108A (added by Act No. 54 of 1970, sec. 10) provides that the Act applies to South West Africa and to the Eastern Caprivi Zipfel, but that in the Rehoboth Gebiet it does not apply to persons to whom Proc. No. 36 of 1941 (South West Africa) applies.
- Aged Persons Act, No. 81 of 1967. Sec. 16(1) of Pension Laws Amendment Act, No. 79 of 1968, authorizes the State President, by proclamation in the *Gazette*, to declare the Aged Persons Act to be applicable to South West Africa "in respect of natives" . . . "in so far as those provisions relate to Bantu or Bantu persons". The Act was applied by Proc. No. R. 293 of 1968, *South West Africa Gaz. Extra.*, 18 Nov. 1968.
- Agricultural Credit Act, No. 28 of 1966. Sec. 1 (as amended by Act No. 66 of 1970, sec. 1) includes the following definitions:
 "State' in the application of this Act in the territory, means the Administration of the territory . . ." and
 "territory' means the territory of South West Africa."
- The long title of Act No. 66 of 1970 reads in part, "To apply the Agricultural Credit Act, 1966, to the territory of South West Africa . . .".
- Apostolic Faith Mission of South Africa (Private) Act, No. 24 of 1961. Sec. 8A (added by Act No. 4 of 1970) makes the Act applicable to South West Africa and Eastern Caprivi Zipfel.
- Architects' Act, No. 35 of 1970. Sec. 35 makes the Act and amendments applicable to South West Africa.
- Armaments Development and Production Act, No. 57 of 1968. Sec. 1 (ix) defines the Republic to include South West Africa.
- Arms and Ammunition Act, No. 75 of 1969. Sec. 47 applies Act to South West Africa and Eastern Caprivi Zipfel.
- Assessment of Damages Act, No. 9 of 1969. Sec. 2 applies Act and amendments to South West Africa and Eastern Caprivi Zipfel.
- Atomic Energy Act, No. 30 of 1967. Sec. 36 applies the Act to the "territory", which is defined by Sec. 1 (1) (xii) to include Eastern Caprivi Zipfel.
- Attorneys, Notaries and Conveyancers Admission Act, No. 23 of 1934. Sec. 35A (1) (added by Act No. 93 of 1970, sec. 16) applies Act and amendments to South West Africa and Eastern Caprivi Zipfel. Sec. 2 (amended by Act No. 93 of 1970, sec. 1) defines "law society" to include the Law Society of South West Africa; "province" and "Republic" to include South West Africa; and "territory" to mean South West Africa.
- Bantu Affairs Act, No. 55 of 1959, secs. 2, 3, and 4, and regulations issued under sec. 15 (1) (a). Sec. 16A (added by Third Bantu Laws Amendment Act, No. 49 of 1970, sec. 6) so provides.
- Bantu Education Act, No. 47 of 1953. Sec. 15ter (added by Act No. 44 of 1970, sec. 5) makes the Act and amendments thereto applicable to Namibia and the Eastern Caprivi Zipfel.
- Bantu Special Education Act, No. 24 of 1964. Sec. 22A (added by Act No. 44 of 1970, sec. 7) makes the Act and amendments thereto applicable to South West Africa and Eastern Caprivi Zipfel.

- Births, Marriages and Deaths Registration Act, No. 81 of 1963. Sec. 51A (1) (added by Act No. 58 of 1970, sec. 46) makes the Act, except secs. 7A and 42 (4), applicable to South West Africa and Eastern Caprivi Zipfel. Sec. 1 (substituted by Act No. 58 of 1970, sec. 1) defines "Republic" as including South West Africa.
- Blind Persons Act, No. 26 of 1968. Sec. 16 (1) of Pension Laws Amendment Act, No. 79 of 1968, authorizes the State President, by proclamation in the *Gazette*, to declare the Blind Persons Act to be applicable to South West Africa "in respect of natives" . . . "in so far as those provisions relate to Bantu or Bantu persons". The Act was applied by Proc. No. R. 293 of 1968, *South West Africa Gaz. Extra*. 18 Nov. 1968.
- Border Control Act, No. 61 of 1967. Sec. 13 (5) (b) defines "Union" as it is defined in Admission of Persons to the Union Regulation Act (where, by amendment, the definition of "Union" includes South West Africa).
- Broadcasting Act, No. 22 of 1936. Sec. 29A (added by Act No. 60 of 1969, sec. 17) applies the Act and amendments thereto to South West Africa and Eastern Caprivi Zipfel.
- Canned Fruit Export Marketing Act, No. 100 of 1967. Sec. 11 applies Act to South West Africa and Eastern Caprivi Zipfel.
- Census Act, No. 76 of 1957. Sec. 18A (added by Act No. 40 of 1968, sec. 3) applies the Act to South West Africa and Eastern Caprivi Zipfel.
- Civil Defence Act, No. 39 of 1966. Sec. 19 (substituted by Act No. 69 of 1967) empowers the State President to make the Act applicable to South West Africa and Eastern Caprivi Zipfel. This was done by Proc. 205 of 1969, *South African Gazette* 2495, 1 August 1969.
- Companies Act, No. 46 of 1926. Sec. 228A (added by Act No. 90 of 1969, sec. 9) applies the Act to South West Africa and Eastern Caprivi Zipfel. Section 229 (amended by Act No. 90 of 1969, sec. 10) defines "Republic" to include the Territory.
- Companies Amendment Act, No. 90 of 1969. Sec. 14 applies the Act to South West Africa and Eastern Caprivi Zipfel. It repeals South West African ordinances governing companies.
- Conventional Penalties Act, No. 15 of 1962. Sec. 5 (substituted by Act No. 102 of 1967, sec. 18 (1)) covers the application of the Act to agreements to which Ord. 7 of 1942 (Hire-Purchase Ordinance) applies. Section 18 (2) of the 1967 amendment Act makes sec. 18 (1) applicable to South West Africa.
- Cultural Institutions Act, No. 29 of 1969. Sec. 18 makes Act applicable to South West Africa and Eastern Caprivi Zipfel.
- Customs and Excise Amendment Act, No. 96 of 1967. Sec. 3 (4) applies to South West Africa and Eastern Caprivi Zipfel.
- Customs and Excise Amendment Act, No. 105 of 1969. Sec. 41 provides that "Sections 39 and 40, too, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel".
- Customs and Excise Amendment Act, No. 98 of 1970. Sec. 10 (1) is made applicable to South West Africa and Eastern Caprivi Zipfel by sec. 10 (2).
- Defence Act, No. 44 of 1957. Sec. 153 (1) (substituted by sec. 66 of Act No. 85 of 1967) makes Act applicable to South West Africa and Eastern Caprivi Zipfel. (The Act may have been applicable previously, the substituted section changing the wording, but not the substance of sec. 153 (1).)
- Defence Amendment Act, No. 86 of 1967. Sec. 70 applies secs. 66-68 to South West Africa and Eastern Caprivi Zipfel.
- Development of Self-Government for Native Nations in South West Africa Act, No. 54 of 1968.

- Disability Grants Act, No. 27 of 1968. Sec. 16 (1) of the Pension Laws Amendment Act, No. 79 of 1963, applies, as to the Aged Persons (q.v.). Act applied by Proc. No. R293 of 1968.
- Finance Act, No. 25 of 1970. Sec. 1 only, which provides for remission of capital and interest owing by Magistrate of Rehoboth District and the utilization thereof.
- Formalities in Contracts of Sale of Land Act, No. 71 of 1969. Sec. 3 makes Act applicable to South West Africa.
- Formalities in respect of Leases of Land Act, No. 18 of 1969. Sec. 2 applies the Act to South West Africa.
- General Law Amendment Act, No. 76 of 1962, sec. 21 (the "Sabotage Act"), made applicable to South West Africa and Eastern Caprivi Zipfel by sec. 7(a), added by Act No. 62 of 1966, sec. 19. (Note that the effective date of Act No. 62 of 1966 was 1 November 1966, i.e., after the adoption of res. 2145.)
- General Law Amendment Act, No. 102 of 1967, sec. 22 only, "Supply and acquisition of liquor to and by Natives in South West Africa".
- General Law Amendment Act, No. 101 of 1969, sec. 29 (preventing disclosure in court of evidence which is certified by a Minister as "prejudicial to the interests of the State of public security") made applicable to South West Africa by sub-section (3).
- General Law Amendment Act, No. 17 of 1970. Sec. 7 only, which amends the South West Africa Constitution Act, No. 39 of 1968, by inserting a new section 31A therein.
- General Law Further Amendment Act, No. 92, of 1970, sec. 14 only (the section amends section 201 of the Criminal Procedure Ordinance, No. 34 of 1963, of South West Africa).
- Hire-Purchase Act, No. 36 of 1942. Sec. 20A (added by Act No. 79 of 1970, sec. 2) provides that the Act and all amendments apply to South West Africa and Eastern Caprivi Zipfel.
- Human Sciences Research Act, No. 23 of 1968. Sec. 16 makes Act applicable to South West Africa. Sec. 1 defines "State" to include South West Africa.
- Identity Documents in South West Africa Act, No. 37 of 1970.
- Income Tax Act, No. 58 of 1962. Sec. 111A, added by Act No. 89 of 1969, sec. 40, provides that the principal Act and amendments apply to South West Africa. Note that sec. 109 empowers the South African Finance Minister to enter into an agreement with the Administrator of South West Africa regarding prevention of double taxation.
- Income Tax Act, No. 89 of 1969, sec. 55, provides that it applies to South West Africa.
- Income Tax Act, No. 52 of 1970. Sec. 30 makes the Act applicable to South West Africa.
- Indecent or Obscene Photographic Matter Act, No. 37 of 1967. Sec 4A (added by Act No. 101 of 1969, sec. 26) makes Act and all amendments applicable to South West Africa and Eastern Caprivi Zipfel.
- Insurance Act, No. 27 of 1943. Sec. 77*quat* (added by Act No. 39 of 1969, sec. 2A (1)) provides that the Act and amendments shall apply to South West Africa and Eastern Caprivi Zipfel. Sec. 24 (2) provides that sec. 24 (1) shall be deemed to have come into effect as of the commencement date of the principal Act.
- Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963. Sec. 11A (added by Act No. 55 of 1970, sec. 2) applies the Act to South West Africa.
- Land Bank Act, No. 13 of 1944. Sec. 2 (1) is amended by Act No. 31 of 1969, sec. 5 (c), (d), by adding a definition of "Republic" which includes the

- Territory. The 1969 Act specifically repeals existing ordinances and proclamations relating to the territorial Land Bank and merges it into the South African Land Bank.
- Land Survey Act, No. 9 of 1927. Sec. 49A (added by Act No. 64 of 1970, sec. 10) makes Act and amendments apply to South West Africa and Eastern Caprivi Zipfel. Sec. 1 (as amended by Act No. 64 of 1970, sec. 9 (*d*), (*e*), (*f*)) adds definitions of "province", "Republic", and "South Africa": each "includes" the territory of South West Africa.
- Land Surveyors' Registration Act, No. 65 of 1970. Sec. 1 (as amended by Act No. 65 of 1970, sec. 1 (*b*)) defines "Republic" and "South Africa" each to "include" the territory of South West Africa. Note the long title of Act No. 65 of 1970 is "to apply the Land Surveyors' Registration Act, 1950, to the territory of South West Africa . . .".
- Land Tenure Act, No. 32 of 1966. Sec. 10A (added by Act No. 67 of 1970, sec. 6) makes the Act and amendments, except sec. 5, apply in the territory. Sec. 1 (as amended by Act No. 67 of 1970, sec. 1) defines the territory to mean South West Africa.
- Limitation and Disclaimer of Finance Charges Act, No. 73 of 1968, Sec. 19 (1) applies the Act to South West Africa and Eastern Caprivi Zipfel.
- Limitation of Legal Proceedings (Provincial and Local Authorities) Act, No. 94 of 1970. Sec. 7 provides that the Act and amendments apply to South West Africa and Eastern Caprivi Zipfel.
- Magistrates' Court Act, No. 32 of 1944. Sec. 115A (1) (added by Act No. 53 of 1970, sec. 21) provides that the Act applies to South West Africa and the Eastern Caprivi Zipfel.
- Maintenance Act, No. 23 of 1963. Sec. 16A added by Act No. 39 of 1970, sec. 4, makes Act applicable to Namibia and the Eastern Caprivi Zipfel. Sec. 1 is amended by Act No. 39 of 1970, sec. 1, by adding a definition of "Republic" which includes "the territory" and a definition of the territory ("means . . . South West Africa").
- Marketable Securities Tax Act, No. 32 of 1948. Sec. 11 (added by Revenue Laws Amendment Act, No. 103 of 1969, sec. 4) provides that the Act and amendments thereto made after 1 October 1969 shall apply to South West Africa after 1 October 1969.
- Marketing Act, No. 59 of 1968. Section 99 makes the Act applicable to Namibia in so far as karakul pelts are concerned.
- Marriage Act, No. 25 of 1961. Sec. 39A (1) (added by Act No. 51 of 1970, sec. (1)) applies the Act to South West Africa and Eastern Caprivi Zipfel.
- Matrimonial Causes Jurisdiction Act, No. 22 of 1939. Sec. 7*ter* (substituted by Act No. 70 of 1968, sec. 27 (1)) makes the Act and all amendments applicable to South West Africa and the Eastern Caprivi Zipfel.
- Medical Schemes Act, No. 72 of 1967. Sec. 45 applies Act to South West Africa and Eastern Caprivi Zipfel.
- Members of Statutory Bodies Pension Act, No. 94 of 1969. Sec. 7 provides that "This Act and any amendment thereof shall, so far as is necessary for the effective application thereof, apply also in the territory". "Sec. 1 (xii) provides that 'the territory' means the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel . . ."
- Merchandise Marks Act, No. 17 of 1941. Sec. 21*bis* (added by Act No. 39 of 1952, sec. 3, and substituted by Act No. 55 of 1967, sec. 3) provides that the Act and amendments shall apply to South West Africa and Eastern Caprivi Zipfel.

- Mountain Catchment Areas Act, No. 63 of 1970. Sec. 19 makes the Act applicable to South West Africa and the Eastern Caprivi Zipfel.
- National Monuments Act, No. 28 of 1969. In sec. 1 (v) "Republic" is defined to include the territory of South West Africa.
- National Supplies Procurement Act, No. 89, of 1970. Sec. 1 (v) defines "Republic" to include South West Africa.
- Nuclear Installations (Licensing and Security) Amendment Act, No. 89 of 1967. Sec. 4 applies the Act to South West Africa. This Act amends earlier Acts on nuclear and atomic energy which apparently applied to South West Africa but did not specifically make amendments thereto applicable also.
- Nursing Act, No. 69 of 1957. Sec. 58 (substituted by Act No. 31 of 1970, sec. 1) makes the Act applicable to South West Africa and the Eastern Caprivi Zipfel.
- Parliamentary Service and Administrators' Pension Act, No. 85 of 1965. Sec. 36 (substituted by Act No. 20 of 1970, sec. 9), provides that the Act and amendments, "in so far as is necessary for the effective application thereof", shall apply to South West Africa.
- Prescription Act, No. 68 of 1969. Sec. 21 applies the Act and amendments to South West Africa and Eastern Caprivi Zipfel.
- Price Control Act, No. 25 of 1964. Sec. 21 (substituted by Act No. 80 of 1967, sec. 8) applies Act to South West Africa and Eastern Caprivi Zipfel.
- Prisons Act, No. 8 of 1959. Sec. 96 (substituted by Act No. 70 of 1968, sec. 52), provides that the State President may apply the Act, with any modifications he deems appropriate, by proclamation in the Gazette, to South West Africa and the Eastern Caprivi Zipfel. This was done by Proc. No. R. 130 of 1969, *South African Gazette* No. 2406, 23 May 1969. It appears that the new section 96, under which this was done, replaced a section which also permitted application of the Act to South West Africa in some way.
- Prize Jurisdiction Act, No. 3 of 1968. Sec. 6 applies the Act and amendments to South West Africa and Eastern Caprivi Zipfel.
- Professional Engineers Act, No. 81 of 1968. Sec. 32 applies the Act to South West Africa. The definition of Republic includes South West Africa.
- Prohibition of Disguises Act, No. 16 of 1969. Sec. 3 applies the Act and amendments to South West Africa and Eastern Caprivi Zipfel.
- Promotion of Economic Development of Bantu Homelands Act, No. 46 of 1968. Sec. 32 applies the Act to South West Africa and Eastern Caprivi Zipfel.
- Protection of Names, Uniforms and Badges Act, No. 23 of 1935. Sec. 11ter (added by Act No. 3 of 1967, sec. 1, as corrected by Act No. 70 of 1968, sec. 19) provides that the Act, amendments thereto, and regulations thereunder shall apply to South West Africa and Eastern Caprivi Zipfel.
- Provincial and the Territory Service Pension Act, No. 14 of 1969. The following definitions are from sec. 1:
- (xiv) " 'provincial' or the territory pension fund means any of the following funds:
- "(k) the South West Africa Teachers' Pension Fund established by Proclamation No. 39 of 1931, of the Administrator of the Territory . . ."
- (xx) " 'the territory' means the territory of South West Africa, including . . . the Eastern Caprivi Zipfel . . .".
- Quantity Surveyors' Act, No. 36 of 1970. Sec. 34 applies the Act and amendments to South West Africa.
- Radio Act, No. 3 of 1952. Sec. 19A (added by Act No. 93 of 1969, sec. 16) makes

- the Act and amendments applicable to South West Africa and Eastern Caprivi Zipfel.
- Railways and Harbours Amendment Act, No. 23 of 1967. Sec. 10 applies it to South West Africa. Railways and Harbours Amendment Act, No. 8 of 1968. Sec. 9 applies it to SWA. Railways and Harbours Second Amendment Act, No. 60 of 1968. Sec. 10 applies it to SWA. Railways and Harbours Amendment Act, No. 32 of 1969. Sec. 8 applies it to SWA. Railways and Harbours Second Amendment Act, No. 41 of 1969. Sec. 13 applies it to SWA.
- Railways and Harbours Acts Amendments Act, No. 57 of 1970. Sec. 6 provides that the Act and amendments to it apply to South West Africa.
- Reciprocal Enforcement of Maintenance Orders Act, No. 80 of 1963. Sec. 1 amended by Act No. 40 of 1970, sec. 1, to add definitions of "Republic" (includes the territory) and "territory" (means South West Africa). Sec. 10A added by Act No. 40 of 1970, sec. 6, makes Act and amendments thereto applicable to Namibia and Eastern Caprivi Zipfel.
- Rehoboth Investment and Development Act, No. 84 of 1969.
- South African Medical Research Council Act, No. 19 of 1969, sec. 25 provides that the Act and amendments shall apply to South West Africa.
- South West Africa Affairs Act, No. 25 of 1969.
- South West Africa Constitution Act, No. 39 of 1968.
- South West Africa Constitution Amendment Act, No. 13 of 1970.
- Stamp Duties Act, No. 77 of 1968. Sec. 37A (added by Act No. 103 of 1969, sec. 22) provides that the Act shall apply to South West Africa after 1 October 1969 and that amendments made after that date shall apply to South West Africa thereafter.
- State Attorney Act, No. 56 of 1957. The State Attorney Amendment Act, No. 7 of 1966 (effective 3 January 1967), sec. 6, makes the principal Act and all amendments applicable to South West Africa and Eastern Caprivi Zipfel.
- Statistics Act, No. 73 of 1957. Sec. 16A (1) (added by Act No. 41 of 1968, sec. 4) makes the Act and amendments apply to South West Africa and Eastern Caprivi Zipfel.
- Subdivision of Agricultural Land Act, No. 70 of 1970. Sec. 14 applies Act and amendments to South West Africa.
- Terrorism Act, No. 83 of 1967. Sec. 9 (2) applies the Act to South West Africa and Eastern Caprivi Zipfel.
- Training Centres for Coloured Cadets Act, No. 46 of 1967. Sec. 31 provides that the State President may extend this Act to South West Africa, including the Eastern Caprivi Zipfel. I have seen no evidence that he has done so.
- Transfer Duty Act, No. 40 of 1949. Sec. 21A (added by Revenue Laws Amendment Act, No. 103 of 1969, sec. 9) applies the Act and amendments made after 1 October 1969 to South West Africa as and after 1 October 1969.
- War Pensions Act, No. 82 of 1967. Sec. 1 defines "the Republic" or "the Union" to include the territory of South West Africa.
- Water Act, No. 54 of 1956. Sec. 180 (1) (substituted by Act No. 77 of 1969, sec. 13) provides that the State President may, by proclamation in the *Gazette*, apply all or any of the provisions of the Act to South West Africa or any part thereof.
- Weights and Measures Act, No. 13 of 1958. Sec. 49A (added by Act No. 55 of 1969, sec. 14) makes the Act and amendments applicable to South West Africa and Eastern Caprivi Zipfel.
- Wool Act, No. 59 of 1967. See sec. 1 (definition of Republic includes South West Africa).

**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 International Court of Justice on behalf of the Secretary-
General of the United Nations*

INTRODUCTION

1. The Secretary-General of the United Nations has the honour to submit herewith for the convenience of the International Court of Justice a review of some of the documentation relating to the request by the Security Council for an advisory opinion on the question "What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"

2. The present review deals with the following proceedings:

I. Proceedings of the General Assembly at its Twenty-first Session (1966) which led to the termination of the South African Mandate for South West Africa by resolution 2145 (XXI) of 27 October 1966.

II. Proceedings of the *Ad Hoc* Committee for South West Africa (January to March 1967) established by paragraph 6 of General Assembly resolution 2145 (XXI).

III. Proceedings concerning the question of South West Africa at the Fifth Special Session (April to June 1967) of the General Assembly which led to the adoption of resolution 2248 (S-V) of 19 May 1967, *inter alia*, establishing the United Nations Council for South West Africa.

IV. There follows a survey of General Assembly resolutions adopted at the Twenty-second, Twenty-third, Twenty-fourth and Twenty-fifth Sessions (1967 to 1970) of the General Assembly relating to Namibia.

V. Proceedings leading to Security Council resolution 245 (1968) by which the Security Council, *inter alia*, took note of General Assembly resolution 2145 (XXI).

VI. Proceedings leading to Security Council resolution 246 (1968) by which the Security Council, *inter alia*, took into account General Assembly resolution 2145 (XXI).

VII. Proceedings leading to Security Council resolution 264 (1969) by which the Security Council, *inter alia*, recognized that the General Assembly had terminated the Mandate of South Africa over Namibia and had assumed direct responsibility for the Territory until its independence, and by which the Security Council called upon the Government of South Africa to withdraw immediately its administration from the Territory.

VIII. Proceedings leading to Security Council resolution 269 (1969) by which the Security Council, *inter alia*, reaffirmed its resolution 264 (1969), condemned the Government of South Africa for its refusal to comply with that resolution and called upon the Government of South Africa to withdraw its administration from the Territory immediately and in any case before 4 October 1969.

IX. Proceedings leading to Security Council resolution 276 (1970) by which the Security Council, *inter alia*, declared that the continued presence of the South African authorities in Namibia is illegal and that all acts taken by the Government of South Africa on behalf of or concerning

Namibia after the termination of the Mandate are illegal and invalid, and by which the Security Council took additional decisions with a view to the effective implementation of the relevant resolutions of the Council.

X. Proceedings leading to Security Council resolution 283 (1970) by which the Security Council, reaffirming and recalling earlier resolutions, requested States to refrain from any relations with South Africa implying recognition of the authority of the South African Government over Namibia and by which it called upon all States to take appropriate measures in regard to diplomatic and consular relations, commercial and industrial enterprises and concessions, and initiated action concerning international treaties which until the termination of the Mandate were applicable to Namibia.

XI. Proceedings leading to Security Council resolution 284 (1970) by which the Security Council requested an advisory opinion from the International Court of Justice.

XII. The review is concluded by a summary.

I. PROCEEDINGS OF THE GENERAL ASSEMBLY WHICH LED TO THE ADOPTION OF RESOLUTION 2145 (XXI)

Consideration of the Question of South West Africa as a Matter of Priority

3. The representatives of 35 African States, in a letter dated 3 August 1966 addressed to the Secretary-General, proposed that the question of South West Africa be considered as a matter of priority at the Twenty-first Session of the General Assembly (Dossier item 161; A/6386).

4. The question was included on the agenda of the Twenty-first Session as item 65. The General Assembly decided to consider the item as a matter of priority directly in plenary meetings.

5. The item was discussed between 23 September and 27 October 1966, at the 1414th, 1417th, 1419th, 1425th, 1427th, 1429th, 1431st, 1433rd, 1439th, 1448th, 1449th, 1451st, 1453rd and 1454th meetings of the General Assembly (Dossier items 133 to 146).

6. The General Assembly at its 1454th meeting on 27 October 1966 adopted resolution 2145 (XXI) on the Question of South West Africa (Dossier item 162).

Documents before the General Assembly in connection with the item

(1) *Report of the Special Committee and Report of the Sub-Committee on South West Africa*

7. The General Assembly, in connection with the item on the question of South West Africa, had before it, in addition to the draft resolutions and amendments mentioned below, the Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Report of the Special Committee's Sub-Committee on South West Africa (Dossier item 125; A/6300/Rev. 1).

8. Chapter IV of the report of the Special Committee dealt with the question of South West Africa. The Report of the Sub-Committee on South West Africa formed an appendix to Chapter IV of the Report of the Special Committee (Dossier item 125; A/6300/Rev. 1, pp. 297-299).

9. The Report of the Sub-Committee on South West Africa contained, in its

paragraph 32, a series of recommendations of that Sub-Committee as to the course of action which should be adopted with respect to South West Africa. The Sub-Committee recommended, in paragraph 32 (c) (iii), that the United Nations should decide to exercise the right of reversion of the Mandate to itself; and in paragraph 32 (c) (iv), the Sub-Committee recommended that the rights and responsibilities of South Africa as a Mandatory Power in respect to South West Africa should be terminated, along with the assumption of responsibility by the United Nations for the direct administration of the Territory, and the creation of appropriate machinery for the purpose (Dossier item 125; A/6300/Rev. I, pp. 298-299).

10. The Special Committee, at its 467th meeting on 15 September 1966, adopted the report of its Sub-Committee on South West Africa by consensus, it being understood that the reservations expressed by members would be reflected in the records (Dossier item 125; A/6300/Rev. I, para. 380). The statements made by members of the Special Committee on the report of the Sub-Committee on South West Africa are contained in paragraphs 330-379 of the report of the Special Committee (Dossier item No. 125; A/6300/Rev. I.)

(2) *Draft resolutions and amendments*

(a) *Draft resolution A/L.483 and Add. 1-3 and amendments which were adopted*

11. A draft resolution (Dossier item 161; A/L.483 and Add. 1-3) proposed by the delegations of the countries listed below formed the basis of General Assembly resolution 2145 (XXI):

Afghanistan, Algeria, Burma, Burundi, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Ethiopia, Gabon, Gambia, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Laos, Lebanon, Libya, Madagascar, Mali, Mauritania, Mongolia, Morocco, Niger, Nigeria, Pakistan, Philippines, Rwanda, Senegal, Sierra Leone, Singapore, Somalia, Sudan, Syria, Thailand, Togo, Turkey, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta, Yemen and Zambia.

12. A set of amendments to the draft resolution, which amendments were adopted by the General Assembly, were proposed (Dossier item 161; A/L.488) by the delegations of the following countries:

Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela.

13. The texts of the draft resolution and of the amendments were as follows:

Document A/L.483 and Add. 1-3

Document A/L.488

*The General Assembly,
Reaffirming the inalienable right of South West Africa to freedom and independence in accordance with the Charter of the United Nations, General Assembly resolution 1514 (XV) of 14 December 1960 and earlier Assembly resolutions concerning the Mandated*

Document A/L.483 and Add. 1-3

Document A/L.488

Territory of South West Africa,

Recalling the Advisory Opinion of the International Court of Justice of 11 July 1950, which has been accepted by the General Assembly in its resolution 449 A (V) of 13 December 1950, and the Advisory Opinions of 7 June 1955 and 1 June 1956 as well as the Judgment of 21 December 1962, which have established the fact that South Africa continues to have obligations under the Mandate which was entrusted to it on 17 December 1920 and that the United Nations has supervisory powers in respect of South West Africa,

Gravely concerned at the situation in the Mandated Territory, which has seriously deteriorated, following the Judgment of the International Court of Justice of 18 July 1966,

Having studied the reports of the various committees which had been established to exercise the supervisory functions of the United Nations over the administration of the Mandated Territory of South West Africa,

Convinced that the administration of the Mandated Territory by South Africa has been conducted in a manner contrary to the Mandate, the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming its resolution 2074 (XX) of 17 December 1965, in particular paragraph 4 thereof, which condemned the policies of *apartheid* and racial discrimination practised by the Government of South Africa in South West Africa as constituting a crime against humanity,

Emphasizing that the problem of South West Africa is an issue falling within the terms of resolution 1514 (XV),

*Document A/L.483 and Add. 1-3**Document A/L.488*

Considering that all efforts of the United Nations to induce the Government of South Africa to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the well-being and security of the indigenous inhabitants have been of no avail,

Mindful of the obligations of the United Nations towards the people of South West Africa,

Noting with deep concern the explosive situation which exists in the southern region of Africa,

Affirming its right to take appropriate action in the matter, including the right to revert to itself the administration of the Mandated Territory,

1. *Reaffirms* that the provisions of General Assembly resolution 1514 (XV) are fully applicable to the people of the Mandated Territory of South West Africa and that, therefore, the people of South West Africa have the inalienable right to self-determination, freedom and independence in accordance with the Charter of the United Nations;

2. *Reaffirms further* that South West Africa is a territory having international status and that it shall maintain this status until it achieves independence;

3. *Declares* that South Africa has failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa;

(1) Add the following at the end of operative paragraph 3: "and has, in fact, disavowed the Mandate". The paragraph would therefore read as follows:

3. *Declares* that South Africa has failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa, and has, in fact, disavowed the Mandate;

Document A/L.483 and Add. 1-3

4. *Decides* to take over the Mandate conferred upon his Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa and to assume direct responsibility for the administration of the Mandated Territory;

5. *Establishes* a United Nations Administering Authority for South West Africa composed of . . . States Members of the United Nations to be immediately designated by the President of the General Assembly—to administer the Territory on behalf of the United Nations, with a view to preparing it for independence;

6. *Requests* the Administering Authority to proceed immediately with its work in the Territory and to recommend to the General Assembly as soon as possible, and in any case not later than the Twenty-second Session of the General Assembly, a date for the independence of the Territory;

7. *Request* the Security Council to take the necessary effective measures to enable the Administering Authority to discharge its functions in accordance with the present resolution;

Document A/L.488

(2) Replace operative paragraphs 4 to 9 by the following:

4. *Decides* that the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is therefore terminated and that South Africa has no other right to administer the Territory, and that henceforth South West Africa comes under the direct responsibility of the United Nations;

5. *Resolves* that in these circumstances the United Nations must discharge those responsibilities with respect to South West Africa;

6. *Establishes* an *Ad Hoc* Committee for South West Africa—composed of 14 States Members to be designated by the President of the General Assembly—to recommend practical means by which South West Africa should be administered, so as to enable the people of the Territory to exercise the right of self-determination and to achieve independence, and to report to the General Assembly at a special session as soon as possible and in any event not later than April 1967;

7. *Calls upon* the Government of South Africa forthwith to refrain and desist from any action, constitutional, administrative, political or otherwise, which will in any manner whatsoever alter or tend to alter the present international status of South West Africa;

8. *Calls* the attention of the Security Council to the present resolution;

Document A/L.483 and Add. 1-3

8. *Urges* all States to extend their whole-hearted co-operation and to render assistance in the implementation of the present resolution;

9. *Requests* the Secretary-General to provide all necessary administrative, financial and other assistance for the implementation of the present resolution and to enable the United Nations Administering Authority for South West Africa to perform its duties.

Document A/L.488

9. *Requests* all States to extend their whole-hearted co-operation and to render assistance in the implementation of the present resolution;

10. *Requests* the Secretary-General to provide all necessary assistance for the implementation of the present resolution and to enable the *Ad Hoc* Committee for South West Africa to perform its duties.

14. The amendments to draft resolution A/L.483 and Add. 1-3, proposed in documents A/L.488, and eventually adopted, were, *inter alia*, as follows:

Operative paragraph 3 of the draft resolution. The addition to operative paragraph 3 (which contained the declaration that South Africa had failed to fulfil its obligations under the Mandate) of the statement that South Africa had in fact disavowed the Mandate.

Accordingly, the General Assembly in terms of the amendment was to declare, and the General Assembly did in fact declare, not only that South Africa by omission and commission was guilty of a material breach of its obligations under the Mandate, but also that South Africa had repudiated the Mandate, a fact which in itself constitutes a material breach.

Operative paragraph 4 of the draft resolution. The phrase, in operative paragraph 4, in terms of which the General Assembly would have decided to take over the Mandate and assume direct responsibility for the administration of the Territory, was replaced by a provision in which the General Assembly decided: that the Mandate is terminated; that South Africa has no other right to administer the Territory; that henceforth South West Africa comes under the direct responsibility of the United Nations; and that the United Nations must discharge those responsibilities (paras. 4 and 5 of the amended text).

Operative paragraph 5 of the draft resolution. Operative paragraph 5 (providing for the immediate establishment of a United Nations Administering Authority for South West Africa) was replaced by a provision by which the General Assembly established an *Ad Hoc* Committee to recommend practical means by which South West Africa should be administered, so as to enable the people of the Territory to exercise the right of self-determination and to achieve independence (para. 6 of the amended text).

Operative paragraph 6 of the draft resolution. The provision in operative paragraph 6, which would have contained a request to the Administering Authority, among other things, to proceed immediately with its work in the Territory, was replaced by a provision calling on the Government of South Africa forthwith to refrain from any action which would alter or tend to alter the international status of South West Africa (para. 7 of the amended text).

(b) *A sub-amendment to the amendments contained in document A/L.488, which was not adopted.*

15. A sub-amendment to the amendments proposed in document A/L.488 was

moved by the United States of America (Dossier item 146; 1454th mtg., para. 68). In its final version the sub-amendment sought to replace operative paragraph 4 of the draft resolution (A/L.483 and Add. 1-3) with the following text:

"*Decides* that South Africa's Mandate over South West Africa has therefore terminated and that South Africa has no other right to administer the Territory, and that, in these circumstances, the United Nations has a direct responsibility to preserve the international status of the Territory of South West Africa under conditions which will enable South West Africa to exercise its rights of self-determination and independence."

The General Assembly at its 1454th meeting rejected the sub-amendment (Dossier item 146; 1454th mtg., para. 242).

(c) *A draft resolution which was not adopted*

16. A draft resolution A/L.487/Rev. 1 (Dossier item 146; 1454th mtg., paras. 252-262) submitted by the delegation of Saudi Arabia (which referred, in a preambular paragraph, to an earlier draft resolution of the same delegation (A/L.486) envisaging the appointment of one or more co-administrators to administer South West Africa on behalf of the United Nations during the short period required before the United Nations Administering Authority for South West Africa assumes the responsibility for the administration of the Mandated Territory) proposed that the General Assembly declare that South Africa is a racist colonial power in rebellion against the United Nations; and that the General Assembly recommend to the Security Council that it take the necessary measures with a view to liberating the people of the Mandated Territory from the State of South Africa.

17. The General Assembly at its 1454th meeting rejected this draft resolution (Dossier item 146; 1454th mtg., para. 280).

Adoption of General Assembly Resolution 2145 (XXI) and Details of the Voting

18. The General Assembly at its 1454th meeting adopted the draft resolution A/L.483 and Add. 1-3, amended as proposed in document A/L.488.

19. The voting in the General Assembly on the draft resolution, as amended, as a whole was as follows. There were 114 votes in favour and 2 against, with 3 abstentions (Dossier item 146; 1454th mtg., para. 244).

20. The two votes against the draft resolution were cast by South Africa and Portugal. The delegation of South Africa explained its negative vote at the 1451st meeting of the General Assembly (Dossier item 144; paras. 18-33). Earlier in the debate the delegation of South Africa had explained its attitude at the 1417th meeting (Dossier item 134; paras. 1-97), the 1431st meeting (Dossier item 139; paras. 211-268), the 1433rd meeting (Dossier item 140; paras. 220-230) and at the 1439th meeting (Dossier item 141; paras. 157-219). The delegation of Portugal explained its negative vote at the 1454th meeting (Dossier item 146; paras. 284-290).

21. The three delegations which abstained in the vote were the delegations of France, Malawi and the United Kingdom.

22. The representative of France explained his abstention at the 1454th meeting (Dossier item 146; paras. 326-330). Earlier in the debate the representative of France had spoken at the 1439th meeting (Dossier item 141; paras. 143-156).

23. The United Kingdom's contribution to the general debate on the item

will be found in paragraphs 17 to 59 of the verbatim record of the 1448th meeting (Dossier item 142). The representative of the United Kingdom spoke in explanation of his abstention in the 1454th meeting (Dossier item 146; paras. 17-59).

24. The representative of Malawi abstained in the vote on the amendments proposed in document A/L.488, on the United States sub-amendment, and on the draft resolution as a whole, and in the vote on the Saudi Arabian draft resolution (Dossier item 146; 1454th mtg., paras. 238, 242, 243, 244 and 280). The representative of Malawi stated subsequently at the fifth special session of the General Assembly (Dossier item 167; 1504th mtg., p. 81—Dossier item 176; 1513th mtg., para. 254) that at the Twenty-first Session of the General Assembly his delegation had made it clear that it held no brief for the manner in which South Africa administered the Mandate over South West Africa. Although recognizing that a change was necessary, his delegation had abstained on the resolution strictly on the basis that it was incapable of implementation.

Summary of Views Expressed in the Debate

(1) Statements made in introducing draft resolution A/L.483 and Add. 1-3

25. The draft resolution A/L.483 was introduced at the 1419th meeting of the General Assembly (Dossier item 135; 1419th mtg.) by the representatives of *Ghana* (paras. 2-32 and 127-138), *Iraq* (paras. 16-32), *Ceylon* (paras. 33-55), *Guinea* (paras. 58-85), the *United Arab Republic* (paras. 86-98) and *Sierra Leone* (paras. 99-138). These sponsors of the draft resolution presented to the General Assembly the propositions on which the draft resolution was based: that South Africa by its actions had failed to fulfil its obligations under the Mandate; that South Africa had forfeited its right to administer the Mandated Territory; that the people of South West Africa had the right to self-determination and independence; that the General Assembly had the authority and the obligation to see to it that the rights of the people of South West Africa are restored; that the Mandate should be taken away from the Government of South Africa and that it should be taken over by the United Nations; and that the action for which the draft resolution called was clearly inescapable in the circumstances.

(2) Statement made in introducing amendments proposed in document A/L.488

26. The representative of *Mexico*, at the 1451st meeting of the General Assembly, introduced the amendments contained in document A/L.488 on behalf of the 21 Latin American delegations which had sponsored the amendments. He stated that the amendments, as a whole, merely served to clarify and reinforce the General Assembly's action, and that they could be considered not merely as amendments to the original Afro-Asian draft, but as a second version of the same document, inspired by the same principles and aimed at the same goals (Dossier item 144; 1451st mtg., paras. 55 and 59).

(3) Statements made in the course of discussion

(a) Sponsors of draft resolution A/L.483 and Add. 1-3

27. Several delegations which sponsored the draft resolution A/L.483 and Add. 1-3 participated in the debate and argued in favour of the termination of the Mandate. Some of the delegations stressed, in particular, the violation of the Mandate by South Africa. Others emphasized the repudiation of the Mandate by South Africa. Still others considered that the right of the people of South West Africa to self-determination derived from the Charter and that

General Assembly resolution 1415 (XV) was the strongest argument for the action proposed. Several of the delegations pointed out that, judicial remedies having been frustrated, there was no other avenue open than political action by the United Nations. The immediately following paragraph gives references to the statements made by the sponsoring delegations in support of the draft resolution.

28. The representative of *Zambia* stated that the real issue was moral, humanitarian and political (Dossier item 136; 1425th mtg., para. 9). The representative of *Upper Volta* emphasized the obligations of the Mandatory Power flowing from Article 73 of the Charter, and stated that the action proposed in the draft resolution represented the minimum that he wished to see adopted (Dossier item 136; 1425th mtg., paras. 38, 52). The representative of *Libya* stated that there could no longer be any question of a further appeal to the International Court of Justice. No legal question was at issue (Dossier item 136; 1425th mtg., para. 72). In the view of the delegation of *Somalia* the Court's decision of 1966 was not a victory for South Africa. By its action the Court had remitted the problem of South West Africa to the General Assembly (Dossier item 137; 1427th mtg., para. 14). According to the representative of *Sudan* the General Assembly was now (1966) the spokesman, the guide and the guardian of the people of South West Africa (Dossier item 137; 1427th mtg., para. 42). The representative of the *Central African Republic* disapproved of the Judgment of 1966 and considered the Advisory Opinions of 1950, 1955 and 1956 and the Judgment of 1962 as the only valid jurisprudence and stated that there was but one solution: the simple withdrawal of the Mandate (Dossier item 137; 1427th mtg., paras. 51, 55). The representative of *Iran* stated that regardless of whether or not it had violated the terms of the Mandate, South Africa was under the undeniable obligation to enable the people of South West Africa to exercise its right to self-determination. The General Assembly must act in order to demonstrate that South Africa could not with impunity defy the conscience of mankind (Dossier item 137; 1427th mtg., paras. 110 and 117). The representative of *Burma* said that the Court's decision left to the General Assembly no other alternative but to seek other ways to find a solution (Dossier item 137; 1427th mtg., para. 153). In the view of the representative of *Nigeria*, after the frustrating nature of the last (1966) judgment of the Court, it had become urgent that some positive action should be taken within the Organization (Dossier item 138; 1429th mtg., para. 17). According to the representative of *Thailand*, South Africa's past failures to fulfil its obligations in respect of the Mandated Territory had disqualified it from continuing to exercise the responsibility entrusted to it by the world community (Dossier item 138; 1429th mtg., para. 35). The representative of *Mongolia* stated that the General Assembly had full power to withdraw the Mandate from South Africa and grant independence to its people immediately. He expressed doubts about the advisability of including in the resolution a provision for the establishment of a temporary United Nations organ to deal with the question of preparing South West Africa for independence (Dossier item 138; 1429th mtg., paras. 54-56). The representative of *Algeria* said that national independence might well be viewed as the corollary of the revocation of the Mandate. In no circumstances should the United Nations inherit the Mandate, which would be terminated. Its task would be to ensure the necessary transition between the General Assembly's decision and the Territory's effective accession to independence (Dossier item 138; 1429th mtg., paras. 145-146). The representative of the *Ivory Coast*, describing the question of South West Africa as an international scandal, concluded that the champions of *apartheid*

were unworthy of the Mandate which should be withdrawn from them (Dossier item 138; 1429th mtg., paras. 159 and 164). The representative of the *Congo* (Brazzaville) said that only one reasonable course of action remained open: the revocation of the Mandate (Dossier item 139; 1431st mtg., para. 22). The representative of the *Syrian Arab Republic* commented that the draft resolution had the merit of marking a new start. The step to revoke the Mandate was a bold one, but one which was justified and logical (Dossier item 139; 1431st mtg., paras. 105, 116). The representative of *Cyprus* said that a point had been reached where decisive and drastic steps must be taken in order to remedy the intolerable situation of the inhabitants of the Territory. The General Assembly must move from the realm of theory into the field of practical implementation of its objectives (Dossier item 139; 1431st mtg., paras. 119, 129). The representative of *Mali* claimed that the problem of South West Africa was not a legal problem. A nation's future cannot be placed in the hands of a jurist, but must depend on political judgment and choice, adopted judiciously. The United Nations could not shift the burden to the Organization of African Unity (Dossier item 140; 1433rd mtg., paras. 59, 60, 64). The representative of *Uganda* believed that the only way open to the Organization as the principal, was to revoke the trust assigned to South Africa as the agent (Dossier item 140; 1433rd mtg., para. 84). The representative of *Rwanda* considered that the General Assembly must unequivocally reaffirm the right of the people of the Territory to liberty and independence in conformity with the Charter and resolution 1514 (XV) (Dossier item 141; 1439th mtg., para. 19). The representative of *India* stated that the only course of action left to the world community is to terminate South Africa's Mandate and to take upon itself the responsibility of administering the Territory until such time as arrangements can be made for the people of South West Africa to assume the reins of government themselves (Dossier item 146; 1454th mtg., para. 120).

(b) *Delegations which did not sponsor draft resolution A/L.483 and Add. 1-3 but which voted in favour of the draft resolution*

29. Paragraphs 30 to 66 below contain references to the statements made by delegations which did not sponsor draft resolution A/L.483 but supported the resolution in their interventions and in their vote. Reference is also made to reservations expressed by some delegations.

(i) *Eastern European States*¹

30. The representative of the *USSR* had fully shared the view of the African States concerning the nature of the action which the United Nations must take. Through its policy of *apartheid*, racial discrimination and systematic violation of the fundamental rights and freedoms of the people of South West Africa, South Africa had forfeited any legal or moral right to administer the Territory, and should therefore be deprived of the Mandate. The United Nations should clearly and unequivocally declare that it withdrew from the Government of South Africa the Mandate to administer South West Africa. It should demand that South Africa leave the Territory, and give the people an opportunity to exercise their right to independence in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples. He suggested that it would be logical to bear in mind the appropriateness of associating the

¹ The arrangement used in this and the following sections been has selected for convenience. It does in no way prejudice the classification of countries by regional groups.

Organization of African Unity with the application of the measures concerned. He expressed, however, some doubts concerning those provisions of the draft resolution which related to the institution for South West Africa, after the withdrawal of the Mandate from South Africa, of some kind of transitional period, and to the assumption by the United Nations for that period of direct responsibility for the administration of the Territory (Dossier item 136; 1425th mtg., paras. 136, 137, 141). In explaining his affirmative vote, the representative of the USSR made a reservation in regard to paragraph 3 which adduces, as a reason for depriving South Africa of the Mandate, the argument that South Africa had itself disavowed the Mandate. In the Soviet view that was not the reason why South Africa was deprived of the Mandate. The reason was that the people of the Territory must be emancipated from South African racist oppression and be given independence. He also repeated reservations previously made in regard to the advisability of fixing a kind of transitional period (Dossier item 146; 1454th mtg., paras. 312, 318, 319).

31. The representative of *Albania* stated that the United Nations could not allow itself to tolerate any longer the obstinate and insolent refusal of South Africa to implement the numerous resolutions adopted by the General Assembly. It was high time to put an end to the situation; the best way to deal with it was to revoke the Mandate of South Africa over South West Africa immediately and to proclaim the independence of the Territory (Dossier item 142; 1448th mtg., para. 15).

32. The representative of the *Byelorussian SSR* stated that, as regards the draft resolution submitted by the Afro-Asian countries (A/L.483 and Adds. 1-3), his delegation fully understood the endeavours of these countries to end the colonialist régime in the Territory of South West Africa and was, accordingly, prepared to support the draft resolution. His delegation, however, thought that the various transitional measures were superfluous and that it would be better to grant South West Africa independence immediately by depriving the Republic of South Africa of its Mandate over the Territory (Dossier item 143; 1449th mtg., para. 146).

33. The representative of *Czechoslovakia* fully supported the proposal of the Afro-Asian countries that the Republic of South Africa should be immediately deprived of the Mandate to administer South West Africa. He doubted, however, whether transferring the administering of South West Africa to the United Nations would be the most appropriate solution. He took, in principle, a favourable attitude towards the draft resolution, and added that he thought there would be widespread support in the General Assembly for giving the Organization of African Unity a part to play in implementing the proposed decisions (Dossier item 136; 1425th mtg., paras. 98-101). In explaining his vote, he repeated that the problem of South West Africa was in fact a problem of the immediate and urgent implementation of the Declaration on the elimination of colonialism. South Africa, because of its policy of *apartheid*, racial discrimination, etc., had divested itself of any rights whatsoever to administer further the Territory of South West Africa; it must therefore be deprived of the Mandate (Dossier item 146; 1454th mtg., paras. 342-347).

34. The representative of *Hungary* welcomed the draft resolution A/L.483 and endorsed completely that part which stated that the provisions of General Assembly resolution 1514 (XV) were fully applicable to the people of South West Africa. The Hungarian delegation joined those who demanded that, considering the given situation, South Africa should be divested of its Mandate immediately. He expressed reservations concerning those provisions of the draft reso-

lution which proposed the establishment of a United Nations administering authority (Dossier item 138; 1429th mtg., paras. 107-110).

35. The representative of *Poland* said that the necessary action had to be taken to pave the way to the full independence of the people of South West Africa. On political, moral and legal grounds, Poland supported the draft resolution (Dossier item 137; 1427th mtg., para. 82).

36. The representative of *Romania* stated that South Africa must be declared divested of its rights over the Territory; rights which had never been and were not those of master of the Territory. *Romania's* action should in no way be interpreted as meaning that *Romania* considered any legal action whatsoever to be required on the part of the United Nations, or any other forum, before the people of South West Africa could have the right to be master of their own country (Dossier item 141; 1439th mtg., paras. 40, 42; Dossier item 146; 1454th mtg., para. 348).

37. The representative of the *Ukrainian SSR* stated that the time for persuasion had passed; it was now time for action. His delegation therefore fully supported the demands of the Afro-Asian countries that the Mandate should be revoked. With regard to the proposed transitional period, he believed that an independent State of the people of South West Africa should be set up immediately after the status of the Mandated Territory and of the colonial régime was ended (Dossier item 139; 1431st mtg., para. 97).

38. It was the opinion of the representative of *Yugoslavia* that the Court's ruling had actually returned the question where it belonged—to the General Assembly. *Yugoslavia* had always considered the problem of South West Africa to be primarily a political one. South Africa had deprived itself of the legal and moral grounds to administer South West Africa (Dossier item 141; 1439th mtg., paras. 86 and 89). The representative of *Yugoslavia* believed that the time had come not to seek further ways to administer South West Africa, but to decide what measures should be taken to make it possible for South West Africa to become independent (Dossier item 146; 1454th mtg., para. 155).

(ii) Western European and other States

(1) Western European States

39. The representative of *Austria* said that, as the International Court of Justice did not find itself in a position to deliver a judgment on the merits of the case submitted by *Ethiopia* and *Liberia*, the General Assembly had the duty to act on the basis of its own assessment of the situation. That assessment was adequately summarized in the preamble of the draft resolution. There was general agreement regarding the termination of the right of the Mandatory Power; however certain apprehensions had been expressed by a number of delegations with regard to the most appropriate way of filling the gap between the termination of South Africa's rights under the Mandate and the time when the recommendations of the *ad hoc* committee would be implemented. The representative of *Austria* summed up the general consensus as follows: firstly, South Africa had lost by its deeds as well as by its disavowal of its obligations under the Mandate, the right to continue to administer South West Africa; secondly, the United Nations had special responsibilities for the transitory period; thirdly, the practical measures to be taken should be carefully considered by an *ad hoc* committee, and the Security Council should be asked to give attention to the General Assembly's resolution (Dossier item 145; 1453rd mtg., paras. 53, 55 and 57).

40. The representative of *Belgium* explained that his delegation's support of

the text for which he had voted did not, in any way, imply that the delegation approved it without doubts or reservations. His delegation would have preferred the point of law of the General Assembly's competence to be clarified as fully as possible (Dossier item 146; 1454th mtg., paras. 350, 351).

41. The delegation of *Denmark* was of the firm opinion that South Africa had lost every right which it had in respect of South West Africa because of the countless and flagrant violations of its sacred trust under the Mandate. The responsibility of the United Nations for the future of South West Africa must be clearly defined. The Danish delegation was in full agreement with the ideas underlying the draft resolution, which they could support apart from some of its provisions concerning the modalities and the procedure to be followed (Dossier item 144; 1451st mtg., paras. 63, 64).

42. The representative of *Finland* said that, since there was general agreement that South West Africa was a territory having international status, and that South Africa, by disavowing the Mandate and by introducing into the Territory, the system of *apartheid*, had lost the right to administer the Territory, then it followed that the United Nations must assume responsibility for South West Africa and its people (Dossier item 144; 1451st mtg., para. 5).

43. The representative of *Greece* emphasized that the question of South West Africa was essentially a political one calling for a political solution by political means, and that the value of the resolution would depend on the number and the importance of those who joined in voting for it (Dossier item 136; 1425th mtg., para. 121; Dossier item 146; 1454th mtg., para. 196).

44. The representative of *Ireland* said that since South Africa had not only repudiated the Mandate but had openly proceeded to govern South West Africa as part of her national territory, the General Assembly required no further opinion of the Court. He suggested that the Assembly should decide that South Africa had not only failed to fulfil the Mandate, but that it had thus forfeited any right to administer the Territory. He also suggested that the Assembly should decide to terminate the Mandate at the earliest possible date and bring the Territory to independence (Dossier item 137; 1427th mtg., paras. 27 and 31). In his statement in explanation of vote, the representative of Ireland said that such doubts as his delegation had had, and to which he had referred in the 1427th meeting would be fully met by the acceptance of the amendments put forward by the Latin American States (A/L.488, eventually adopted) and by the United States (A/L.490, subsequently rejected). He earnestly appealed to the Government of South Africa to co-operate with the *Ad Hoc* Committee so as to ensure the orderly transfer to an independent South West Africa of the powers which South Africa had hitherto exercised in the Territory (Dossier item 146; 1454th mtg., paras. 138-141).

45. The representative of *Italy* referred to the opinion widely held among Members of the United Nations that the present Assembly (the Twenty-first Session) should declare that the Government of South Africa had forfeited the right to exercise the Mandate, and that the General Assembly should decide that the Territory must be brought to independence at the earliest possible date. This view was fully shared by the Italian delegation and implied, he said, in a political context the termination of the Mandate (Dossier item 139; 1431st mtg., paras. 197-198). In explaining his affirmative vote, the representative of Italy said that the text of the resolution in its final version had commanded the support of an overwhelming majority of the Assembly; met in principle most of the requirements of the situation, if not all; showed the firm stand which the international community took on the problem of South West Africa; and indicated a practical course of action for the General Assembly to take. The Italian dele-

gation considered that operative paragraph 6 (establishing the *Ad Hoc* Committee) was the key provision of the resolution. It maintained its reservation on the declaration in operative paragraph 4 that henceforth South West Africa came under the direct responsibility of the United Nations (Dossier item 146; 1454th mtg., paras. 298-300).

46. The representative of the *Netherlands* said that, after thorough consideration of the legal aspects, his delegation had come to the conclusion that the General Assembly was legally entitled to put an end to South Africa's Mandate because of non-compliance by the Mandatory Power with the essential obligations ensuing from the mandate agreement. Every party to a treaty had the inherent right to terminate the treaty in case of a material breach by the other party. That right could in this case, *a fortiori*, be claimed by the United Nations as the successor of the League of Nations in view of the violations of the stipulations of the mandate agreement. The Netherlands delegation had no doubt that the Mandatory Power had violated the terms of the Mandate. It had therefore forfeited the right to administer the Territory further. That was the main aspect. He expressed however, some reservations with regard to paragraph 4 of the draft resolution as it would be amended by the Latin American amendments, because the stipulation that the United Nations would assume immediately a direct responsibility for the administration of the Territory could not be carried out in practice in the foreseeable future. Even if the United States amendments, which the Netherlands delegation supported, were not adopted, the Netherlands delegation would maintain its reservation with regard to operative paragraph 4; but in order to give maximum weight to the resolution, the Netherlands delegation would not withhold its support for the resolution as a whole (Dossier item 146; 1454th mtg., paras. 95-101).

47. The representative of *Norway* declared that after 20 years of futile discussions about the South African administration of South West Africa, the consensus had arisen at the Twenty-first Session of the General Assembly that South Africa had lost its right to administer the Territory, and that its Mandate was terminated (Dossier item 145; 1453rd mtg., para. 40).

48. The representative of *Sweden* stated that the Judgment of the International Court of Justice did not mean that the Government of South Africa had received a blank cheque or an authorization in any form to carry out the policy of *apartheid* in South West Africa. In the view of the Swedish delegation, the Judgment had placed upon the United Nations a duty to fulfil the sacred trust of civilization with regard to South West Africa which had been betrayed by South Africa. The problem before the Assembly was how this responsibility was to be discharged. So far as the Swedish Government was concerned, its starting point had been that South Africa was in continued breach of its obligations under the Mandate and that it had forfeited by its deeds every right to continue to administer the Territory. This situation should be formally and solemnly recognized and stated by the General Assembly. The Swedish delegation felt that the General Assembly could and should go further and decide that the Mandate, as a consequence, was terminated—a Mandate which South Africa itself had disavowed, and that the United Nations had specific responsibilities for transitory administrative arrangements pending the exercise by the inhabitants of their right to self-determination. He also favoured the establishment of an *Ad Hoc* Committee (Dossier item 144; 1451st mtg., paras. 40, 41).

(2) Other States

49. The representative of *Australia* said that his delegation found itself in a great deal of agreement with the statements made by the representatives of the

United Kingdom and France (see below, paras. 67-72), but not having the special responsibilities which those two countries had under the Charter, Australia felt able to vote for the resolution (Dossier item 146; 1454th mtg., para. 255). In the general debate on the item, the representative of Australia had referred to the complexity of the legal and practical problems involved. He had agreed with the point made by the representative of Japan (see below, para. 57) that the General Assembly must keep strictly within the framework of the Charter and of international law. But it was necessary also that the General Assembly should be active in the pursuit of justice by all lawful means, and justice clearly required that South West Africa should be administered by an authority fully committed to such principles as enjoyment, in freedom and without racial discrimination, of the basic human rights, the principle of self-determination of peoples, etc. (Dossier item 141; 1439th mtg., para. 142).

50. The representative of *Canada* expressed Canada's full support for the rights of peoples to the unfettered exercise of their self-determination. Canada strongly deplored the uncompromising attitude that South Africa had displayed in regard to South West Africa. The policy of *apartheid* carried within it the seeds of conflict. Canada believed that South Africa had forfeited its right to administer the Mandate. With reference to the concern expressed by some speakers that the General Assembly might not enjoy full legal competence to assume the Mandate unilaterally, the Canadian delegation tended to the view that in the light of the advice which the General Assembly had received in the past from the International Court of Justice, the Assembly had an adequate basis for the action proposed. It did recognize, however, that in taking into account the doubts expressed by some speakers, there might be an advantage in having this matter clarified. He said that by any reasonable standard, South Africa's policy under the Mandate justified the general opinion that South Africa had proved to be an unacceptable administrator of the Territory. In the view of the Canadian delegation, the General Assembly was not called upon to make a juridical judgment as to whether in one respect or another the Government in charge of the Mandate had been delinquent in carrying out the Mandate entrusted to it. This was a matter which had been argued and contested before the International Court of Justice. What the General Assembly was called upon to do was to make a decision in the light of all the relevant factors, and taking into consideration South Africa's refusal to accept accountability to the United Nations, as to whether the Government of South Africa should continue to exercise the Mandate. The Canadian Government believed that the answer was "no". In the opinion of the Canadian delegation, the record of South Africa constituted clear grounds for stating that South Africa had lost the right to continue administering the Mandate (Dossier item 140; 1433rd mtg., paras. 38, 39, 42, 43). In explaining his vote, the representative of Canada reiterated the belief that South Africa had forfeited its right to administer the Mandate, and that the people of South West Africa should accede to self-determination and independence as soon as possible (Dossier item 146; 1454th mtg., para. 292).

51. The representative of *Israel* said that the legal position as previously declared by the Court in the Advisory Opinions of 1950, 1955 and 1956 and in the Judgment of 1962 remained unimpaired. The Advisory Opinion of 1950 and the General Assembly's resolution 449 A (V) accepting it, constituted the point of departure for all the subsequent phases of United Nations action on the question of South West Africa. Since the Court had found itself unable to furnish any further guidance on the important factual and legal issues placed before it, his delegation believed that the General Assembly was now free to reach its own conclusions on the basis of the record before it. In the Israeli view, the real ef-

fect of the 1966 Judgment was that the political aspect of the question of South West Africa outweighed the possible legal problems, and that even the most scrupulous concern for legal niceties might at this juncture cede its place to the political wisdom of the majority of the General Assembly. It seemed clear that the Mandatory Power was in breach of the major obligations which it took upon itself in the Mandate Agreement and which it was now repudiating without justification. Since the Mandatory Power was failing to fulfil its essential obligations under the Mandate, it followed that the United Nations was free to take appropriate action. The representative of Israel referred in this regard to paragraph 6 of the Commentary of the International Law Commission on its draft Article 57 on the Law of Treaties (now Article 60 of the Vienna Convention on the Law of Treaties). The General Assembly, he stated, was called upon to enunciate clearly its political decision on the future of the mandated Territory of South West Africa. The General Assembly could quite legitimately do so on the basis of the existing jurisprudence of the Court, and any attempt to embroil the Court further in the affairs of South West Africa would only add to the confusion and controversy and not assuage it, and would only complicate still further the work of the General Assembly. It followed that the General Assembly was now entitled to terminate the Mandate (Dossier item 141; 1439th mtg., paras. 91, 92, 96, 98, 100 and 101).

52. The representative of *Jamaica* said his Government was in no doubt whatever that South Africa had forfeited the right to administer this Mandate. The only practical step which the United Nations could take was to relieve South Africa of the Mandate. The questions which would remain would be questions of timing, of procedure, of tactics—that is, of the machinery to be employed in withdrawing the Mandate. In this regard the delegation of *Jamaica* would support any reasonable and effective arrangement (Dossier item 139; 1431st mtg., paras. 67, 69).

53. The representative of *New Zealand* said his delegation had voted in favour of the resolution because it believed that a very important principle was at stake. In essence, the issue was whether, in the face of South Africa's failure to comply with its substantive obligations and its disavowal of the Mandate, the United Nations would assert the responsibilities which it undoubtedly had. In the resolution those responsibilities were unequivocally affirmed. The situation justified an act of solidarity on the part of the international community in support of a resolution incorporating the restatement of the collective view of the Organization, despite differences of view as to the most appropriate and effective wording of that resolution as a whole (Dossier item 146; 1454th mtg., paras. 305-308). The question of implementation remained for study. The representative of *New Zealand* regretted that the sub-amendments to operative paragraph 4, submitted by the United States, had not been adopted. The suggested rewording would have clarified the meaning of the paragraph and would have underlined that South West Africa's international status remained unaltered by the termination of the Mandate (para. 309).

54. In his intervention in the general debate on the item, the representative of *New Zealand* reviewed the series of resolutions which culminated in the adoption of resolution 1541 (XV), which applied equally to all Trust and Non-Self-Governing Territories, not excluding the Non-Self-Governing Territory of South West Africa. In the case of South West Africa, the Administering Power also had specific and explicit obligations towards the international community which were of more direct significance than those deriving from the declaratory resolutions of the General Assembly. The representative of *New Zealand* also stated that *New Zealand* accepted that South Africa had forfeited any moral

right to administer the Territory. New Zealand accepted further that a strong case could be made out for the termination of the Mandate by the General Assembly. In the light of all the factors, New Zealand believed that the question whether the Assembly could properly regard South Africa as having forfeited the right to continue with the Mandate could be answered affirmatively. This conclusion could be stated with greater authority if it had the backing of an advisory opinion of the International Court of Justice. In the future there might well be a context in which the United Nations felt a cogent need for such corroboration. The legal landmarks were, however, already clear, and they led to only one broad conclusion: the justification for Assembly action lay in the responsibility it inherited from the League and in South Africa's failure to fulfil its obligations under the Mandate (Dossier item 141; 1439th mtg., paras. 105, 115, 116, 118).

55. The representative of the *United States* said his delegation's interpretation of the resolution was that it was South Africa's rights which had come to an end, not the concept of international responsibility itself. This consequence was derived from both South Africa's failure to fulfil its obligations and from its disavowal of the Mandate (Dossier item 146; 1454th mtg., para. 334). The United States had voted for the resolution in its amended form in the belief that the text did not, in fact, depart from the essential objectives the United States delegation had in mind in an earlier statement when it had found that, as regards the status of South West Africa, virtually all the membership, with very few exceptions, were in agreement. The representative of the United States had said that the General Assembly was confronted with a continuing material breach of obligations incumbent upon the Mandatory Power. South Africa itself had disavowed the Mandate. By virtue of the breach of its obligations and its own disavowal of the Mandate, South Africa had forfeited all rights to continue to administer the Territory (Dossier item 141; 1439th mtg., paras. 72, 73).

(iii) Asian and African States

56. The representative of *China* expressed sympathy with the principles and objectives of the draft resolution. A mandate, a sacred trust of civilization, was by its very nature a temporary institution. As successor to the League of Nations, the United Nations would be justified in demanding that the Territory of South West Africa be placed under international supervision without delay (Dossier item 138; 1429th mtg., para. 75).

57. The representative of *Japan* considered that for many years South Africa had continuously failed to meet its obligations as set forth in the provisions of the mandate agreement, some of which were essential for the attainment of the purpose and goal of the Agreement. The General Assembly, which had been compelled to consider seriously the violation by South Africa of its obligations, was right to proclaim the objective set forth in paragraph 4 of the Afro-Asian draft resolution, in favour of which the Japanese delegation would vote. He also spoke in favour of the establishment of an *ad hoc* committee for the purpose of studying the different practical and legal aspects of the problem (Dossier item 144; 1451st mtg., paras. 11, 12 and 13). Earlier in the session the representative of Japan had drawn attention to two legal points which seemed to him characteristic of the Judgment delivered by the Court on 18 July 1966. The Court had expressed no opinion on most of the substantive questions raised before it by Ethiopia and Liberia. The Court's decision made no reference whatever to the various resolutions of the General Assembly. The decision therefore did not affect those resolutions which had so often condemned South Africa's policy in South West Africa. The legal implications retained their full value. The Court

neither confirmed nor cancelled its Advisory Opinion of 1950. This Advisory Opinion retained its full validity. The Judgment of the Court in no way excused the Republic of South Africa for pursuing its policy in South West Africa. In the opinion of the Japanese Government, South Africa must begin by immediately placing the Territory under the international trusteeship system. Moreover, one could not speak of changing the status of non-self-governing peoples without reference to the Declaration on the Granting of Independence to Colonial Countries and Peoples. Japan firmly believed that the policy of *apartheid* inasmuch as it was detrimental to the well-being and advancement of the population, was contrary to the Mandate and to the spirit of the United Nations Charter. The representative of Japan quoted relevant passages of Judge Tanaka's dissenting opinion, and added that the Government of Japan shared a great many views Judge Tanaka had expressed on the *apartheid* policy. The issue of South West Africa involved fundamental principles of international law, such as *pacta sunt servanda* in relation to the mandate agreement, the legal nature and scope of human rights, and the legal machinery for the succession of the League of Nations and the United Nations; many legal points remained undefined by the highest authorities on international law. It therefore seemed appropriate to the representative of Japan that the General Assembly or the Security Council should ask the International Court of Justice for an advisory opinion on several legal matters, e.g., whether the policy of *apartheid* was contrary to the provisions of the Mandate or to those of Article 73 of the Charter. In making this suggestion, Japan had no wish to minimize the importance of the political aspects involved (Dossier item 135; 1419th mtg., paras. 139-181).

58. The representative of *Tunisia* said that, as the Court had not dealt with the basic issues submitted to it, it fell to the Assembly's lot to seek the best measures to safeguard the sacred principles of the Charter. The Court did not cancel its Judgment of 1962 and the Advisory Opinions of 1950, 1955 and 1956. The 1966 Judgment of the Court had clearly shown that it was difficult to settle the issue in legal terms. For it is a political and colonial problem which calls for a solution based on the principles of the Charter and on General Assembly resolution 1514 (XV). A whole people was threatened with subjugation. The United Nations could not allow such a situation to continue. The United Nations should require the Government of South Africa to relinquish its powers under the Mandate and the General Assembly should prepare to exercise these powers itself (Dossier item 139; 1431st mtg., paras. 31, 39, 46, 48, 50). He proposed that the United Nations should take over the Mandate for as short a period as possible to enable all powers to be transferred to the people of South West Africa (Dossier item 146; 1454th mtg., para. 57).

(iv) Latin American States

59. The representative of *Argentina* stated that the right of the people of South West Africa to exercise freely their right of self-determination must be recognized. The United Nations possessed the necessary powers to lead the people of South West Africa to independence. The delegation of Argentina was in full accord with the ultimate objective of draft resolution A/L.483 and Add. 1-3. He welcomed the suggestion to set up a committee to study the most appropriate means of enabling the United Nations to lead the people of South West Africa to the free exercise of their right of self-determination. The committee should be appointed in the course of the present session so that the General Assembly could reach a decision before the end of the session (Dossier item 140; 1433rd mtg., paras. 107-110).

60. The representative of *Brazil* expressed a series of reservations in regard to

the draft resolution A/L.483. He stated that a decision by the General Assembly to take over the Mandate as called for by the draft resolution, and to assume direct responsibility for its administration, would be based on doubtful juridical grounds and, therefore, rather difficult to implement. He held that the Mandate had the character of a treaty and a treaty could not be unilaterally revoked unless there was an express provision for unilateral revocation contained in the text of the treaty, which was not the present case. Competence to determine and modify the international status of South West Africa rested with South Africa, acting with the consent of the United Nations. The revocation of the Mandate would leave the Territory a kind of *res nullius* without any legal status, and consequently vulnerable to conquest or annexation. The unilateral institution of a United Nations administering authority might be considered a violation of the principles of the Charter, which admitted only trusteeship. The representative of Brazil also pointed out that it was the function of the General Assembly only to make recommendations; it was the Security Council which could make decisions with cogent efficacy. It was not therefore legitimate for the General Assembly to decide to revoke the Mandate (Dossier item 137; 1427th mtg., paras. 132, 133). It should be noted that the delegation of Brazil became a co-sponsor of the amendments in document A/L.488, and that at the 1454th meeting the representative of Brazil voted for those amendments and for the draft resolution as a whole (Dossier item 146; 1454th mtg., paras. 238, 243, 244).

61. The representative of *Chile* stated that South Africa had not fulfilled and had in fact disregarded its obligations under the Mandate, and did not deserve to continue as a Mandatory Power. South West Africa had also, he stated, the inalienable right of self-determination (Dossier item 137; 1427th mtg., paras. 156-160).

62. The position of the delegation of *Cuba* was based on the following principles: support of the inalienable rights of the African people of the Territory to immediate and unrestricted independence; the unhesitating rejection of the policy of *apartheid* and colonialist exploitation; affirmation of the right and duty of the United Nations to protect the right of this people to the full exercise of its sovereignty and self-determination (Dossier item 146; 1454th mtg., para. 198). In the general debate on the item, the delegation of Cuba had expressed itself in support of the resolution to revoke South Africa's Mandate, but added that it was in favour of total and immediate independence for the Territory (Dossier item 143; 1449th mtg., para. 52).

63. The representative of *Ecuador* stated that the final objective to be aimed at must be the earliest possible attainment by South West Africa of complete independence. The measures which the General Assembly may adopt should include the revocation of the Mandate conferred on South Africa, on the ground that if the General Assembly exercised supervision over the administration of the Territory, it could not remain indifferent or unmoved when it was shown that the Government of South Africa had not fulfilled the sacred trust which it received from the international community (Dossier item 140; 1433rd mtg., para. 31).

64. The representative of *Haiti* referred to the obligations incumbent on a Mandatory Power under the international mandates system. These obligations South Africa had not fulfilled. Ever since 1946 South Africa had been the only country administering a Mandate which had refused to observe the requirements of the Mandate, under which it was bound to submit an account of its administration. The delegation of Haiti would support any decision the General Assembly might take to free South West Africa (Dossier item 135; 1419th mtg., paras. 206, 213, 219).

65. The representative of *Peru* stated that the position taken by South Africa obliged the United Nations to condemn South Africa and to revoke its Mandate over South West Africa. The United Nations must exercise its right, and its duty, to lead all peoples which had not yet attained independence towards complete and fruitful sovereignty (Dossier item 141; 1439th mtg., paras. 67, 70).

66. The representative of *Venezuela* stated that South Africa had failed to fulfil its obligations with respect to the administration of the mandated Territory. Consequently, and in view of the fact that the repeated efforts of various United Nations bodies had not had the slightest result, the United Nations must take over the Mandate and assume direct responsibility for the administration of the Territory (Dossier item 139; 1431st mtg., para. 140).

(c) *Delegations which abstained in the vote*

(i) France

67. In his intervention in the general debate on the item, the representative of *France* said, *inter alia*, that with each year that passed one saw in one form or another an aggravation of racial discrimination in South West Africa that was contrary to the United Nations Charter, contrary to the Universal Declaration of Human Rights, and contrary to the unanimous will of the Assembly (Dossier item 141; 1439th mtg., para. 143). The French delegation considered that the international obligations contracted by the South African Government when it was entrusted with the Mandate were not extinguished with the dissolution of the League of Nations. If, as South Africa claimed, the Mandate had ceased to exist, South Africa would be deprived of all legal foundation for exercising its authority, for it would have no justification for keeping its rights arising out of the Mandate while at the same time repudiating obligations deriving from the same source. Consequently, for the French delegation, the international status of South West Africa was still the same as before the dissolution of the League of Nations. The United Nations could and must exercise the supervisory functions formerly entrusted to the League of Nations (para. 144). The French delegation could only reaffirm its total opposition to the principles applied by the Government of South Africa by extending to the Territory of South West Africa its policy of *apartheid*. The South African Government had manifestly failed in that fundamental obligation to which it had subscribed under the terms of the Mandate. The French delegation was also firmly attached to the right of all peoples to self-determination (paras. 145-147).

68. In explaining his vote at the 1454th meeting (Dossier item 146), the representative of France expressed his delegation's opinion that the international status of South West Africa was still in force, that South Africa had disregarded its fundamental obligations under the Mandate by extending its policy of *apartheid* to that Territory, and that the essential aim of the United Nations should be to enable the population of South West Africa to determine for itself its future and thus to accede to independence. The French delegation stated that in maintaining these views, it had approved at least paragraphs 2, 3 and 7 of the draft resolution in its amended form, i.e., the reaffirmation that South West Africa was a territory having international status and that it should maintain this status until it achieved independence; the declaration that South Africa had failed to fulfil its obligations in respect of the administration of the Mandated Territory and ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa, and has, in fact, disavowed the Mandate; and the call upon the Government of South Africa forthwith to refrain and desist from any action, constitutional, administrative, political or

otherwise, which would in any manner whatsoever alter or tend to alter the present international status of South West Africa. The views which led the French delegation to abstain in the vote did not relate to the basic findings of fact and of law, but related to the legal validity of the method proposed for putting an end to the policy of South Africa in South West Africa. The French delegation stated that the question as to which United Nations bodies would have competence to effect the revocation of the Mandate had not been sufficiently considered. It did not see the justification for the United Nations itself assuming the administration of the Territory (Dossier item 141; 1439th mtg., paras. 143-156). France's dissent related to the wisdom of having South West Africa administered by the United Nations. Although the French delegation had stated that it did not exclude the withdrawal of the Mandate, it could not agree with the manner in which the withdrawal had been decided upon. The French delegation also mentioned its disagreement with General Assembly resolution 1514 (XV). It considered that the very special case of South West Africa had nothing to gain from being linked with a general and questionable text of this kind (Dossier item 146; 1454th mtg., paras. 326-330).

(ii) United Kingdom

69. The representative of the *United Kingdom* stated at the 1448th meeting that certain conclusions were absolutely clear: that the 1950 Advisory Opinion stood; that the South African Government's contention that the advisory opinions had been over-ruled had completely failed; South West Africa had been and was a territory under international Mandate; South Africa had the international obligations stated in Article 22 of the Covenant. The provisions for international accountability lay at the heart of the mandates system (paras. 33-38). By word and by action the South African Government had clearly demonstrated its undeviating determination to deny and repudiate essential obligations incumbent upon it under the Mandate. By repudiating these obligations, so clearly affirmed by the International Court of Justice, it had, in effect, forfeited its title to administer the Mandate. The South African Government could not deny its essential obligations under the Mandate without forfeiting whatever rights it might have had in regard to the administration of the Mandate. It no longer had the right to carry the sacred trust conferred upon it. These, in the view of the representative of the United Kingdom, were conclusions about which one need have no doubt whatsoever (paras. 41-45).

70. The representative of the United Kingdom pointed to a number of legal questions affecting the future of the Territory, on which the Assembly had no guidance from the Court. His delegation did not wish that the last word of the Court on this great issue should be the Judgment of July 1966. It seemed highly desirable to demonstrate to the world and to the South African Government in particular that the Judgment by the Court given in July 1966 was in no way a victory or justification or vindication for the South African Government. The clear conclusions which the Assembly must reach from a study of the legal and factual aspects of the question of South West Africa must be that by its disavowal of its obligations under the Mandate, in particular by its breach of the requirements of international accountability, the South African Government had forfeited the right to administer the Mandate (paras. 45-49). After referring to what he had said in the Special Political Committee (472nd meeting) on 1 December 1965 on the issue of *apartheid* generally, the representative of the United Kingdom came again to the main question which he wished to put to the Assembly—that South Africa had forfeited the right to administer the Mandate (paras. 50-53). The United Kingdom could not accept the legal ar-

guments put forward by the representatives of South Africa in the debate; it certainly could not accept their defence of their racial policies. Even more strongly, the United Kingdom rejected the application of those policies to a country which was an international responsibility (para. 57). He concluded that methods and means must be found to enable all the people of South West Africa to proceed to freedom and true self-determination (Dossier item 142; 1448th mtg., paras. 33-58).

71. At the 1454th meeting, the representative of the United Kingdom expressed a number of reservations with respect to the resolution. These reservations related to the last paragraph of the Preamble. He believed that it would be at least unwise to use the words "including the right to revert to itself the administration of the Mandated Territory", a clause which the delegation regarded as doubtful in law. It had throughout been the United Kingdom's contention that the Assembly should not at that stage do more than state that the rights of the South African Government under the Mandate had terminated. That was a finding which the United Kingdom claimed to be right in view of the failure of the South African Government to fulfil its international obligations. The representative felt that the General Assembly should unite in a formal declaration that the South African Government's rights under the Mandate had terminated as a result of its failure to comply with its obligations under the Mandate (Dossier item 146; 1454th mtg., paras. 72-77).

72. It was made clear in the statements of the United Kingdom delegation that its dissent which led it to abstain in the vote on the draft resolution, did not relate to the findings of the violation of its obligations by South Africa and the consequence following from them, i.e., the termination of the Mandate, but to the technical and legal aspects of the steps to be taken subsequently.

(d) Delegations which voted against the draft resolution A/L.483 and Add. 1-3 and the amendments in document A/L.488

(i) Portugal

73. The representative of *Portugal* said that the resolution approved by the General Assembly had failed to take into consideration very pertinent and important juridical aspects of the question. In his opinion the international status of the Territory could be modified only by agreement between both parties to the contractual relationship, i.e., South Africa and the organization that created the Mandate. Neither party could alter the present status of the Territory without the concurrence of the other. The resolution went clearly beyond the competence of the General Assembly as defined in the Charter. Under the Charter the Security Council alone would appear to be the decision-making organ of the United Nations while the General Assembly could make only recommendations. From that point of view again it did not seem legitimate for the General Assembly to take a decision to consider the Mandate as terminating and South Africa as having no right to administer South West Africa. On the other hand, the Security Council itself could take up this question only if there were an actual or impending breach of, or threat to, international peace and security. Since this was not the case, it was difficult for the delegation of Portugal to understand how the Security Council could take up the matter (Dossier item 146; 1454th mtg., paras. 285, 286, 288).

(ii) South Africa

74. No attempt has been made to summarize in the present statement the arguments submitted to the General Assembly at its Twenty-first Session by the

delegation of the *Republic of South Africa*. References to the contributions to the debate of the South African delegation, to the speeches made by it in exercise of the right of reply and to the statement made in explanation of vote are given in paragraph 20¹.

Nor does the present paper summarize the comprehensive statements made in reply to the South African interventions by the delegations of Ethiopia (Dossier item 139; 1431st mtg., paras. 270 *et seq.*), Liberia (Dossier item 140; 1433rd mtg., paras. 112 *et seq.*) and the Philippines (Dossier item 141; 1439th mtg., paras. 280 *et seq.*).

75. Reference is also made to the statements made before the presentation of draft resolution A/L.483 at the 1414th meeting by Ethiopia, Liberia, Pakistan and Guinea, and at the 1417th meeting by South Africa, India and Tanzania.

General Observations on Resolution 2145 (XXI)

76. As has already been noted, resolution 2145 (XXI) was adopted by 114 votes to 2 with 3 abstentions. (At that time the United Nations had 121 Members.) Not only the sponsors of the draft resolution and of the Latin American amendments, but also the other members of the General Assembly (apart from South Africa and Portugal) supported the substantive provisions of the resolution, namely:

- (1) the reaffirmation of the right of the people of South West Africa to self-determination;
- (2) the reaffirmation of South West Africa's international status;
- (3) the declaration that South Africa had failed to fulfil its obligations and had, in fact, disavowed the Mandate;
- (4) that the Mandate was terminated and that South Africa had no other right to administer the Territory.

77. One of the abstaining delegations (France) expressly supported paragraphs 2, 3 and 7 of resolution 2145 (XXI). The difference of opinion between that delegation and the 114 delegations who voted in favour of the resolution did not relate to the basic findings of fact and of law, but to the method proposed for putting an end to the policy of South Africa in South West Africa. That delegation also mentioned its disagreement with General Assembly resolution 1514 (XV). It considered that the very special case of South West Africa had nothing to gain from being linked with a general and questionable text of this kind.

78. The dissent of another of the three abstaining delegations (United Kingdom) did not relate to the findings that South Africa had violated its obligations under the Mandate and to the consequence following from this finding, i.e., the termination of the Mandate. The United Kingdom delegation stated that these conclusions, *inter alia*, were absolutely clear: that the 1950 Advisory Opinion stood; that South West Africa was (i.e., in 1966) a territory under international Mandate; that by word and by action the South African Government demonstrated its undeviating determination to deny and to repudiate essential obligations incumbent upon it; that it had forfeited its title to administer the Mandate.

¹ A summary of a comprehensive written statement of the Foreign Minister of South Africa will be found in para. 275 below.

II. PROCEEDINGS OF THE AD HOC COMMITTEE FOR SOUTH WEST AFRICA ESTABLISHED BY RESOLUTION 2145 (XXI) OF THE GENERAL ASSEMBLY

79. The General Assembly in resolution 2145 (XXI) on the Question of South West Africa established the *Ad Hoc* Committee for South West Africa, composed of 14 States Members of the United Nations to be designated by the President of the General Assembly. The members of the Committee as designated by the President of the General Assembly were Canada, Chile, Czechoslovakia, Ethiopia, Finland, Italy, Japan, Mexico, Nigeria, Pakistan, Senegal, the Union of Soviet Socialist Republics, the United Arab Republic and the United States of America.

80. The purpose of the Committee was to recommend practical means by which South West Africa should be administered, so as to enable the people of the Territory to exercise the right of self-determination and to achieve independence. The Committee was to report to the General Assembly at a special session of the Assembly.

81. The Committee met between 17 January and 31 March 1967. The report of the Committee was submitted to the Fifth Special Session of the General Assembly, 21 April-13 June 1967 (Dossier item 185; A/6640).

82. The members of the Committee were agreed on the aim which the Committee was to pursue. There were differences of view, however, as to the nature of the action which the United Nations might take and the extent of its capabilities.

Proposals Submitted to the Ad Hoc Committee

83. Three principal proposals were examined by the Committee: a proposal submitted by the delegations of Ethiopia, Nigeria, Senegal and the United Arab Republic (A/AC.129/L.3 and L.5); a proposal by the delegations of Chile and Mexico (A/AC.129/L.7); and a proposal by the delegations of Canada, Italy and the United States of America (A/AC.129/L.6) (Dossier item 185; A/6640: for A/AC.129/L.3 and L.5, see paras. 45, 81 and 82; for A/AC.129/L.7, see para. 93; for A/AC.129/L.6, see para. 84).

(a) Proposal by Ethiopia, Nigeria, Senegal and the United Arab Republic.

84. The proposal submitted by the delegations of Ethiopia, Nigeria, Senegal and the United Arab Republic was fully endorsed by the delegation of *Pakistan* which stated that it wished to associate itself formally with those proposals as a co-sponsor (Dossier item 185; A/6640, para. 99). The proposal was favoured by the representative of *Finland* (Dossier item 185; A/6640, para. 66), and had to a very large extent the support of the representatives of *Czechoslovakia* (Dossier item 185; A/6640, para. 103) and the *USSR* (Dossier item 185; A/6640, para. 117).

85. The proposal contained provisions for the creation by the General Assembly of an organ to be called the *United Nations Council for South West Africa*, and for the appointment of a *United Nations Commissioner for South West Africa*.

86. The terms of reference of the Council were to include the task of taking over the administration of the Territory, ensuring the withdrawal of South African police and military forces, and their replacement by United Nations law enforcement personnel. The Council was to be based in South West Africa and to be responsible for the maintenance of law and order.

87. The proposal also recommended that the General Assembly should

declare South Africa's continued presence in South West Africa, and any action by South Africa which frustrated or obstructed the task of the Council, as an act of aggression against the people and the territorial integrity of South West Africa, and a flagrant defiance of the authority of the United Nations.

(b) *Proposal by Chile and Mexico*

88. The proposal submitted by the delegations of Chile and Mexico was supported by the delegation of *Japan* (Dossier item 185; A/6640, para. 98).

89. The proposal also contained provision for the establishment by the General Assembly of a United Nations Council for South West Africa, and for the designation of a United Nations Commissioner for South West Africa.

90. The Council was to assume full responsibility for the administration of South West Africa. It was also to take the necessary steps to establish a constituent assembly charged with drawing up an independence constitution for the Territory. The Council was to enter immediately into contact with the authorities of South Africa in order to lay down procedures for the transfer of the Territory with the least possible upheaval.

(c) *Proposal by Canada, Italy and the United States*

91. The proposal submitted by the delegations of Canada, Italy and the United States contained a provision in terms of which the Committee, considering that by resolution 2145 (XXI) the General Assembly had, *inter alia*, declared that the Government of South Africa had lost the right to administer South West Africa and that the Territory had come under the direct responsibility of the United Nations, would recommend to the Fifth Special Session of the General Assembly, *inter alia*, the appointment of a Special Representative for South West Africa and a United Nations Council for South West Africa.

92. The mandate of the Special Representative was to include the duty "to establish all contacts that he may deem necessary" and the duty "to determine the necessary conditions that will enable South West Africa to achieve self-determination and independence".

93. The gist of the three-Power proposal was explained to be that the Territory was to be administered by the people of South West Africa themselves and any form of direct alien administration should be ruled out.

94. The three delegations were of the opinion that the United Nations had to exhaust all other means to realize the purposes of resolution 2145 (XXI) before considering coercive measures. They considered the requirement, in their proposals, that the Special Representative should "establish all contacts that he may deem necessary" to be an essential element in his terms of reference (Dossier item 185; A/6640, paras. 85 to 92).

Transmission of the Three Proposals to the General Assembly

95. None of the three proposals obtained majority support and the *Ad Hoc* Committee decided to transmit to the General Assembly the three proposals submitted to the Committee by the three groups of its member delegations (Statement of the Rapporteur of the *Ad Hoc* Committee at the 1503rd meeting of the General Assembly (Fifth Special Session)) (Dossier item 166, para. 5).

The Propositions Underlying All Three Proposals

96. It will be noted that while the three proposals differed as to the practical action to be taken by the General Assembly at that stage, they all proceeded

from the basic propositions recited, *inter alia*, in the preamble of the joint proposal by Canada, Italy and the United States, that the Government of South Africa had lost the right to administer South West Africa; that the Territory had come under the direct responsibility of the United Nations; that in these circumstances the United Nations must discharge its responsibility with respect to South West Africa. The preamble also referred to the reaffirmation that the people of South West Africa had the inalienable right to self-determination, freedom and independence.

Differences of View on Practical Action

97. The proposal by *Ethiopia, Nigeria, Senegal* and the *United Arab Republic* placed special emphasis on the need for an interim United Nations administration which should last only as long as was necessary for organizing elections and forming a responsible government (Dossier item 185; A/6640, para. 46).

98. The proposal of *Chile* and *Mexico* suggested that the Council for South West Africa, *inter alia*, negotiate the actual transfer of the Territory with the authorities of the Republic of South Africa (Dossier item 185; A/6640, para. 95).

99. The proposal by *Canada, Italy and the United States* contained a recommendation that the steps listed therein "be taken to enable the people of South West Africa to govern the Territory themselves on the basis of unified representative government and self-determination" (Dossier item 185; A/6640, para. 84). The *USSR* (Dossier item 185; A/6640, para. 68), and *Czechoslovakia* (Dossier item 185; A/6640, para. 76) favoured the immediate granting of independence to the people of South West Africa.

Subjects on Which Unanimity of View Existed in the Ad Hoc Committee

100. The differences of view concerning the best possible approach to practical action notwithstanding, there was unanimity among the members of the *Ad Hoc* Committee that South Africa's Mandate had been terminated and that steps enabling the people of South West Africa to exercise their right to self-determination must be taken. In the words of one delegation (the United States of America, Dossier item 185; A/6640, para. 110), all the members of the Committee were aware of the presence in South West Africa of an administration which was without legal authority and of which the overwhelming majority of member States disapproved. There was agreement that the South African presence in South West Africa was illegal. There was no agreement on the measures to remove it.

101. This view that South Africa had no title to be in South West Africa and to administer it was also expressed in connection with the incident recorded in the following paragraph.

102. At its fifteenth meeting the *Ad Hoc* Committee was informed that the Government of South Africa claimed to be offering the people of a section of South West Africa, Ovamboland, the opportunity of gaining self-government. Following statements on this question made by the representatives of Mexico, Chile, the USSR, Japan, Czechoslovakia, the United States, Ethiopia, Pakistan and Canada, the Chairman of the *Ad Hoc* Committee noted that the statements made on the subject confirmed that the Committee unanimously endorsed the view that the proposal of the South African Government with regard to Ovamboland was contrary to General Assembly resolution 2145 (XXI) and was therefore illegal (Dossier item 185; A/6640, paras. 124-127).

III. PROCEEDINGS OF THE FIFTH SPECIAL SESSION OF THE GENERAL ASSEMBLY WHICH LED TO THE ADOPTION OF RESOLUTION 2248 (S-V) OF 19 MAY 1967

103. The Fifth Special Session of the General Assembly convened on 21 April 1967 and discussed the "Question of South West Africa" at its 1503rd through 1518th plenary meetings (Dossier items 166-181).

104. As was noted in section II of the present review, the General Assembly, in resolution 2145 (XXI), paragraph 6, created the *Ad Hoc* Committee for South West Africa to recommend practical means by which South West Africa should be administered, and to report to the General Assembly at a special session no later than April 1967.

*Documents before the General Assembly in Connection with the Item
Report of the Ad Hoc Committee for South West Africa*

105. The General Assembly had before it the report of the *Ad Hoc* Committee for South West Africa containing three proposals and an informal suggestion transmitted without recommendation after consideration by the *Ad Hoc* Committee (Dossier item 185; A/6640).

Draft resolutions

Draft resolution A/L.516/Rev. 1.

106. At the 1506th plenary meeting the representative of Nigeria introduced document A/L.516 and Add. 1-3, a 58-Power draft resolution recommending the establishment in the Territory of a United Nations Council for South West Africa to administer South West Africa (Dossier item 169; 1506th mtg., pp. 2-17; Dossier item 185; A/L.516 and Add. 1-3).

107. The representative of Nigeria in introducing the draft resolution stated that preambular paragraph 3 reaffirmed resolution 2145 (XXI) by which the General Assembly terminated the Mandate exercised by South Africa and decided that South Africa had no other right to administer the Territory of South West Africa; that preambular paragraph 4 recorded the General Assembly's assumption of direct responsibility for the Territory of South West Africa in accordance with resolution 2145 (XXI); and that preambular paragraph 5 recognized the General Assembly's consequential responsibility to effect its obligations by taking practical steps to transfer power to the people of South West Africa. The representative of Nigeria stated "We cannot think of any member State of this Organization taking exception to any of these paragraphs . . ." (Dossier item 169; 1506th mtg., p. 6).

108. A revised draft resolution A/L.516/Rev. 1, co-sponsored by 79 members, was introduced by the representative of Nigeria at the 1516th plenary meeting following consultations (Dossier items 185 and 189; A/L.516/Rev. 1: Dossier item 179; 1516th mtg.).

109. The draft resolution A/L.516/Rev. 1 represented an accommodation between the Afro-Asian text (A/L.516 and Add. 1-3) and several Latin American suggestions propounded initially by Chile and Mexico in the *Ad Hoc* Committee. In presenting this revised text recommending, *inter alia*, the establishment of a United Nations Council on South West Africa to administer directly the Territory of South West Africa, the representative of Nigeria stated: "Our starting point is resolution 2145 (XXI), and if we are able to accommodate any suggestion for amendment it is necessary that whoever proposes that suggestion be clearly operating upon the understanding not only that resolution

2145 (XXI) exists but also that it exists to be implemented" (Dossier item 179; 1516th mtg., pp. 3-32).

Draft resolution A/L.517

110. At the 1507th plenary meeting the representative of Saudi Arabia introduced draft resolution A/L.517 providing for the appointment of Co-Administrators to administer South West Africa together with South Africa on an interim basis pending the functioning of the United Nations Council for South West Africa (Dossier item 170; 1507th mtg., paras. 109-129; Dossier item 185; A/L.517). Draft resolution A/L.517 was never put to the vote: it was "suspended" at the request of the author (Dossier item 179; 1516th mtg., p. 51).

Adoption of Resolution 2248 (S-V)

111. The General Assembly at its 1518th meeting adopted the draft resolution A/L.516/Rev. 1 as resolution 2248 (S-V). There were 85 votes in favour and 2 against, with 30 abstentions:

In favour: Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Morocco, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Barbados, Bolivia, Brazil, Burma, Burundi, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cyprus, Dahomey, Ecuador, El Salvador, Ethiopia, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Ivory Coast.

Against: Portugal, South Africa.

Abstaining: Luxembourg, Malawi, Malta, Mongolia, Netherlands, New Zealand, Norway, Poland, Romania, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Czechoslovakia, Denmark, Finland, France, Hungary, Iceland, Ireland, Italy (Dossier item 181; 1518th mtg., pp. 6-10).

Statements in the General Debate and Explanations of Vote

Statements by co-sponsors of draft resolution A/L.516/Rev. 1

112. The co-sponsors of draft resolution A/L.516/Rev. 1 believed that the Fifth Special Session had been convened to implement resolution 2145 (XXI); and that resolution 2145 (XXI) was the point from which the Fifth Special Session must proceed. Some of the co-sponsors referred expressly and approvingly to certain principles in resolution 2145 (XXI). The representative of *Ethiopia* observed that if the General Assembly was to be consistent with itself its debate at the fifth special session would have to proceed within the sole context of resolution 2145 (XXI) and in the light of the report of the *Ad Hoc* Committee on South West Africa. Having decided to terminate the Mandate and to assume direct responsibility for advancing South West Africa

to independence, the General Assembly was obliged to create effective machinery for implementing its decisions (Dossier item 166; 1503rd mtg., paras. 20, 65-66). The representatives of *Trinidad and Tobago*, *Kuwait* and *Yemen* agreed that the Assembly was not convened to reopen discussion of the merits of South Africa's case with respect to the Mandate, but to discuss practical alternatives for implementing resolution 2145 (XXI) and to examine the report of the *Ad Hoc* Committee (Dossier item 168; 1505th mtg., p. 36; Dossier item 171; 1508th mtg., para. 64; Dossier item 173; 1510th mtg., p. 71). The delegation of *Thailand* considered the terms of resolution 2145 (XXI) irrevocable and non-negotiable and believed the question of South West Africa must proceed "from reaffirmation of Assembly resolution 2145 (XXI) to translation of the provisions in that resolution into concrete and practical action" (Dossier item 173; 1510th mtg., pp. 77-78).

113. The representative of *Somalia* referred to the most important matter on which there was general concurrence: "the fact that all members recognized that there is no going back on the provisions of General Assembly resolution 2145 (XXI), which terminated the right of South Africa to administer South West Africa and which placed the Territory under the direct responsibility of the United Nations (Dossier item 169; 1506th mtg., p. 27). The representative of *Jamaica* considered the Assembly's point of departure "the international status of South West Africa, which is now under the direct responsibility of the United Nations" (Dossier item 171; 1508th mtg., para. 28). The representative of *Nepal* emphasized that the Assembly had adopted a decision (resolution 2145 (XXI)) on certain "basic and fundamental" principles, reopening of the debate upon which would be impermissible. "It is the understanding of my delegation that these principles are (1) the Mandate conferred on the British Government to be exercised on its behalf by the South African Government is terminated; (2) the Government of South Africa has no other right to administer the Territory; and (3) South West Africa comes under the direct responsibility of the United Nations, and this responsibility must be discharged" (Dossier item 173; 1510th mtg., pp. 83-85). The representative of the *United Arab Republic* believed the first step in the direction of enabling the people of South West Africa to exercise self-determination and to achieve independence had been taken by the General Assembly when it terminated the Mandate. "What should logically follow is how best we can ensure the transfer of power to the people of South West Africa." "What we are called upon to do is to follow up resolution 2145 (XXI) and step forward" (Dossier item 171; 1508th mtg., paras. 16-17). The representative of *Tanzania* referred to the assumption by the Assembly of responsibility for South West Africa, and called upon the Assembly to implement its obligation to transfer all powers to the people of the Territory, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples and resolution 2145 (XXI) (Dossier item 172; 1509th mtg., p. 22). The representative of *Iraq* emphasized that the Assembly at the current special session was obliged to concentrate on a single issue—the administration of South West Africa by the United Nations with a view towards preparing the people of the Territory for self-determination and independence (Dossier item 176; 1513th mtg., p. 61). The representative of *Chile* observed: "The basic declarations of the United Nations—that the Mandate has terminated, that the United Nations assumes direct responsibility over the Territory, that the objective of the United Nations is to lead the Territory to self-determination and independence—are immutable and irreversible. That is why we believe that the common denominator, from which no proposal can depart, is still the strict framework of resolution 2145

(XXI)" (Dossier item 167, 1504th mtg., pp. 53-55). The representative of *Liberia* also considered irrevocable the Assembly's decision to revoke South Africa's right to administer South West Africa and to assume direct responsibility for the Territory (Dossier item 178; 1515th mtg., para. 42).

114. The representative of *Burma* argued that even those Members which had abstained in the voting upon resolution 2145 (XXI) shared the views of the overwhelming majority, namely that the Government of South Africa had breached its obligations under the sacred trust and had thus forfeited its right to administer the Mandate (Dossier item 175; 1512th mtg., para. 97). The delegation of *Barbados* stated that it would have voted in favour of resolution 2145 (XXI) had it acceded to independence and been represented in the General Assembly at the time of the adoption of that resolution (Dossier item 168; 1505th mtg., p. 21).

115. The following co-sponsors proceeded from the basic proposition that South Africa's Mandate had terminated, that South Africa had no other right to administer South West Africa and that the United Nations had assumed direct responsibility for the Territory. They considered the implementation of resolution 2145 (XXI), not the substance of that resolution, the proper subject for discussion at the fifth special session: *Guinea* (Dossier item 166; 1503rd mtg., para. 92), *Senegal* (Dossier item 172; 1509th mtg., p. 41), *Kenya* (Dossier item 169; 1506th mtg., p. 26), *Congo (Democratic Republic of)* (Dossier item 176; 1513th mtg., p. 3), *Guyana* (Dossier item 174; 1511th mtg., pp. 47-55), *Uruguay* (Dossier item 178; 1515th mtg., paras. 56-115), *Yugoslavia* (Dossier item 172; 1509th mtg., pp. 56-66), *Iran* (Dossier item 173; 1510th mtg., pp. 2-10), *Turkey* (Dossier item 173; 1510th mtg., pp. 71-75), *Congo (Brazzaville)* (Dossier item 173; 1510th mtg., pp. 27-40), *Ivory Coast* (Dossier item 174; 1511th mtg., pp. 32-40), *Sierra Leone* (Dossier item 174; 1511th mtg., pp. 77-86), *Chad* (Dossier item 175; 1512th mtg., paras. 124-135), *Rwanda* (Dossier item 176; 1513th mtg., pp. 51-57), *Syria* (Dossier item 178; 1515th mtg., paras. 116-129), *Philippines* (Dossier item 175; 1512th mtg., paras. 26-37), *India* (Dossier item 175; 1512th mtg., paras. 38-52), *Afghanistan* (Dossier item 178; 1515th mtg., paras. 66-94), *Burundi* (Dossier item 176; 1509th mtg., pp. 13-15), *Libya* (Dossier item 176; 1513th mtg., pp. 21-26), *Ceylon* (Dossier item 177; 1514th mtg., paras. 19-27), *Ghana* (Dossier item 172; 1509th mtg., pp. 13-15), *Upper Volta* (Dossier item 173; 1510th mtg., pp. 21-26), *Uganda* (Dossier item 173; 1510th mtg., pp. 37-45), *Mauritania* (Dossier item 170; 1507th mtg., p. 26), *Cameroon* (Dossier item 175; 1512th mtg., paras. 104-123), *Central African Republic* (Dossier item 176; 1513th mtg., pp. 37-50), *Sudan* (Dossier item 177; 1514th mtg., paras. 95-114), *Indonesia* (Dossier item 174; 1511th mtg., pp. 71-77), *Cyprus* (Dossier item 177; 1514th mtg., paras. 54-81), *Niger* (Dossier item 172; 1509th mtg., pp. 66-77).

Statements by delegations which voted in favour of but did not co-sponsor draft resolution A/L.516/Rev. I

116. The representative of *Saudi Arabia* stated that draft resolution A/L.517 "mentioned nothing about the Mandate, because we decided at the last session that South Africa had forfeited its right to the Mandate" (Dossier item 170; 1507th mtg., para. 110). The delegation of *Japan* stressed its support for resolution 2145 (XXI). "The termination of the Mandate and of the right of the Government of South Africa to continue to administer the Territory of South West Africa or to exercise any control over its inhabitants can no longer possibly be called into question by anyone" (Dossier item 175; 1512th

mtg., para. 58). The representative of *Spain* believed the fifth special session must proceed strictly within the context of resolution 2145 (XXI) and in the light of the report of the *Ad Hoc* Committee on South West Africa (Dossier item 180; 1517th mtg., p. 37).

117. The following delegations also emphasized that the fifth special session had been convoked to implement resolution 2145 (XXI), not to discuss the merits or shortcomings of that resolution: *Mali* (Dossier item 173; 1510th mtg., p. 46), *China* (Dossier item 177; 1514th mtg., paras. 82-94), *Israel* (Dossier item 178; 1515th mtg., paras. 1-9), *Greece* (Dossier item 181; 1518th mtg., pp. 47-50).

Statements by permanent members of the Security Council abstaining in the vote upon draft resolution A/L.516/Rev. 1

118. The representative of *France* stated that South Africa had "renege[d] on the obligations imposed upon it by the Mandate with respect to ensuring the material and moral well-being as well as the social progress of the inhabitants of South West Africa". He believed the problem "confronting the Assembly is not so much that of guaranteeing the administration of the Territory during a transitional period, as it is that of determining the ways and means by which the population of South West Africa will be able, if it so desires, to accede to independence" (Dossier item 173; 1510th mtg., pp. 58-61).

119. The delegation of the *USSR* endorsed the informal suggestion it had made in the *Ad Hoc* Committee on South West Africa, including support for the immediate independence of the people of South West Africa (Dossier item 167; 1504th mtg., pp. 46-47).

120. The delegation of the *United Kingdom* reaffirmed its conclusion "that the South African Government had forfeited the right to administer the Mandate over South West Africa" and restated its support for the self-determination of the people of South West Africa and the correctness of the 1950, 1955 and 1956 Advisory Opinions of the International Court of Justice. The representative of the United Kingdom repeated that his delegation had been unable to vote for resolution 2145 (XXI) for a number of reasons. "We had and still have doubts on several legal issues." "Moreover, we were convinced that the terms of reference of the *Ad Hoc* Committee should not have been confined and restricted as they were but should have been widened to allow and require the Committee to consider all aspects of the future course to be followed by the United Nations, with the agreed object of self-determination and independence for all the people of the Territory." The representative of the United Kingdom concluded that his delegation had been prepared to support the proposal submitted to the *Ad Hoc* Committee by Italy, Canada and the United States, but could not endorse the alternative proposals before the General Assembly for they were not based upon broad agreement and could only raise false hopes (Dossier item 167; 1504th mtg., pp. 62-65, 68-70; Dossier item 181; 1518th mtg., pp. 11-12).

121. The representative of the *United States* reaffirmed his delegation's support for resolution 2145 (XXI) which "contains the basic agreed position of the United Nations" on the question of South West Africa and which "is our anchor". The representative "proposed not to step backward from resolution 2145 (XXI), but to find ways within the capacity of the United Nations to put it into practical effect" (Dossier item 168; 1505th mtg., pp. 2-6, 8-10; Dossier item 181; 1518th mtg., pp. 51-52).

Statements by Western European and other States (other than permanent members of the Security Council) abstaining in the vote upon draft resolution A/L.516/Rev. 1

122. The abstaining members of this group, without exception, reaffirmed the principles of resolution 2145 (XXI). The representative of *Canada* stated: "I wish to emphasize that Canada accepts the decision of the United Nations General Assembly, contained in resolution 2145 (XXI). We accept that the Mandate of South Africa was terminated by that decision, that the Territory henceforth comes under the direct responsibility of the United Nations, and that the United Nations must discharge its responsibilities in helping the people of South West Africa to independence and self-determination" (Dossier item 167; 1504th mtg., p. 22). The representative of *Italy* stated that members of the *Ad Hoc* Committee on South West Africa agreed in "taking as the basis for our deliberations the provisions of resolution 2145 (XXI) and its ultimate objectives: the exercise of self-determination and the attainment of independence by the people of South West Africa" (Dossier item 177; 1514th mtg., para. 31).

123. The abstaining members of this group considered the current special session devoted to the implementation of resolution 2145 (XXI). The representative of *Denmark* stressed that during any contacts between the United Nations and South Africa the terms of resolution 2145 (XXI) would under no conditions be negotiable, for the only purpose of such contacts would be to implement resolution 2145 (XXI) (Dossier item 177; 1514th mtg., para. 7).

124. These abstaining members did not, however, believe that draft resolution A/L.516/Rev. 1 could effectively or realistically implement resolution 2145 (XXI). The representative of *Norway* insisted that his delegation had not changed its position since voting in favour of resolution 2145 (XXI): "my Government is ready to vote for new resolutions implementing that resolution, provided they have a reasonable chance of being executed and will bring effective help towards the freedom of South West Africa" (Dossier item 181; 1518th mtg., pp. 23-25). The representative of the *Netherlands* reminded the Assembly that when his delegation had voted for resolution 2145 (XXI) it had made clear not only its consideration that the decision to terminate the Mandate was entirely justified in view of South Africa's failure to comply with the provisions of the Mandate Agreement, but also its reluctance that the United Nations assume immediately a direct responsibility for the administration of South West Africa in view of the likelihood that such an effort would be unsuccessful (Dossier item 181; 1518th mtg., p. 27). The representative of *Finland* reaffirmed his delegation's view that any decision taken at the fifth special session would have to be based upon resolution 2145 (XXI) and directed toward self-determination and independence for the people of South West Africa. He regretfully concluded that his delegation would not vote for draft resolution A/L.516/Rev. 1 which, while an impressive expression of the convictions of a great majority of the Assembly, could not in practice be carried out. "This should not be taken to imply any weakening of our commitment to the aims and purposes of resolution 2145 (XXI)" (Dossier item 181; 1518th mtg., p. 37). The representative of *Sweden* reaffirmed support for the provisions of resolution 2145 (XXI). He did not consider the current revised draft resolution concrete and constructive, for it did not command the broad, persuasive support of resolution 2145 (XXI) and possibly was not a firm basis for further United Nations action (Dossier item 170; 1507th mtg., paras. 3-5; Dossier item 181; 1518th mtg., pp. 38-41). The representative of *Malta* stressed

support for resolution 2145 (XXI) but feared that the revised draft resolution, unlikely to be implemented, would adversely affect the prestige of the United Nations (Dossier item 181; 1518th mtg., pp. 46-47). The representative of *Iceland* observed that discussions and negotiations during the fifth special session reflected the prevailing desire in the Assembly to take a step forward in pursuance of the goals set forth in resolution 2145 (XXI) and, at the same time, to endeavour to maintain the overwhelming majority by which that resolution had been adopted (Dossier item 180; 1517th mtg., p. 11). The delegation of *Austria* restated its approval of resolution 2145 (XXI), observing that only a draft enjoying the full and active support of the permanent members of the Security Council could enable the United Nations to achieve the goal set out in that resolution (Dossier item 181; 1518th mtg., pp. 32-35). The representative of *Ireland* suggested that, in view of South Africa's obvious determination to remain in forcible occupation of South West Africa, the Assembly, as the authority legally and morally responsible for the Territory, seek forthwith the assistance of the Security Council in effecting the Assembly's obligations to the people of South West Africa (Dossier item 176; 1513th mtg., p. 22).

Statements by members of the Afro-Asian group abstaining in the vote upon draft resolution A/L.516/Rev. I

125. The representative of *Malawi* referred to his delegation's position at the Twenty-first Session of the General Assembly during which "we made it abundantly clear that we held no brief for the manner in which the Mandate over South West Africa was administered by South Africa. We recognized that a change was necessary. But my delegation abstained on the resolution strictly on the basis that it was not capable of being implemented". However, as the resolution had been supported by the vast majority of Assembly members, he considered the Assembly obligated to continue searching for ways to implement it (Dossier item 169; 1504th mtg., p. 81; Dossier item 176; 1513th mtg., p. 101). The representative of *Botswana* believed the status of South West Africa must be determined by the United Nations representing the international community, not by South Africa acting unilaterally; he could not, however, envisage a change in the status of South West Africa without the active co-operation of the present administering authority in any machinery designed to set in motion the process of self-determination and independence. Although he considered it possible to argue that the Mandate had been terminated and that South Africa illegally occupied South West Africa, the representative reminded the Assembly that resolution 2145 (XXI) had not removed South Africa's administration from the Territory (Dossier item 174; 1511th mtg., pp. 26-30).

Statements by members of the Eastern European group abstaining in the vote upon draft resolution A/L.516/Rev. I

126. The representative of *Czechoslovakia* believed the task of the fifth special session was to consider and adopt measures by which the provisions of resolution 2145 (XXI) would be brought to life. He proposed the withdrawal of South Africa from South West Africa and the independence of the Territory (Dossier item 170; 1507th mtg., paras. 51, 54). The representative of *Romania* believed one of the basic duties of the General Assembly at the Fifth Special Session was to demand firmly that all States without exception strictly comply

with the provisions of resolution 2145 (XXI) (Dossier item 171; 1508th mtg., para. 55). The representative of the *Byelorussian SSR* supported the exercise by the people of South West Africa of their right to self-determination and independence in accordance with the provisions of the United Nations Charter and the Declaration on the Granting of Independence to Colonial Countries and Peoples (Dossier item 173; 1510th mtg., para. 32). The representative of the *Ukrainian SSR* reaffirmed his delegation's opinion in favour of the immediate granting of independence to the people of South West Africa (Dossier item 174; 1511th mtg., pp. 7-18). The delegation of *Hungary* maintained that the people of South West Africa, like the people of any other colonial territory, had every right to immediate independence (Dossier item 174; 1511th mtg., pp. 62-63). The representative of *Bulgaria* endorsed the decisions contained in resolution 2145 (XXI) and suggested that the efforts of the United Nations be directed toward the expulsion of South Africa and its illegal administration from South West Africa in order to promote the Territory's independence (Dossier item 175; 1512th mtg., paras. 5-7, 20, 22, 24). The representative of *Poland* referred to his delegation's understanding that the provisions of resolutions 1514 (XVI) and 2145 (XXI) were aimed at the immediate liberation of the people of South West Africa and to his delegation's continued support for the inalienable right of the people of South West Africa to freedom and independence (Dossier item 176; 1513th mtg., para. 92).

Statement opposing the adoption of draft resolution A/L.516/Rev. 1

127. Having referred to his delegation's opposition to the adoption of resolution 2145 (XXI), the representative of *Portugal* stated: "The present resolution, contained in document A/L.516/Rev. 1, is intended to implement those provisions. Consequently, the Portuguese delegation could not do anything other than assume the same position as last year . . ." (Dossier item 181; 1518th mtg., p. 27).

Statements by delegations absent during the vote upon draft resolution A/L.516/Rev. 1

128. The representative of *Albania* believed the General Assembly should supplement its decision of 27 October 1966 by formally and effectively proclaiming the independence of South West Africa (Dossier item 172; 1509th mtg., pp. 53-55). The representative of *Lesotho* considered the terms of resolution 2145 (XXI) clear about the termination of the Mandate previously exercised by South Africa over South West Africa. He thought it of the utmost importance that the special session agree on equally clear terms to govern the transfer of authority from the *de facto* administrator of South West Africa to the United Nations administration (Dossier item 174; 1511th mtg., pp. 69-70).

General Observations on General Assembly Resolution 2248 (S-V)

129. All delegations participating in the debate with the exception of one (*Portugal*) considered the implementation of resolution 2145 (XXI), not the substance of that resolution, the proper focus of discussion at the Fifth Special Session. Resolution 2145 (XXI) was frequently described as a point of departure or the context within which the Fifth Special Session must proceed.

IV. SURVEY OF GENERAL ASSEMBLY RESOLUTIONS RELATING TO NAMIBIA
ADOPTED SUBSEQUENT TO GENERAL ASSEMBLY RESOLUTIONS 2145 (XXI) AND
2248 (S-V)

130. The General Assembly continued to be seized of the question of South West Africa after the termination of the Mandate by resolution 2145 (XXI) and after the establishment of the United Nations Council for South West Africa by resolution 2248 (S-V).

Resolutions 2324 (XXII) and 2325 (XXII) of 16 December 1967

131. At its 22nd Session, on 16 December 1967, the General Assembly adopted resolutions 2324 (XXII) and 2325 (XXII) (Dossier items 246 and 247).

Resolution 2324 (XXII)

132. The General Assembly, in resolution 2324 (XXII), condemned the illegal arrest, deportation and trial at Pretoria of 37 South West Africans as a flagrant violation by the Government of South Africa of their rights, of the international status of the Territory, and of General Assembly resolution 2145 (XXI). It called upon the Government of South Africa to discontinue forthwith this illegal trial and to release and repatriate the South West Africans concerned. It also drew the attention of the Security Council to the resolution.

Resolution 2325 (XXII)

133. In resolution 2325 (XXII) the General Assembly, *inter alia*, condemned the refusal of the Government of South Africa to comply with General Assembly resolutions 2145 (XXI) and 2248 (S-V), and declared that the continued presence of South African authorities in South West Africa was a flagrant violation of its territorial integrity, international status and the terms of earlier General Assembly resolutions.

134. It called upon the Government of South Africa to withdraw from the Territory of South West Africa unconditionally and without delay all its military and police forces and its administration; to release all political prisoners; and to allow all political refugees who are natives of the Territory to return to it.

135. The General Assembly also directed an appeal to all member States, particularly to the main trading partners of South Africa and to those which had economic and other interests in South Africa and South West Africa, to take effective action and other measures designed to ensure the immediate withdrawal of the South African administration from the Territory of South West Africa.

136. The General Assembly requested the Security Council to take effective steps to enable the United Nations to fulfil the responsibilities it had assumed with respect to South West Africa, and it further requested the Security Council to take all appropriate measures to enable the United Nations Council for South West Africa to discharge fully the functions and responsibilities entrusted to it.

Resolution 2372 (XXII) of 12 June 1968

137. On 12 June 1968 the General Assembly at its resumed 22nd Session adopted resolution 2372 (XXII) (Dossier item 248), and expressed its concern that the continued refusal of the Government of South Africa to comply with its obligations to the United Nations and to the international community as a

whole constituted a flagrant defiance of the authority of the United Nations.

138. It deplored the defiance by the Government of South Africa of the General Assembly and Security Council resolutions concerning the illegal arrest, deportation, trial and conviction of South West African patriots.

139. The General Assembly proclaimed that, in accordance with the desires of its people, South West Africa should henceforth be known as "Namibia".

140. At the same time it charged the United Nations Council for South West Africa (renamed the United Nations Council for Namibia) with the performance, as a matter of priority, of additional functions.

141. It condemned the Government of South Africa for its persistent refusal to comply with the resolutions of the General Assembly and the Security Council, its refusal to withdraw from Namibia, and its obstruction of the efforts of the United Nations Council for Namibia to proceed to Namibia.

142. It condemned action by the Government of South Africa designed to consolidate its illegal control over Namibia and to destroy the unity of the people and the territorial integrity of Namibia. The General Assembly also condemned the actions of States which, by continued political, military and economic collaboration with South Africa, had encouraged its Government to defy the authority of the United Nations.

143. It reiterated its demand that the Government of South Africa withdraw from Namibia immediately and unilaterally all its military and police forces and its administration.

144. It recommended to the Security Council urgently to take all appropriate steps to secure the implementation of the resolution and to take effective measures in accordance with the provisions of the Charter to ensure the immediate removal of the South African presence from Namibia.

Resolution 2403 (XXIII) of 16 December 1968

145. At its 23rd Session, on 16 December 1968, by resolution 2403 (XXIII) (Dossier item 269) the General Assembly again reaffirmed the inalienable right of the people of Namibia to self-determination and independence and the legitimacy of their struggle against the foreign occupation of their country. It reiterated its condemnation of the Government of South Africa for its persistent defiance of the authority and resolutions of the United Nations, for its refusal to withdraw from Namibia, and for its policy and actions designed to destroy the national unity and territorial integrity of Namibia.

146. It decided to draw the attention of the Security Council to the serious situation which had arisen as a result of the illegal presence and actions of the Government of South Africa in Namibia. It recommended to the Security Council urgently to take all effective measures in accordance with the relevant provisions of the Charter.

Resolution 2498 (XXIV) of 31 October 1969

147. At its 24th Session, on 31 October 1969, by resolution 2498 (XXIV) (Dossier item 312) the General Assembly again reaffirmed the inalienable right of the people of Namibia to self-determination and independence, condemned the Government of South Africa for its persistent refusal to withdraw its administration from Namibia and drew the attention of the Security Council to the deteriorating situation which had arisen as a result of the refusal of the South African authorities to comply with resolution 269 (1969) of the Security Council.

Resolution 2678 (XXV) of 9 December 1970

148. At its 25th Session, on 9 December 1970 by resolution 2678 (XXV), the General Assembly having recalled the previous General Assembly and Security Council resolutions which have a bearing on the question of Namibia and also the relevant provisions of General Assembly resolution 2621 (XXV) containing the programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples expressed its deep concern at the deteriorating situation in Namibia and the continued refusal of South Africa to comply with the relevant decisions. It took into consideration the fact that South Africa has persistently violated the principles of the Charter. The General Assembly was "mindful of the obligations of member States under Article 25 thereof". It condemned the Government of South Africa, *inter alia*, for the extension of the internationally condemned policies of apartheid to the Territory, and for its policies aimed at destroying the unity of the people and the territorial integrity of Namibia through the creation of the so-called separate "homelands". It also condemned the support given to South Africa by its major trading partners and called upon the Governments concerned to cease immediately any assistance to and co-operation with South Africa. The General Assembly invited the Security Council to consider taking effective measures including those provided for under Chapter VII of the Charter.

Note. For documentation relevant to resolutions 2324 (XXII), 2325 (XXII) and 2372 (XXII), see Dossier items 190 to 245; for documentation relevant to resolution 2403 (XXIII), see Dossier items 249 to 268; for documentation relevant to resolution 2498 (XXIV), see Dossier items 271 to 311.

V. PROCEEDINGS LEADING TO SECURITY COUNCIL RESOLUTION 245 (1968)*Request for a Meeting of the Security Council*

149. The Security Council had occasion to pronounce itself on the subject of the termination by General Assembly resolution 2145 (XXI) of South Africa's Mandate over South West Africa for the first time when, on 24 January 1968, in a communication addressed to the President of the Security Council, the delegations of 53 States Members of the United Nations requested that an urgent meeting of the Security Council be convened (Dossier item 51; S/8355 and Adds. 1-2).

150. The delegations in their letter referred to three resolutions of the General Assembly on the Question of South West Africa: resolution 2145 (XXI) of 27 October 1966, resolution 2324 (XXII) of 16 December 1967, and resolution 2325 (XXII) of 16 December 1967 (Dossier items 162, 246 and 247).

151. The delegations stated that the question of South West Africa has assumed a most serious and urgent dimension following the decision of the Government of South Africa to resume what the delegations called the illegal trial at Pretoria of 35 South West Africans in flagrant violation of their rights and of the international status of the Territory of South West Africa. They urged the Security Council to take immediately effective and appropriate measures to ensure that the Government of South Africa complied with the General Assembly resolutions and discontinued forthwith the illegal trial, and released and repatriated the South West Africans concerned.

Meeting of the Security Council

152. The Security Council considered the question at its 1387th meeting on 25 January 1968 (Dossier item 22; 1387th mtg.).

Documents before the Security Council in Connection with the Question Considered

153. The documents before the Security Council in this connection included a communication dated 23 January 1968 to the President of the Security Council from the President of the United Nations Council for South West Africa (Dossier item 50; S/8353). The communication recalled, *inter alia*, General Assembly resolutions 2145 (XXI), 2248 (S-V) and 2324 (XXII), and addressed itself particularly to the arrest and trial of the South West Africans referred to in the preceding paragraph.

154. The Security Council also had before it the report of the Secretary-General on the Question of South West Africa (Dossier item 52; S/8357 and Addenda) which reproduced replies from States, specialized agencies and other intergovernmental organizations on action taken pursuant to operative paragraph 3 of General Assembly resolution 2324 (XXII). Paragraph 3 of the resolution had appealed to all States and international organizations to use their influence with the Government of South Africa in order to obtain its compliance with the paragraph of the resolution calling upon the Government of South Africa to discontinue forthwith the illegal trial and to release and repatriate the South West Africans concerned.

Adoption of Security Council Resolution 245 (1968)

155. The Security Council at its 1387th meeting on 25 January 1968 (Dossier item 22) unanimously adopted what became Security Council resolution 245 (1968) (Dossier item 105). While the operative paragraphs of the resolution dealt principally with the question of the trial of South West Africans by South Africa, the first preambular paragraph of the resolution read as follows:

"The Security Council,

Taking note of General Assembly resolution 2145 (XXI) of 27 October 1966, by which the Assembly terminated South Africa's Mandate over South West Africa and decided, inter alia, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations,"

Summary of Views Expressed in the Debate

156. In the debate on the problem which was before the Security Council, a number of delegations recalled and emphasized General Assembly resolution 2145 (XXI) by which South Africa's Mandate over South West Africa had been terminated.

157. The representatives of *Ethiopia* and the *United States* emphasized that resolution 2145 (XXI), which obtained the overwhelming support of the General Assembly, had already decided that South Africa's Mandate for South West Africa was terminated and that henceforth South West Africa came under the direct responsibility of the United Nations. The decision was clearly based on South Africa's own actions in breach of its obligations, its disavowal of the

Mandate, and its disregard of the opinions of the International Court of Justice (Dossier item 22; 1387th mtg., Ethiopia, pp. 37, 38-40; United States, p. 43).

158. The representative of the *USSR* repeated that at the Twenty-first Session of the General Assembly an overwhelming majority had decided to liquidate the Mandate of the League of Nations, under the cover of which the racists of South Africa established a colonial régime in South West Africa (Dossier item 22; 1387th mtg., p. 61).

159. The representative of *Hungary* shared the opinion that the trial at Pretoria was part of the persistent defiance of General Assembly resolutions, including resolution 2145 (XXI). In the Hungarian view, any step or measure by the South African authorities in South West Africa could only be considered as an act of aggression (Dossier item 22; 1387th mtg., p. 71).

160. The representative of *Senegal* pointed out that with the adoption of resolution 2145 (XXI) the General Assembly had taken an historic decision, putting an end to the Mandate. He stated that resolution 2145 (XXI) was in danger of remaining completely a dead letter unless the United Nations adopted coercive measures against South Africa to force it to comply with decisions of the United Nations. The Security Council must take effective steps to divest South Africa once and for all of all sovereignty over South West Africa, measures that would finally permit the United Nations to assume its responsibilities for the Territory. It was a demonstration of cynicism that, despite resolution 2145 (XXI), South Africa had dared to arrest, within their own territory, to deport to Pretoria and to place on trial in its own courts 35 South West African nationals, applying its Terrorism Act, a law which was in itself a defiance of all human conscience and a violation of the Universal Declaration of Human Rights (Dossier item 22; 1387th mtg., pp. 77-81).

161. The representative of *Paraguay* said that it was primarily in the light of the provisions of resolution 2145 (XXI) that the Security Council must consider the subject before it and it was in accordance with those provisions that the United Nations in general, and the Security Council in particular, must adopt the necessary decisions (Dossier item 22; 1387th mtg., p. 91). The representative of *Brazil* recalled that Brazil and the Latin American countries had played a significant role in the adoption of General Assembly resolutions 2145 (XXI) and 2248 (S-V), and that in conformity with those resolutions Brazil had voted in favour of General Assembly resolutions 2324 (XXII) and 2325 (XXII). Resolution 2324 (XXII) established quite clearly that the arrest, deportation and trial of the 35 South West Africans had been decided in disregard of resolutions 2145 (XXI) and 2248 (S-V) (Dossier item 22; 1387th mtg., p. 93).

162. The representative of *Nigeria* stated that the United Nations Council for South West Africa had rejected, and would continue to reject because it considered them absolutely invalid and void, any and all laws and legislation enacted by South Africa which had the effect of partitioning the Territory or of annexing it to South Africa. The United Nations Council for South West Africa would consider ways and means of abrogating all and any laws or legislation enacted by South Africa after the adoption of resolution 2145 (XXI) as illegal and of no consequence. Whatever authority South Africa continued to exercise in the Territory must, in the view of the delegation of Nigeria, be regarded as a usurpation of power, and illegal. South Africa's continued presence in the Territory must be regarded as an act of open aggression (Dossier item 22; 1388th mtg., pp. 98-100, 106.)

163. The representative of *Pakistan* recalled a series of resolutions which the Security Council had adopted in regard to the policy of *apartheid* pursued by South Africa in South Africa (resolutions 181 (1963), 182 (1963), 190 (1964)),

and added that if the Security Council was impelled to pronounce itself in so forthright a manner in the resolutions from which he had quoted in regard to the situation *within South Africa*, it was clear that the Security Council was under a much greater compulsion to take a stronger stand regarding the tragic and explosive situation *in South West Africa* (Dossier item 22; 1387th mtg., pp. 108-110).

164. The representative of the *United Kingdom*, whose delegation had voted for General Assembly resolution 2324 (XXII) seeking discontinuance of the trial and for the resolution of the Security Council, stated however that the reservations of the United Kingdom Government in respect to resolution 2145 (XXI) remained unchanged. The United Kingdom delegation wished by its vote to associate itself with the international concern provoked by the trial, and with the plea made to the South African authorities. He went on to describe in detail the objectionable features of the South African Terrorism Act (Dossier item 22; 1387th mtg., p. 87). In explaining his vote, the representative of the United Kingdom said that, like General Assembly resolution 2324 (XXII), the resolution adopted by the Security Council (245 (1968)) took as its starting point and quoted in its first preambular paragraph, resolution 2145 (XXI). The United Kingdom delegation had abstained in the vote on that resolution and had repeatedly explained the reasons why it was unable to support it. In supporting what became Security Council resolution 245 (1968), the United Kingdom delegation reserved its position on those parts of it which referred to, or flowed from, General Assembly resolution 2145 (XXI), and the delegation's support for the resolution and its wording must be understood in that sense. In particular, the United Kingdom delegation must have doubts about the unqualified use of the word "illegal" in this resolution (Dossier item 22; 1387th mtg., pp. 116, 117).

165. Similarly, the representative of *France* said that, sharing the emotion felt by the majority of delegations, the French delegation had associated itself with the voting on resolution 245 (1968) in spite of the fact that it did not vote at the time in favour of resolution 2145 (XXI) to which reference was made in the first preambular paragraph of resolution 245 (1968). Furthermore, as concerns the distribution of competence among the various organs of the United Nations as this was envisaged in the Charter, the French delegation considered that resolution 2145 (XXI) was not binding upon the Security Council which therefore remained the master of its own decisions so far as the question of South West Africa was concerned (Dossier item 22; 1387th mtg., p. 116).

166. The President of the Security Council (*Pakistan*) in closing the meeting said that the Council had taken an historic decision. The fact that the decision had been adopted unanimously demonstrated conclusively that the Security Council had that day spoken in clear and unequivocal terms as the conscience of all mankind (Dossier item 22; 1387th mtg., p. 117).

General Observations on Security Council Resolution 245 (1968)

167. In evaluating the importance of Security Council resolution 245 (1968) in relation to the question now before the International Court of Justice, it is to be noted that the resolution, including the first paragraph of its preamble, was adopted unanimously by all 15 members of the Security Council.

168. Two permanent members of the Security Council, while neither voting against, nor abstaining on, the first preambular paragraph or on the draft resolution, nevertheless made certain reservations to the taking note, in the first preambular paragraph, by the Security Council of General Assembly

resolution 2145 (XXI). It will be seen, however (see section I, paras. 67 to 72, above), that the reservations of these two permanent members of the Security Council did not relate to the whole of General Assembly resolution 2145 (XXI), and that both supported those provisions of the resolution which are relevant in the present context.

VI. PROCEEDINGS LEADING TO SECURITY COUNCIL RESOLUTION 246 (1968)

Request for a Meeting of the Security Council

169. The South African authorities notwithstanding the adoption by the Security Council of resolution 245 (1968) on 25 January 1968 (Dossier item 105), proceeded with the prosecution of the South West Africans whose trial had been the subject of resolution 245 (1968), and also the subject of resolution 2324 (XXII) adopted by the General Assembly on 16 December 1967 (Dossier item 246).

170. On 9 February 1968 a South African court passed severe sentences on most of the South West Africans accused.

171-179. On 12 February 1968 in a communication addressed to the President of the Security Council, 11 States which were members of the United Nations Council for South West Africa requested that an urgent meeting of the Security Council be convened (Dossier item 54; S/8397). The request was supported by 47 other States Members of the United Nations, in a letter addressed to the President of the Security Council on 12 February 1968 (Dossier item 55; S/8398 and Add. 1/Rev. 1 and Add. 2).

Meetings of the Security Council

180. The Security Council considered the question at its 1390th to 1397th meetings, between 16 February and 14 March 1968 (Dossier items 23-30).

Documents before the Security Council

(a) Communications and reports

181. The documents before the Security Council in this connection included a communication dated 9 February 1968 to the President of the Security Council from the President of the United Nations Council for South West Africa (Dossier item 53; S/8394); a communication dated 15 February 1968 to the President of the Security Council from the Chairman of the Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Dossier item 57; S/8410); and a communication dated 15 February 1968 to the President of the Security Council from the Chairman of the Commission on Human Rights (Dossier item 58; S/8411). The Security Council also had before it the reports of the Secretary-General in documents S/8357 and addenda (Dossier item 52), and S/8359 (Dossier item 56).

(b) Draft resolution S/8429 and amendments

182. *Draft resolution.* A draft resolution sponsored by the delegations of Algeria, Brazil, Ethiopia, India, Pakistan, Paraguay, and Senegal (Dossier item 63; S/8429) was submitted to the Security Council at its 1394th meeting (Dossier item 27; 1394th meeting, p. 6).

183. The draft resolution was introduced, on behalf of the sponsors, by the representative of Pakistan at the 1395th meeting of the Security Council, who stated, *inter alia*, that the Security Council owed it to itself to make it clear to South Africa that the Council had the will to act effectively if South Africa disregards the (then) draft resolution. For by doing so South Africa would be violating Article 25 of the Charter. He went on to say:

"It is clear, in the light of what was said and done in regard to the interpretation of Article 25 at the time of the signing of the United Nations Charter at the San Francisco Conference in 1945, that the Security Council is competent to make recommendations as well as to take decisions under Chapter VI of the Charter. The question whether the Security Council in acting under Chapter VI of the Charter is merely making a recommendation or is taking a decision is, in our view, a matter more of policy for the Security Council than of law. Having regard to South Africa's defiance of the United Nations for more than 20 years, and finally having regard to South Africa's defiance of Security Council resolution 245 (1968), the seven sponsors consider that the time has now come for the Security Council to adopt a resolution in the nature of a decision under Chapter VI of the Charter, rather than to make yet another recommendation to South Africa (Dossier item 28; 1395th mtg., p. 13).

184. *Amendments to the draft resolution.* The draft resolution was amended, in the course of the proceedings, as follows:

(a) *The fourth preambular paragraph of the draft resolution* originally read as follows:

"Mindful of the obligation of Member States to accept and carry out the decisions of the Security Council in accordance with the Charter."

This text paraphrased Article 25 of the Charter by which Members of the United Nations have agreed "to accept and carry out the decisions of the Security Council in accordance with the present Charter".

In the final text of resolution 246 (1968), the fourth preambular paragraph reads as follows:

"Mindful that Member States shall fulfil all their obligations as set forth in the Charter."

(b) *Operative paragraph 4 of the draft resolution* originally read as follows:

"The Security Council,

4. Decides that in the event of failure on the part of the Government of South Africa to comply with the provisions of the present resolution, which will be in violation of Article 25 of the Charter, the Security Council will meet immediately to decide on the application of effective measures as envisaged in the Charter of the United Nations."

Operative paragraph 4 of the draft resolution was replaced, in the final text of resolution 246 (1968), by the following two paragraphs:

"The Security Council

4. *Urges* Member States who are in a position to contribute to the implementation of the present resolution to assist the Security Council in order

to obtain compliance of the Government of South Africa with the provisions of the present resolution;

5. *Decides* that in the event of failure on the part of the Government of South Africa to comply with the provisions of the present resolution, the Security Council will meet immediately to determine upon effective steps or measures in conformity with the relevant provisions of the Charter of the United Nations.”.

The amendment consisted mainly in the omission of the express reference to Article 25 of the Charter.

(c) Operative paragraph 5 of the draft resolution requested “the Secretary-General to follow closely the implementation of the present resolution and to report thereon to the Security Council by . . . 31 March 1968”. In the final text of resolution 246 (1968) the Secretary-General was requested to report to the Security Council “not later than 31 March 1968”.

Adoption of Security Council Resolution 246 (1968)

185. The Security Council at its 1397th meeting on 14 March 1968 unanimously adopted as resolution 246 (1968), the draft resolution S/8429 amended as noted above (Dossier item 30; 1397th mtg., p. 11).

186. The representative of the United Kingdom, in explaining his vote for resolution 246 (1968), emphasized that the Security Council was not then dealing with the whole question of the status and future of South West Africa, but that it was concerned with the prisoners in the Pretoria trial. He recalled that the United Kingdom delegation had reservations on General Assembly resolution 2145 (XXI) and the wording based on it, and maintained these reservations (Dossier item 30; 1397th mtg., pp. 11-15).

Provision in Resolution 246 (1968) referring to General Assembly Resolution 2145 (XXI)

187. The operative paragraphs of resolution 246 (1968) were devoted to the question of the trial, and sentencing, of the South West Africans.

188. The preamble to the resolution, however, referred in its second paragraph set out below, to the termination by General Assembly resolution 2145 (XXI) of South Africa's Mandate over South West Africa:

“*Taking into account* General Assembly resolution 2145 (XXI) of 27 October 1966 by which the General Assembly of the United Nations terminated the Mandate of South Africa over South West Africa and assumed direct responsibility for the Territory until its independence.”

189. The wording of this provision differs somewhat from the wording of the corresponding provision in the first paragraph of the preamble of Security Council resolution 245 (1968). One difference was that in resolution 245 (1968) the Security Council had *taken note* of General Assembly resolution 2145 (XXI); whereas in resolution 246 (1968) the Security Council took the General Assembly resolution *into account*. The expression “taking into account” was thought by the sponsors of the draft resolution to be more appropriate to the situation than the words “taking note” (Dossier item 28; 1395th mtg., pp. 8-10).

Summary of Views Expressed in the Debate

190. The following paragraphs contain references to statements made in the

course of the discussion in the Security Council which may be considered as reflecting the views of the members of the Security Council, and of the other States invited to participate in the discussion, as to the effect and consequences of General Assembly resolution 2145 (XXI) and of Security Council resolution 245 (1968).

Members of the Security Council

191. The representative of *Pakistan*, at the time also the President of the United Nations Council for South West Africa, recalled that on the day of the adoption of Security Council resolution 245 (1968) (25 January 1968), the representative of the United States had described the adoption of that resolution as "indeed an historic occasion" because it marked "the first time in the history of the Organization that the Security Council has been seized of problems relating directly to South West Africa" (Dossier item 24; 1391st mtg., p. 16). The statement made by the representative of Pakistan at the 1395th meeting of the Security Council in introducing draft resolution S/8429, on behalf of its sponsors, is referred to in paragraph 183 above.

192. The representative of the *United States* expressed the view that—

"South Africa's action in applying its own Terrorism Act to South West Africa—an international Territory over which South Africa's Mandate has been terminated by its own violations—was contrary to the international obligations of the Government of South Africa, to the international status of the Territory, to international law, and to the fundamental rights of the inhabitants" (Dossier item 24; 1391st mtg., pp. 33-35).

193. The representative of the *United States*, commenting on what he referred to as the attempts by South Africa to cloak itself in a mantle of seeming legality, said that the legal justifications for South Africa's actions were spurious and that "now that its Mandate is at an end, it cannot invoke even . . . a conditional authority" (Dossier item 24; 1391st mtg., pp. 33-37; Dossier item 30; 1397th mtg., p. 22).

194. The representative of *Hungary* observed that the trial in itself was illegal since it was directed against persons who did not come under the jurisdiction of South Africa. They were citizens of South West Africa temporarily under United Nations mandate. For this reason the trial was an international problem and clearly concerned the Security Council (Dossier item 24; 1391st mtg., p. 46). With regard to the differing positions concerning the applicability of Article 25 of the Charter, the representative of Hungary stated that in his delegation's view South Africa had already provided a solution in this connection. It has refused to implement resolution 245 (1968) and, by so doing, has clearly violated the obligations which it had undertaken under the Charter (Dossier item 29; 1396th mtg., p. 12). It has already violated Article 25 (Dossier item 30; 1397th mtg., p. 27).

195. The representative of *France* explained that his delegation had fully agreed with the request to hold an urgent meeting of the Security Council because the fate of nationals of a territory with international status was at stake. The French delegation greatly regretted that the Government of South Africa had not acted in accordance with the recognized rules of law and justice, bearing in mind and taking into account the international character of the Territory (Dossier item 24; 1391st mtg., pp. 56 and 57). The French delegation could not accept the extension to South West Africa of the policy of apartheid and could only reprove the action undertaken by South African authorities against nation-

als of a Territory having international status. The French delegation accepted the text in spite of the fact that some of its preambular paragraphs contained references to which it had reservations which were well known (Dossier item 30; 1397th mtg., pp. 21-22).

196. The representative of the *USSR* agreed that all attempts to give a semblance of legality to the juridical force by invoking the Terrorism Act were absolutely hollow. The Terrorism Act was adopted after the United Nations had deprived South Africa of its Mandate over South West Africa, that is to say after the United Nations had, by a clear-cut decision, terminated any and all excuses South Africa might have for continuing to administer the Territory (Dossier item 24; 1391st mtg., p. 62). What was involved was not only the fate of the persons who fell victims to the colonialists' oppressions. The case revealed once more how South Africa was seeking, unlawfully and in violation of well-known decisions of the General Assembly and of the Security Council, to extend its jurisdiction into the Territory of South West Africa (Dossier item 30; 1397th mtg., p. 16).

197. The representative of *Brazil* stated that the illegality of the South African Government's decision was twofold:

(1) Since the adoption of General Assembly resolution 2145 (XXI) South Africa had no right to administer the Territory. The South West Africans concerned were not subject to the jurisdiction of South African courts.

(2) The Terrorism Act cannot be accepted since it incorporates the principle of retroactivity (Dossier item 25; 1392nd mtg., p. 7).

198. The representative of *Ethiopia* commented as follows:

"Having for years refused to recognize any United Nations responsibility and indeed its own responsibility to the people of South West Africa under the League of Nations Mandate, it has now escalated its defiance . . . by usurping altogether the international territory of South West Africa, for which the United Nations has assumed a unique and special responsibility since the adoption of Assembly resolution 2145 (XXI). This defiance has, of course, assumed particular significance with South Africa's rejection of the Council's decision of last month to discontinue forthwith the illegal trial of 35 South West Africans in Pretoria.

No one can indeed describe the illegal nature of these trials without begging the essential question—that is, these trials could not have been legal or just, as they are based on the illegal usurpation of power. Since the adoption of Assembly resolution 2145 (XXI), whatever responsibility South Africa might have had with respect to South West Africa, a responsibility which it refused to discharge, such responsibility as had existed has been terminated. The United Nations has since assumed direct responsibility for the administration of the Territory. South Africa cannot thus legally promulgate law, arrest and try South West Africans or administer justice, let alone injustice.

It must be made clear in the Council that it had already condemned the trials not because the trials of South West Africans were illegal *per se* but precisely because they had pre-empted United Nations responsibility. Indeed the Council would be treading on flimsy ground if it were to content itself only with the finding that the trials were illegal because the Act under which they were conducted violated basic norms of justice and law. Although this aspect is significant and relevant in this specific context, the

overriding consideration, I submit, should be that the trials were illegal because they are based on an exercise of power, acquired and now maintained by force.

It is obvious to us that in refusing to abide by Security Council resolution 245 (1968), the Government of South Africa has in fact refused to carry out a specific decision of the Council. Thus, any action the Council sees fit to contemplate at this juncture should, in our assessment, be based on the recognition of the fact that what is involved is nothing less than Article 25 of the Charter, that is, the failure of a State Member of the Organization to carry out decisions of the Council." (Dossier item 25; 1392nd mtg., pp. 22-26.)

199. The representative of Ethiopia further said that the question arose whether or not the defiance of South Africa came under the purview of Article 25 of the Charter and continued:

"It cannot be too strongly emphasized in this respect that decisions of the Council are decisions of the Organization which, on signing the Charter, each one of us has agreed to honour and carry out. No one can indeed ignore decisions of the Council without at the same time contravening his Charter obligations, which, I must repeat, are obligations freely entered into.

It is because we view the continued defiance of South Africa as a challenge to the authority of the Security Council, and, indeed, as a refusal to carry out the decisions of the Council, in the language of Article 25, that we urge that the Council should contemplate more effective measures to see that South Africa carries out Security Council resolution 245 (1968). At any rate, in our assessment, the very least that the Council could do is not to rule out the possibility of invoking more effective action on the basis of Article 25 of the Charter." (Dossier item 25; 1392nd mtg., p. 26).

200. The representative of Algeria recalled that the Security Council, reaffirming resolution 2145 (XXI) of the General Assembly, wished to place in its proper context the problem raised by the arrest and condemnation of some South West Africans, particularly to determine whether the South African Government was prepared to go back on its decision to maintain its authority over a Territory responsibility for which belongs to the United Nations, and especially the Security Council. He went on to say that a certain humanitarian interpretation led to a desire to limit the foreseeable consequences of the adoption of resolution 245 to the mere liberation of the persons unjustly detained. In the view of the Algerian representative the problem confronting the Security Council was a political, and only a political, problem. He believed that other measures, such as those provided for in Article 40 of the Charter, were necessary. South Africa illegally occupied and administered a territory that was under the authority of the United Nations. The United Nations is entrusted with the task of ensuring respect for the elementary principles of law in South West Africa and of leading that country to a status of independence (Dossier item 25; 1392nd mtg., pp. 31 to 37). For an additional statement by the representative of Algeria, see 1395th meeting, pages 21 to 27 (Dossier item 28).

201. The representative of China said that the conviction of the South West Africans under the retroactive Terrorism Act was the more deplorable when one bears in mind the international status of South West Africa (Dossier item 25; 1392nd mtg., p. 37).

202. The representative of *Paraguay* said that in illegally arresting, deporting and trying a group of South Africans the South African Government has flagrantly violated resolution 2145 (XXI). If the detention, deportation and trials were illegal, the handing down of sentences was doubly so and therefore assumed the character of an open challenge. Other speakers have questioned the legality of the laws applied because they are contrary to world-wide norms and standards. These views were most important. But the basic question was the lack of any right on the part of South Africa to exercise any administrative or other function in South West Africa, when this right has been declared terminated pursuant to the terms of resolution 2145 (XXI) (Dossier item 25; 1392nd mtg., pp. 38 to 42).

States not Members of the Security Council

203. The statements listed in the present paragraph and in paragraphs 204 to 208 below were made before the Security Council by representatives of States, members of the United Nations Council for South West Africa, non-members of the Security Council. The representative of the *United Arab Republic* said that South Africa had no right to administer South West Africa and therefore had no jurisdiction over the persons concerned in the trial and that the United Nations had a special responsibility toward the people and the Territory of South West Africa. Member States, collectively and individually, have an obligation to assist and help in putting into effect the decisions of the United Nations (Dossier item 25; 1392nd mtg., pp. 43-45).

204. The representative of *Indonesia*, said that resolution 245 (1968) was a decision, not a recommendation. As such it had binding force upon all Members under the terms of Article 25 of the Charter (Dossier item 26; 1393rd mtg., p. 11).

205. The representative of *Turkey* referred to resolution 2145 (XXI) as epoch-making. In his Government's view, inasmuch as the Mandate of South Africa has been terminated once and for all, the Government of South Africa had no legal right whatsoever to administer the Territory (Dossier item 26; 1393rd mtg., pp. 19-21).

206. The representative of *Yugoslavia*, addressing the Security Council emphasized that the group of South West Africans were taken from their homeland so that they could be brought to trial in a foreign country. The delegation of Yugoslavia considered resolution 245 (1968) to be an important step because in it the Security Council, by taking note of General Assembly resolutions 2145 (XXI) and 2324 (XXII) has for the first time been seized of the problems relating to South West Africa. The responsibility and competence of the Security Council has thus been asserted (Dossier item 26; 1393rd mtg., pp. 22-23).

207. The representative of *Nigeria* stressed that the accused had been tried in a foreign country. It was not the severity of the penalty to be imposed on South Africa, e.g., the question whether it should be under Article 5 or Article 6 or under Chapter VII, that was at issue but the fact that the Security Council retained its will and capacity to act (Dossier item 28; 1395th mtg., pp. 36-37).

208. The representative of *India*, commented on the reference in the draft resolution (as distinct from resolution 246 (1968) as adopted) to Article 25 of the Charter and on statements made within and without the Council chamber that this reference necessarily commits the Council to take action under Chapter VII. He said that, in general, India was among those Members of the Organization

which believe that Article 25 had very close and perhaps exclusive links with Chapter VII. However, he agreed with the statement by the representative of Algeria that allusion to Article 25 does not necessarily imply a mechanical reference to a specific chapter of the Charter.

209. The representative of India continued:

"This I do because the case we are considering today is *sui generis*. We are not now dealing with the usual situations envisaged under Chapters VI and VII of the Charter. This is not a dispute between two or more member States of the Organization. It is a dispute, although that is a mild word for it, between the Organization and a member State which has persistently defied the Organization. In such a situation it is necessary to warn the member State concerned that any further defiance of the United Nations will not be tolerated by the Security Council. Hence the reference to Article 25 of the Charter" (Dossier item 29; 1396th mtg., p. 6).

General Observations on Security Council Resolution 246 (1968)

210. The importance of resolution 246 (1968), like that of resolution 245 (1968), consists in the fact that by it the Security Council unanimously, without abstentions, confirmed General Assembly resolution 2145 (XXI) in saying that it is taking resolution 2145 (XXI) into account. Two permanent members of the Security Council, voting for the resolution, recalled reservations earlier expressed by them relating to part of General Assembly resolution 2145 (XXI).

VII. PROCEEDINGS LEADING TO SECURITY COUNCIL RESOLUTION 264 (1969)

211. The Security Council in resolutions 245 (1968) (Dossier item 105) and 246 (1969) (Dossier item 106) had dealt, in connection with the question of South West Africa, with the specific incident of the detention, trial and sentencing of South West Africans by a South African Court. The first resolution in which the Security Council dealt with the general problem of Namibia¹ was resolution 264 (1969) (Dossier item 107).

Request for a Meeting of the Security Council

212. On 14 March 1969, in a communication addressed to the President of the Security Council, the representatives of 46 States Members of the United Nations requested that an urgent meeting of the Security Council be convened to examine the deteriorating situation in Namibia, and to take appropriate action to enable the people of Namibia to exercise their right of self-determination (Dossier item 75; S/9090 and Add. 1-3).

Meetings of the Security Council

213. The Security Council considered the question at its 1464th and 1465th meetings on 20 March 1969 (Dossier items 31 and 32; 1464th and 1465th mtgs.).

¹ Paragraph 1 of General Assembly resolution 2372 (XXII) of 12 June 1968 provided that South West Africa "in accordance with the desires of its people" is to be known as "Namibia".

*Documents Before the Security Council**Communications*

214. The documents before the Security Council in this connection included a communication dated 19 March 1969 addressed to the President of the Security Council from the Chairman of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Dossier item 76; S/9097).

Draft resolution

215. At its 1464th meeting a draft resolution sponsored by the delegations of Colombia, Nepal, Pakistan, Paraguay, Senegal and Zambia was submitted to the Security Council (Dossier item 77; S/9100).

216. The representative of Zambia, in introducing the draft resolution, stated (Dossier item 31; 1464th mtg., pp. 21, 22) that it was incumbent upon the Council to be actively seized of the question in view of recommendations that had been made to the Council by the General Assembly. The draft resolution fell far short of the sponsors' demands, but he said it contained some positive elements which advanced the question a little further than had been done before.

217. As regards the first operative paragraph of the draft resolution, which recognized the termination of the Mandate, he stated that it was important and necessary if the Council was to enjoy the confidence of the General Assembly and the world community as a whole; and the paragraph also served to emphasize that South Africa had no right to administer Namibia.

218. As regards the second operative paragraph, which stated that the continued presence of South Africa in Namibia was illegal and contrary to the principles of the Charter and the previous decisions of the United Nations, he explained that the sponsors would have liked to state categorically that South Africa's continued stay in Namibia was an act of aggression and therefore a threat to international peace and security. The sponsors had however to accommodate the feelings of certain members who were averse to the idea of an inevitable confrontation with South Africa. As a consequence, the sponsors found it necessary to try to advance on such little progress as they had been able to achieve previously.

219. Operative paragraph 3 of the draft resolution, which called upon the Government of South Africa to withdraw immediately its administration from the Territory, introduced no new elements to the question, the representative of Zambia stated, the call having already been made by the General Assembly¹. The representative of Zambia referred to the fact that South Africa had already embarked on a divisive programme of creating Bantustans in Namibia. The programme, apart from being illegal, was fraught with danger. It was designed to weaken the national unity and the determination of Namibians who had ranged themselves against the forces of occupation.

220. The representative of Zambia also stated that, in the view of the sponsors of the draft resolution, operative paragraph 8 of the draft resolution did not entirely exclude the application of Chapter VII of the Charter. The demands of compromise had militated against the definition of such action, but it was readily accepted that this was a question of the art of the possible.

¹ The General Assembly, in resolution 2325 (XXII) of 16 December 1967, called upon the Government of South Africa to withdraw from the Territory of South West Africa unconditionally and without delay all its military and police forces and its administration.

Adoption of Security Council Resolution 264 (1969)

221. The Security Council at its 1465th meeting adopted as resolution 264 (1969) (Dossier item 107), the draft resolution proposed in document S/9100, without amendments. There were 13 votes in favour, none against, with 2 abstentions, namely France and the United Kingdom (Dossier item 32; 1465th mtg., p. 71).

222. The resolution, while also *taking into account* in its second preambular paragraph General Assembly resolution 2145 (XXI) and *reaffirming* in its sixth preambular paragraph the special responsibility of the Security Council towards the people and the Territory of Namibia, *recognized* in its *first operative paragraph* "that the United Nations General Assembly terminated the Mandate of South Africa over Namibia and assumed direct responsibility for the Territory until its independence".

223. The Security Council, in the *second operative paragraph* of the resolution, considered the continued presence of South Africa in Namibia to be illegal and contrary to the principles of the Charter and the previous decisions of the United Nations.

224. The Security Council, in the *third operative paragraph* of the resolution, called upon "the Government of South Africa to withdraw immediately its administration from the Territory".

225. The *fourth operative paragraph* of the resolution declared that "the actions of the Government of South Africa, designed to destroy the national unity and territorial integrity of Namibia through the establishment of Bantustans, are contrary to the provisions of the United Nations Charter".

226. *Operative paragraphs 5, 6 and 7* of the resolution declared that the Government of South Africa "has no right to enact the 'South West Africa Affairs Bill' " ¹ (*paragraph 5*); condemned "the refusal of South Africa to comply with General Assembly resolutions 2145 (XXI), 2248 (S-V), 2324 (XXII), 2325 (XXII), 2372 (XXII) and 2403 (XXIII) and Security Council resolutions 245 (1968) and 246 (1968) (*paragraph 6*); and invited "all States to exert their influence in order to obtain compliance by the Government of South Africa with the provisions of the present resolution" (*paragraph 7*).

227. The Security Council also decided, in *operative paragraph 8*, "that in the event of failure on the part of the Government of South Africa to comply with the provisions of the present resolution, the Security Council will meet immediately to determine upon necessary steps or measures in accordance with the relevant provisions of the Charter of the United Nations".

Summary of Views Expressed in the Debate

228. The following paragraphs contain references to statements, made in the course of discussion in the Security Council, which may be considered as reflecting the views of the members of the Security Council and of the United Arab Republic (whose representative, being the President of the United Nations Council for Namibia, was invited to participate in the discussion) as to the effect and consequences of General Assembly resolution 2145 (XXI) and the subsequent resolutions of the General Assembly and of the Security Council.

229. The representative of *Algeria* stated that in 1968 the Security Council had considered problems relating to the treatment of Namibian patriots by the South African régime. In March 1968 the Security Council had not, however,

¹ A draft statute then pending before the Parliament of South Africa.

tackled the fundamental question that faced the Council at its 1464th meeting, that was to say the adoption of practical means to achieve the Council's objectives, which were the accession of the Namibian people to sovereignty and independence. He went on to say that now the Council must go beyond the recognition of its responsibility, which must be assumed (Dossier item 31; 1464th mtg., pp. 11-16).

230. The statement made by the representative of *Zambia* in introducing the draft resolution S/9100 at the 1464th meeting of the Security Council has been referred to earlier in paragraphs 216-220 above.

231. The representative of *Senegal* stated that the Government of South Africa, despite the relevant decisions of the United Nations on this matter, had purely and simply annexed the Territory of Namibia. The constituent elements of that act of annexation were to be found in an entire series of legislative measures and regulations adopted by South Africa. [One of them, the South West African Affairs Bill, is expressly mentioned in operative paragraph 5 of the resolution.] (Dossier item 31; 1464th mtg., p. 36.)

232. It had always been the contention of his delegation, the representative of *Nepal* said, that the possibilities of the Security Council as the organ primarily responsible for the maintenance of international peace and security should be utilized with a view to giving effect to the General Assembly's historic resolution 2145 (XXI) and subsequent resolutions on the question of Namibia. Constituting the United Nations Council for Namibia by resolution 2248 (S-V) was nearly as important as resolution 2145 (XXI). It was the considered view of the delegation of *Nepal* that because of its refusal to vacate the Territory, the Government of South Africa was guilty of committing acts of aggression. The delegation of *Nepal* was not entirely satisfied with the provisions of the draft resolution in so far as the draft resolution failed to determine the reality of the situation, namely the continued illegal occupation of the Territory, which constituted a threat to international peace and security, and warded off any hint or suggestion of enforcement action under Chapter VII. He also said that the operative part of the draft resolution evaded resolution 2248 (S-V). [It will be noted that in operative paragraph 6 the Security Council condemns the refusal of South Africa to comply with, among others, General Assembly resolution 2248 (S-V).] In spite of these short-comings, the resolution marked, in the view of the delegation of *Nepal*, a vast improvement over Security Council resolutions 245 (1968) and 246 (1968) which touched upon the substantive political aspect of the question in their preambular parts only. Under the draft resolution now before the Security Council, the Council would significantly for the first time in its history, reinforce the historic General Assembly resolution 2145 (XXI) by recognizing the termination of the Mandate, the assumption by the Organization of direct responsibility for the Territory until its independence and, also for the first time, call upon the Government of South Africa to withdraw from the Territory (Dossier item 31; 1464th mtg., pp. 41-46).

233. The representative of *France* recalled that his delegation had stated in the General Assembly on 27 May 1968 that, if such were the desire of the majority, the French delegation would be in favour of the Security Council being seized of the problem of South West Africa (Dossier item 236; 1663rd mtg., pp. 24-25). After referring to previous disappointments, to the delicate negotiations that had preceded the unanimous adoption of Council resolution 246 (1968) and the explanations of vote given at that time, all clearly showing the limits within which the Council could act if it desired to achieve unanimity among its members, the representative of *France* asked whether the members of the Council were not all already at one in desiring to see an end to the unjust

humiliation imposed on so many Africans, and in wishing to restore the prestige of the Organization so gravely at stake in this matter. He added that the adoption of impractical texts and the making of empty threats could only carry the Council farther away from its goal. In his intervention the representative of France also said that it was doubtful whether the League of Nations could have unilaterally deprived South Africa of its Mandate over South West Africa. In his view the initiative taken by the General Assembly, far from having the effect awaited by its partisans, had only resulted in precipitating the evolution which they hoped to oppose, and that the efforts made to implement resolution 2145 (XXI) had not been crowned with success. He recalled that the French delegation did not vote for resolution 2145 (XXI) and had several times entered reservations to which that resolution had given rise (Dossier item 31; 1464th mtg., pp. 46-52).

234. The representative of *Pakistan* recalled that, not possessing the necessary authority to enforce the decisions of the United Nations, the General Assembly could not but turn, as it did in resolution 2403 (XXIII), to the Security Council to take urgently all effective measures, in accordance with the relevant provisions of the Charter, to ensure the immediate withdrawal of South African authorities from Namibia so as to enable Namibia to attain independence. In the Pakistani delegation's view, the draft text was a considerable advance on Council resolution 246 (1968) inasmuch as it addressed itself not to any particular actions of South African authorities in Namibia but to the basic issue of the unlawful presence of South Africa in the Territory. The delegation of Pakistan was disappointed that in paragraph 8 the Council merely repeated the language of operative paragraph 5 of resolution 246 (1968) instead of going further. In this respect the draft resolution clearly fell short of the requirements of the situation (Dossier item 31; 1464th mtg., pp. 54-56).

235. The representative of the *United States* recalled that all efforts and appeals by the international community had been rebuffed by the Government of South Africa. He referred to resolution 2145 (XXI) and said that the responsibility of the United Nations was to be informed of and to keep the world fully aware of developments affecting the vital interests of all Namibians; to promote those interests by all peaceful and practicable means; and to seek to assist the Namibians in the exercise of their right to self-determination. South Africa's action, the representative of the United States went on to say, demonstrated that the General Assembly had been correct in determining that South Africa had forfeited the right to administer Namibia and in concluding that the United Nations should assume responsibility for the Territory. This was the first time that the Council had met to consider the situation created by South Africa's refusal to implement resolution 2145 (XXI). The United States was willing to take every peaceful and practical step under the Charter which would assist in the achievement of freedom and independence by the people of Namibia. The United States supported the resolution which was wise because it did not commit the Security Council to sanctions. Despite the fact that South Africa had no legal right in Namibia, the United States Government believed that South Africa remained accountable to the United Nations for all of its actions in the Territory and for the well-being of the people so long as it remained in *de facto* control (Dossier item 32; 1465th mtg., pp. 3-10).

236. The representative of the *USSR* summed up his statement in which he had commented in detail on developments as a consequence of which South Africa had been deprived of any right to administer the Territory. In his opinion the positive aspects of the draft resolution were that it confirmed the main decisions which terminated the Mandate and because it called upon South

Africa to withdraw its administration from the Territory. Another positive element was the statement in the draft resolution that the activities of the South African Government, which violated the national unity and territorial integrity of Namibia through the creating of so-called Bantustans, were contrary to the Charter. As a whole the resolution was, in the USSR view, weak (Dossier item 32; 1465th mtg., pp. 21-26).

237. The representative of *Finland* stated that the resolution expressing the recognition of the fact that the General Assembly had terminated the Mandate and had assumed direct responsibility for the Territory, would mean more than a mere restatement of what the General Assembly had already decreed. It would mean that the authority and the power of the Security Council would be fully engaged in the task of translating that decision (resolution 2145 (XXI)) into reality. He recalled that the agreement reached in the General Assembly on the decision to terminate the Mandate did not extend to the means by which it could be carried out. He also said that one must be mindful of the fact that the responsibilities of the Security Council were of a different order from those of other United Nations organs. The termination of South Africa's Mandate was an irrevocable step (Dossier item 32; 1465th mtg., pp. 27-30).

238. The representative of the *United Kingdom* pleaded for agreement among the members of the Security Council on further steps. The United Kingdom delegation thought that the course adopted by the General Assembly in 1966 had been mistaken. In explaining the position of his Government he quoted from his statements in the General Assembly in which he had said, *inter alia*, that South Africa by repudiating its obligations had forfeited its title to administer the Mandate and that it had no longer the right to carry the sacred trust conferred upon it. He commented favourably on the fact that the sponsors of the draft resolution before the Council had abandoned their original intention to include in the draft resolution language from Chapter VII of the Charter (Dossier item 32; 1465th mtg., pp. 31-41).

239. The representative of the *United Arab Republic*, the President of the United Nations Council for Namibia, not a member of the Security Council, emphasized that the illegal presence of South Africa in Namibia constituted a foreign occupation of Namibia, in violation of the Charter, an act of aggression which the United Nations had the responsibility to suppress by all the means provided to it by the Charter (Dossier item 32; 1465th mtg., p. 42).

240. The representative of *Spain* had supported and continued to support resolution 2145 (XXI). His delegation believed that it was basic and fundamental for the maintenance of a just international order and for the survival of the United Nations that the resolutions of the principal organs of the Organization be complied with (Dossier item 32; 1465th mtg., pp. 51-52).

241. The representative of *Colombia* stated that the United Nations could not complacently ignore the situation which was no longer a problem between Namibia and South Africa but a confrontation between the Government of South Africa and the authority of the United Nations. The draft resolution was not strong in its concepts and not couched in strong words. It was well, however, that the Security Council with all its authority recognized and endorsed the termination of the Mandate that had permitted South Africa to be present in South West Africa (Dossier item 32; 1465th mtg., pp. 56-61).

242. The representative of *China* repeated what had been said by his delegation in 1947, i.e., that the powers received from the League of Nations under the mandates system were administrative powers, not powers of sovereignty. The administering State was a trustee, not an owner. The Chinese delegation unreservedly supported resolution 2145 (XXI). He stressed in particular para-

graph 7 of resolution 264 (1969) inviting all States to exert their influence in order to obtain compliance by South Africa with provisions of the resolution (Dossier item 32; 1465th mtg., pp. 61-63).

243. The representative of *Hungary* considered the draft resolution unsatisfactory on many counts: it nevertheless represented modest progress. In view of this, his delegation supported the draft resolution which envisaged, in the event of further non-compliance by South Africa with the will of the Council, that really effective measures would have to be taken (Dossier item 32; 1465th mtg., pp. 63-67).

General Observations on Security Council Resolution 264 (1969)

244. The Security Council in resolution 264 (1969) recognized the termination by the General Assembly of the South African Mandate over Namibia, and the assumption by the General Assembly of direct responsibility for the Territory until its independence. It declared the continued presence of South Africa in Namibia illegal and called upon the Government of South Africa to withdraw immediately its administration from the Territory.

245. Not only did the individual members of the Security Council reaffirm the action taken by the General Assembly in terminating the Mandate, but the reaffirmation was enacted by the Security Council as a body. The fact that two permanent members of the Security Council abstained in the vote did not affect the validity of the decision taken by the Security Council. The question of the effect of the voluntary abstentions of permanent members of the Security Council in votes on matters other than procedural ones is dealt with in greater detail elsewhere in the present document (see the Annex to the present document).

246. Moreover, the abstention of the French and United Kingdom delegations in the vote on what became resolution 264 (1969) demonstrated mainly the dissent of these two delegations from concrete steps foreshadowed in the resolution and not to the substantive decisions as expressed in operative paragraphs 1-6 thereof. The representative of France expressed at that stage some doubt on whether the League of Nations would have had the power to deprive South Africa unilaterally of its Mandate. He did not, because of this doubt, vote against the draft resolution. The representative of the United Kingdom expressed the view that the course adopted by the General Assembly in 1966 had been mistaken. This view did not lead him to vote against resolution 264 (1969).

VIII. PROCEEDINGS LEADING TO SECURITY COUNCIL RESOLUTION 269 (1969)

Request for a Meeting of the Security Council

247. On 24 July 1969 in a communication addressed to the President of the Security Council the representatives of the States which were members of the United Nations Council for Namibia requested that an urgent meeting of the Security Council be convened in order that the Security Council may consider "the situation resulting from the wholly negative reaction of South Africa to Security Council resolution 264 (1969), and from the measures which it is continuing to take in defiance of the authority of the Security Council and the General Assembly" (Dossier item 82; S/9359).

Meetings of the Security Council

248. The Security Council considered the question at its 1492nd to 1497th meetings, between 30 July and 12 August 1969 (Dossier items 33 to 38).

*Documents Before the Security Council**Communications and reports*

249. The documents before the Security Council in this connection included a communication dated 23 July 1969 addressed to the President of the Security Council from the President of the United Nations Council for Namibia (Dossier item 81; S/9352); and a communication dated 1 August 1969 addressed to the President of the Security Council by 46 States Members of the United Nations, and co-signed by an additional member State (Dossier item 84; S/9372 and Add. 1-3).

250. The Security Council also had before it a report submitted to the Security Council on 14 May 1969 by the Secretary-General (Dossier item 78; S/9204 and Add. 1), pursuant to operative paragraph 9 of Security Council resolution 264 (1969) which had requested the Secretary-General to follow closely the implementation of that resolution and to report to the Security Council as soon as possible. Annex I of the report reproduced the reply dated 30 April 1969, of the Minister of Foreign Affairs of the Republic of South Africa to the Secretary-General's telegram of 20 March 1967, conveying to the Minister of Foreign Affairs the text of resolution 264 (1969). The Minister enclosed with his reply the text of a statement he had made in the South African Senate on 20 March 1969 and an extract from a public address by the South African Prime Minister on 21 March 1969. He also invited the Secretary-General's attention to an earlier letter from the Prime Minister dated 27 March 1968 and to the documents mentioned therein.

Draft resolution

251. A draft resolution sponsored by the delegations of Algeria, Colombia, Pakistan, Paraguay, Senegal and Zambia (Dossier item 85; S/9384 and Add. 1) was submitted to the Security Council at its 1497th meeting, on 12 August 1969 (Dossier item 38; 1497th mtg., pp. 2-5). The draft resolution was introduced, on behalf of its sponsors, by the representative of Zambia who stated that it was not the best that could be drafted but that it was the best possible, given the obvious limitations and peculiar circumstances which surrounded all Security Council resolutions. The sponsors regarded it as a step in the right direction. He pointed out that it was the intention to achieve, *inter alia*, the following: to remind South Africa of its obligation under Article 25 of the Charter; to remind the members of the Security Council themselves of their responsibility under Article 6 of the Charter (expulsion of Members from the Organization); to condemn South Africa for its persistent defiance of the authority of the United Nations; to declare that South Africa's continued illegal occupation of Namibia constituted an aggressive encroachment on the authority of the United Nations and also a denial of the political sovereignty of the people of Namibia; to set a date for the withdrawal of South Africa from Namibia; to call upon all States to refrain from all dealings with the Government of South Africa purporting to act on behalf of Namibia (Dossier item 38; 1497th mtg., pp. 7, 8-10).

Adoption of Security Council Resolution 269 (1969)

252. The Security Council, at its 1497th meeting, adopted as resolution 269 (1969) (Dossier item 108) the draft resolution proposed in document S/9384 and Add. 1. There were 11 votes in favour, none against, and 4 abstentions, namely Finland, France, the United Kingdom and the United States (Dossier item 38; 1497th mtg., pp. 12-15).

Summary of Views Expressed in the Debate

253. The representative of *Colombia* stated that the meeting of the Security Council was the natural consequence of resolution 264 (1969), particularly of operative paragraph 8 thereof, by which the Council had decided that, in the event of failure on the part of South Africa to comply with the provisions of resolution 264 (1969), the Security Council would meet immediately to determine the necessary steps or measures in accordance with the relevant provisions of the Charter (Dossier item 33; 1492nd mtg., p. 12). The representative of *Zambia* stated that his delegation was perturbed by the fact that, although the South African Government was no longer the *de jure* government with authority to administer Namibia, it still continued to make the work of the United Nations impossible by refusing to let the United Nations Council for Namibia discharge its duties. The representative of *Zambia* stated that developments made it imperative that the Security Council abandon its last illusions and admit that more effective measures were needed to solve the problem of Namibia once and for all, that is, the application of Chapter VII of the Charter (Dossier item 33; 1492nd mtg., pp. 14-18).

254. At the 1493rd meeting, referring to the reply from the Government of South Africa contained in Annex 1 of the Report of the Secretary-General (Dossier item 78; S/9204), the representative of *Algeria* stated that South Africa was now contesting the juridical basis of the decisions of the Council. He asserted that South Africa's actions were a flagrant violation of Article 25 of the Charter. Among the proposals he made for action by the Council he included the proposal that a demand must be addressed to South Africa to leave the Territory within a given time-limit. He also suggested that an invitation should be addressed to all States to deny South Africa any right to speak on behalf of Namibia (Dossier item 34; 1493rd mtg., pp. 7, 8-10).

255. The representative of *Nepal* pointed out that the United Nations in its dealings with South Africa, over more than two decades, had exhausted the possibilities of persuasion. The aggrieved party in the situation, created by the policy of the belligerency of the Government of South Africa was not just another government or two, but the whole United Nations. There was, the representative of *Nepal* stated, no doubt whatever in the minds of his delegation that the continued occupation of Namibia constituted a threat to international peace and security. In regard to General Assembly resolution 2248 (S-V), he said that it had not been supported by four permanent members of the Security Council (Dossier item 34; 1493rd mtg., pp. 13-15, 16, 17).

256. The representative of *Pakistan* stated that resolution 264 (1969) had constituted a major step forward inasmuch as the Security Council had recognized its responsibility in the question of Namibia. The case of the international community—no: only of the people of Namibia—against the South African Government constituted a long list of acts in the nature of grave transgressions of international law, and he went on to list these acts. South Africa's reply in document S/9204 made it clear, beyond any shadow of doubt,

that South Africa would not alter its defiant attitude towards the resolutions of the General Assembly and the Security Council (Dossier item 34; 1493rd mtg., pp. 21 to 26).

257. The representative of *India*, a non-member of the Security Council, recalled that in 1967 (General Assembly resolution 2248 (S-V), sec. VI) the General Assembly had decided that South West Africa should be enabled to be independent by June 1968. With reference to the statements made by the South African Foreign Minister and the South African Prime Minister (S/9204), the representative of India said that the Security Council was faced with a situation in which a member State had defiantly refused to fulfil its obligation under Article 25 of the Charter. In regard to future action which the Council could undertake, the representative of India mentioned a decision prohibiting all dealings with South Africa in so far as they related to Namibia; a ban on the sale of arms to South Africa; the claiming by the legally appointed administering authority of the revenue due to it from the mining and other enterprises in Namibia; the claiming by the United Nations of indemnities and reparations from South Africa on account of the deprivations and dispossessions of the Namibian population (Dossier item 34; 1493rd mtg., pp. 27, 31 to 33).

258. The representative of *Chile*, also a non-member, pleaded for remedial action by the Security Council (Dossier item 34; 1493rd mtg., p. 36).

259. The representative of *Finland* also pointed out that South Africa not only had ignored the requests of the Council but had chosen to challenge the very right of the Council to make them. It was obvious to him that agreement could not be reached in the Security Council on a proposal to resort to enforcement action under Chapter VII. In this situation the Security Council could best discharge its responsibilities by proceeding on the basis of the wide agreement which had existed in the Council on this issue (Dossier item 35; 1494th mtg., pp. 6 and 7).

260. The representative of *Senegal* was convinced that there was no other way of dealing with this matter than to apply the provisions of Chapter VII (Dossier item 35; 1494th mtg., p. 13).

261. According to the representative of the *USSR*, everything was transparently clear; South Africa did not wish to withdraw from Namibia and would not heed the resolutions of the General Assembly and the Security Council (Dossier item 35; 1494th mtg., p. 16).

262. The representative of *Hungary* said that ignoring the clear-cut decision of the world Organization and disregarding world public opinion, the South African Government had declared political war on the United Nations (Dossier item 36; 1495th mtg., p. 3).

263. The representative of *Paraguay* said that the real question before the Council was to decide on the scope of the new measures to be adopted in accordance with the spirit and the letter of resolution 264 (1969) in order to ensure the complete implementation of that resolution. His delegation was not unaware of the political realities which indicated that at present at least, the possibilities of action open to the Security Council were necessarily limited (Dossier item 36; 1495th mtg., p. 7).

264. The representative of *China* emphasized that there had been virtual unanimity of opinion that the continued illegal occupation of Namibia by South Africa must be brought to an end. In the present case it was obvious that the full and wholehearted support of those Western powers that were in a special position to make significant contributions to enforcement action was not forthcoming. In such circumstances, the Council, should it decide to apply

mandatory economic sanctions, ran the risk of raising hopes it could not fulfil (Dossier item 36; 1495th mtg., pp. 12, 13-15).

265. The representative of *France* stated that his delegation had always considered that it was the duty of South Africa to ensure the material and moral well-being of the population (of Namibia) and to promote progress towards exercise by that population of the right of self-determination. The French delegation had on many occasions expressed its disapproval of the extension to a territory with an international status of a discriminatory and repressive policy. It had also expressed its opposition to any initiative taken by the South African Government with the aim of dividing the Territory against the will of its inhabitants, or of integrating it into the Republic of South Africa. The French representative recalled the statement by the French Foreign Minister who, speaking in the General Assembly (A/PV.1683, p. 32), had said that France was "ready to take part in the search for any solution likely to restore the rights and dignity of the populations that have too long been deprived of them". On the other hand, the French representative again reminded the Council of the French reservations with respect to resolution 2145 (XXI) which in its view had a very weak juridical basis and which it was clear could not be implemented in practice. He also recalled that resolution 264 (1969) had not been adopted unanimously. He believed that the United Nations must take a realistic view of the situation and be able to suit its actions to its own capabilities (Dossier item 36; 1495th mtg., pp. 16-20).

266. The representative of the *United Kingdom* repeated that the United Kingdom believed that the people of South West Africa should be enabled to exercise the right of free and full self-determination; that South Africa had not been administering the Territory in accordance with the Mandate originally entrusted to it; that South Africa had indeed forfeited the right to administer the Mandate. The United Kingdom delegation also reaffirmed its objections to the notorious "homelands" legislation which had extended the system of Bantustans to South West Africa. The differences among members of the Security Council were about means not about ends. The United Kingdom would not be prepared to agree to commitments under Chapter VII of the Charter. His delegation believed that the path so far followed had been mistaken and did not believe that the Security Council should take further steps along that path (Dossier item 37; 1496th mtg., pp. 2 to 6).

267. The representative of the *United States* repeated that there was virtual unanimity in the Council as to the situation which had given rise to the complaint before it. There was general agreement that South Africa had remained in the Territory illegally and general concern that South Africa had not lived up to its solemn obligations. The representative of the United States also said that the illegal occupying authority had proceeded unilaterally to create so-called "homelands" in pursuit of its policy of virtual annexation. The honest differences that did arise among members of the Security Council did not relate to the essential facts of the state of affairs in Namibia, but concerned what steps or measures the Security Council could most appropriately take. The United States Government could not support the view that mandatory sanctions under Chapter VII should be adopted at that stage. The representative of the United States also said that the opposition to the evils prevailing in Namibia should be steadfast. He continued:

"There are ways available to this Council, and to each of us as member States, to express that opposition. We can and should continue to assert the responsibility of the United Nations for Namibia. We should observe

events there closely and inform the world fully and candidly on what is taking place. We should keep the pressure of world opinion focused on the actions of the illegal occupying authority in violation of the Charter, of General Assembly resolution 2145 (XXI) and the other relevant resolutions of the United Nations. We should unswervingly insist on the application to Namibia of the standards of the Charter concerning the right of dependent territories to self-determination and independence. All of our governments, moreover, are free to take whatever further action is permitted by their constitutional processes to express their cognizance of the illegitimacy of the South African presence in Namibia and hence of the illegality of all actions and transactions carried out in Namibia under the authority, the laws and the regulations of South Africa."

In its bilateral relations with South Africa, the Government of the United States had continued to call the attention of that Government to what the United States considered to be the illegal applications of its domestic legislation to the Territory of Namibia. The Government of the United States had continued to reiterate its concern as to the South West Africa Affairs Act of 1969, the Homelands Act, and indeed the application to Namibia of all legislation inconsistent with the rights of the people of Namibia under the Covenant of the League of Nations, the Mandate Agreement, and Chapters IX and XI of the United Nations Charter. He concluded that continued assertion by the Security Council of its unequivocal and unrelenting condemnation of the violation of the Charter in Namibia, coupled with whatever voluntary steps member States may deem it possible to take, constituted the most promising means of realizing the common objectives (Dossier item 37; 1496th mtg., pp. 7-15).

268. The representative of *Spain* emphasized that the Government of South Africa not only had failed to implement Security Council resolution 264 (1969), but had declared that it had no intention of implementing or complying with it and had even gone so far as to deny the competence of the Council to deal with the problem of Namibia. He repeated that the presence of South African authorities in Namibia was illegal and must be terminated. He indicated that it might perhaps not be redundant to set a target date for the withdrawal of the South African administration from the Territory (Dossier item 37; 1496th mtg., pp. 7 to 15).

269. *The statement made by the representative of Zambia in introducing draft resolution S/9384 at the 1497th meeting on behalf of the sponsors is referred to earlier in paragraph 251 above. The representative of Nepal also made a statement explaining the principal provisions of the draft resolution (Dossier item 38; 1497th mtg., p. 11).*

General Observations on Security Council Resolution 269 (1969)

270. In the course of the proceedings which led to the adoption of resolution 269 (1969), it was made clear by the four abstaining delegations that they were strongly opposed to the extension to Namibia of the discriminatory and repressive policy of South Africa; to the aim of dividing the Territory against the will of its inhabitants; or to its integration into the Republic of South Africa. The representatives of Finland, the United Kingdom and the United States placed it on record that the differences of opinion in the Council were about means and not about ends. The differences did not relate to the essential facts pertaining to the state of affairs in Namibia but concerned what steps or measures the Security Council could most appropriately take.

271. The invocation of Article 25 of the Charter, the characterization of the continued occupation of Namibia by South Africa as constituting an aggressive encroachment on the authority of the United Nations, and the setting of a time-limit for the withdrawal of the South African administration from the Territory are among the new elements which resolution 269 (1969) introduced, beyond those which had been included in earlier Security Council and General Assembly resolutions.

IX. PROCEEDINGS LEADING TO SECURITY COUNCIL RESOLUTION 276 (1970)

Request for a Meeting of the Security Council

272. On 26 January 1970 in a communication addressed to the President of the Security Council, the representatives of 57 States Members of the United Nations requested, with reference to paragraph 6¹ of Security Council resolution 269 (1969), that the Security Council be convened, on an urgent basis, in order to examine the failure of the Government of South Africa to comply with the letter and spirit of that resolution and in particular with its paragraph 4² (Dossier item 92; S/9616 and Add. 1-3).

Meetings of the Security Council

273. The Security Council considered the question at its 1527th to 1529th meetings on 28, 29 and 30 January 1970 (Dossier items 39 to 41; 1527th to 1529th mtgs.).

Documents Before the Security Council

Communications and reports

274. The documents before the Security Council in this connection included a report submitted to the Security Council on 3 October 1969 by the Secretary-General pursuant to operative paragraph 9 of Security Council resolution 269 (1969) which had requested the Secretary-General to follow closely the implementation of that resolution and to report to the Security Council as soon as possible (Dossier item 88; S/9463 and Add. 1-2). Annex 1 of the report reproduced the reply dated 26 September 1969 of the Minister of Foreign Affairs of the Republic of South Africa to the Secretary-General's telegram of 12 August 1969 conveying to the Minister of Foreign Affairs the text of Security Council resolution 269 (1969). An extensive annexure to the Minister's reply contained a detailed description of the administration, the economy, scientific and tech-

¹ The Security Council, in paragraph 6 of resolution 269 (1969), decided that in the event of failure on the part of the South African Government to comply with the provisions of the preceding paragraph of the resolution, the Security Council will meet immediately to determine upon effective measures in accordance with the appropriate provisions of the relevant chapters of the United Nations Charter. Paragraph 5 of the resolution called upon the Government of South Africa to withdraw its administration from the Territory immediately and in any case before 4 October 1969.

² The Security Council, in paragraph 4 of resolution 269 (1969), recognized the legitimacy of the struggle of the people of Namibia against the illegal presence of the South African authorities in the Territory.

nological research, veterinary services, health services and education in South West Africa.

275. In his reply the Foreign Minister of South Africa dealt with "the illegality of the resolution", a qualification which he related both to General Assembly resolution 2145 (XXI) and to Security Council resolution 269 (1969), which the Foreign Minister described as "wholly unrealistic and without justification in fact and in law". The reply based the claim of the illegality of the UN resolutions on the South African Government's interpretation of certain proceedings in the Assembly of the League of Nations and in United Nations organs; the Foreign Minister challenged the correctness of the 1950 Advisory Opinion of the International Court of Justice, *inter alia*, on the ground that certain facts were not before the Court in 1950; the Foreign Minister quoted a number of writers who he claimed supported his views; the Foreign Minister further recalled efforts towards a better understanding with the United Nations which, he said, South Africa had made. In dealing with the substantive parts of Security Council resolution 269 (1969), he came to the conclusion that the terms "people", "occupation", "territorial integrity" and "political sovereignty" which are used in the resolution had no relation to the realities of South West Africa. The Foreign Minister then went on to describe the ethnic composition of the population of South West Africa, which he said did not consist of one people but of several peoples. He described in detail, *inter alia*, arrangements which had been made for the establishment of a Legislative Council and an Executive Council for Ovamboland, administrative departments as well as rules of procedure and financial regulations for the Legislative Council. The Foreign Minister's reply reproduced the table of contents of the rules of procedure. The reply stated that the former Trust Territories of the Cameroons and Togoland under British Administration, and Rwanda under Belgian Administration, had all been divided on an ethnic basis. The Foreign Minister also dealt with the visit to South Africa of officers of the United Nations Special Committee for South West Africa of 1962. After presenting what in his view were some of the major legal and factual defects of Security Council resolution 269 (1969), the Foreign Minister questioned whether any account had been taken of the catastrophic consequences for the peoples of South West Africa that would follow from severing their ties with South Africa. He enclosed a memorandum which, together with the publication *South West Africa Survey 1967*, would in his view show the significant evolution which was taking place under South Africa's administration in all spheres of life. He concluded by saying that on no account would South Africa abandon the peoples of South West Africa who for half a century had placed their trust in South Africa to lead them on the path of progress, peace and stability.

Draft resolution

276. A draft resolution (S/9620) sponsored by the delegations of Burundi, Finland, Nepal, Sierra Leone and Zambia was submitted to the Security Council at its 1527th meeting (Dossier item 39; 1527th mtg., paras. 30-31). A revised version of the draft resolution was later submitted to the Security Council at its 1529th meeting (Dossier item 93; S/9620/Rev. 1: Dossier item 41; 1529th mtg., para. 3).

277. The original draft resolution proposed that the Security Council request the Secretary-General to set up an *ad hoc* committee of experts. Following consultations, the revised version of the draft resolution provided for the establishment by the Security Council of an *Ad Hoc* Sub-Committee of the Council.

It was agreed that the *Ad Hoc* Sub-Committee would consist of all members of the Security Council (Dossier item 40; 1528th mtg., para. 7).

278. The representative of Finland, introducing draft resolution S/9620, emphasized that the text was a provisional one. The crucial question concerned the use of coercive measures under Chapter VII of the Charter. The division of opinion on that question seemed to be irreconcilable, at least for the present. It was of paramount importance to preserve and strengthen the authority and effectiveness of the Security Council. Before invoking the provisions of Chapter VII, the Security Council should make sure that its decisions could in fact be carried out and that its will could be made to prevail. The purpose of the draft resolution was to explore the possibilities of practical action. It sought to define the area of agreement between the great majority of members and purposefully avoided those issues which tended to divide the Council. The point of departure was that since the Mandate of South Africa had been terminated by General Assembly resolution 2145 (XXI), the continued presence of the South African authorities in Namibia was illegal and consequently all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate were illegal and invalid. That fact must have a number of implications for any government dealing in one way or another with the Government of South Africa. The practical application of the injunction addressed to all States to refrain from any dealings with respect to Namibia recognizing any right of the Government of South Africa to act on behalf of Namibia had not yet been sufficiently investigated and the sponsors therefore proposed the appointment of a committee that should study these problems (Dossier item 39; 1527th mtg., paras. 27-45).

Adoption of Security Council Resolution 276 (1970)

279. The Security Council at its 1529th meeting on 30 January 1970 adopted as resolution 276 (1970) the draft resolution (S/9620/Rev. 1). There were 13 votes in favour, none against, and two abstentions, namely France and the United Kingdom (Dossier item 41; 1529th mtg., para. 184).

Summary of Views Expressed in the Debate

280. The following paragraphs contain references to statements made in the course of the discussion in the Security Council which may be considered as reflecting the views of member States on the questions now at issue.

281. The statement made by the representative of Finland in introducing draft resolution S/9620 at the 1527th meeting of the Security Council is referred to in paragraph 278 above.

282. The representative of Zambia commented on the communication from the South African Foreign Minister, which was annexed to the report of the Secretary-General in document S/9463 and Add. 1-2 (Dossier item 88). He also observed that over the past few years Western countries and the Western major Powers in particular had adopted an increasingly negative attitude towards issues concerning Southern Africa. He compared this situation with the stand of certain European Governments which advocated the expulsion of Greece from the Council of Europe, and asked whether oppression was objectionable only when the victims were of European stock. Fact-finding was more effective than fault-finding, and he expressed the hope that the draft resolution would enable the Council to move forward in the search for a solution to this dangerous problem (Dossier item 39; 1527th mtg., paras. 46-71).

283. The representative of the *United States* found it a matter for great regret that so little progress had been made since the Council discussed the issue of South West Africa in August 1969. The draft resolution seemed to the United States delegation accurately to represent and to reaffirm the basic attitude of the United Nations to this problem. He believed that all Members continued to have an obligation to do their best to persuade South Africa to acknowledge United Nations responsibility for Namibia. The United States did not recognize and did not intend to recognize South Africa's claim that it had a right to act on behalf of the Territory. The study contemplated in the resolution would permit the Security Council to form an intelligent judgment as to what other peaceful and practical steps it might be possible for the United Nations to take to discharge more effectively its obligations towards the people of Namibia (Dossier item 39; 1527th mtg., paras. 72-80).

284. The representative of *Turkey*, the President of the United Nations Council for Namibia, emphasized the necessity to re-examine the situation arising from the refusal of the South African Government to comply with resolution 269 (1969). The Turkish Government deeply deplored the persistent attitude of defiance adopted by South Africa towards the world organization, and its refusal to co-operate with the United Nations in the finding of a just and equitable solution (Dossier item 40; 1528th mtg., paras. 12-31).

285. The representative of *Syria* stated that acts of South Africa on behalf of Namibia were naturally illegal as they emanated not from a legitimate but from a usurping power. The emphasis should be put on refraining from assisting that usurping power in any way. He quoted resolution 2548 (XXIV) of the General Assembly which in its paragraph 6 requested all States as well as the specialized agencies and international institutions to withhold assistance of any kind from, *inter alia*, the Government of South Africa (Dossier item 40; 1528th mtg., paras. 32-52). The representative of *Sierre Leone* said it was now incumbent on the United Nations to plan, fully and thoroughly, methods by which the freedom of Namibia could be gained. He emphasized the call upon all States as expressed in paragraph 5 of the draft resolution (Dossier item 40; 1528th mtg., paras. 53-80).

286. The representative of the *USSR* in a comprehensive speech put the question where South Africa got the audacity to disregard the decisions of the Security Council which are binding on all States Members under Article 25 of the Charter. Commenting on the official statement by the representative of the United States that the United States recognized the illegality of South Africa's presence in Namibia, he said that if the United States really took this position it should, together with all the other members of the Security Council, adopt a strong and effective resolution which would really pillory the racist régime in South Africa. In order to exert effective pressure on South Africa and bring about an end to the occupation of Namibia, the Security Council must call upon all States to discontinue especially all economic, trade, transport and other relationships with South Africa. All these measures, provided in Article 41 of the Charter, were legally justified (Dossier item 40; 1528th mtg., paras. 81-122).

287. The representative of *Nepal* emphasized that the Security Council must retain the initiative and try to make what little progress could be achieved in the situation. He pointed out that the paragraph establishing the *Ad Hoc* Sub-Committee was the central and novel feature of the draft resolution, which was of an interim nature, and its purpose was to help the Security Council to make vital decisions in this regard in the future (Dossier item 40; 1528th mtg., paras. 123-134).

288. The representative of *Spain* emphasized that by resolution 269 (1969)

the Council had called upon South Africa to withdraw its administration from Namibia immediately and in any case before 4 October 1969. However, that date had passed, as had also that of June 1968, set by the General Assembly in resolution 2248 (S-V) calling for the decolonization of the Territory. South Africa had not taken the least steps to fulfil its ineluctable obligations. The most important problem the Security Council had to face was the stand of the member States that refused to take into account the resolutions of the main bodies of the United Nations, thus hurling the gravest of all challenges that the world organization had to confront, since they affected the Organization's very reason for existence. The Spanish delegation would have preferred a draft resolution more commensurate with the principles that had been violated (Dossier item 40; 1528th mtg., paras. 135-143).

289. The representative of *Poland* commented that South Africa's voluminous reply to resolution 269 (1969) had tried to dilute the negative answer of South Africa in a maze of "legal" argument; but the essence of that reply was still a practical, curt "No" to the categoric injunctions of the Security Council contained in its resolution 269 (1969), just as it had been to General Assembly resolution 2145 (XXI) and subsequent resolutions. The Council was facing not a mere act of passive non-compliance with its decision, but an aggressive action of a State aimed at consolidating its annexation of another country. The representative of Poland stated that the text of the draft resolution as submitted at the 1528th meeting had brought improvements to the original text. In spite of certain shortcomings of the draft resolution, he was ready to support it (Dossier item 41; 1529th mtg., paras. 4-27).

290. The representative of the *United Kingdom* stated it was unnecessary to repeat in detail his Government's position which was sufficiently well known: enjoyment of real self-determination and independence by the people of South West Africa; forfeiture by South Africa of the right to administer the Mandate; repugnance at aspects of the South African administration such as the Terrorism Act and trials under that legislation. At the same time, the United Kingdom had consistently drawn attention to the practical considerations and to the need for the United Nations to act only within its capabilities. South Africa was in fact controlling the Territory. The action the United Kingdom could take was limited; it was not able to contemplate action which would rapidly turn into economic warfare against South Africa. As the basis of the new draft resolution (S/9620/Rev. I) lay in the earlier resolutions on which the United Kingdom had already abstained in the past, he could not support the draft resolution. Paragraph 5 of the draft resolution seemed to ignore some of the circumstances to which he had referred. The *Ad Hoc* Sub-Committee proposed in paragraph 6 of the draft resolution should not be limited to making recommendations for Chapter VII action (Dossier item 41; 1529th mtg., paras. 28-33).

291. The representative of *China* recalled that his delegation had voted for resolution 2145 (XXI) and expressed his profound regret that the United Nations had been prevented from exercising its functions in Namibia. There was no significant difference of opinion on the fact that the adamantly unco-operative attitude on the part of South Africa warranted strong censure by the world community, but differences did arise as to how the Security Council could best discharge its responsibility. Further study and exploration might be useful. He therefore welcomed the proposal to set up an *Ad Hoc* Committee (Dossier item 41; 1529th mtg., paras. 44-50).

292. The representative of *Colombia* stated that only meagre results had been achieved after prolonged efforts in the matter of Namibia. Those efforts had not however been sterile. Colombia would support the draft resolution because it

wished to leave no stone unturned to carry out all efforts that might directly or indirectly lead to a settlement of the situation in Namibia (Dossier item 41; 1529th mtg., paras. 51-56).

293. The representative of *France* recalled that his Government viewed the policy followed by the South African Government in South West Africa with the same severity as the representatives of the countries of that continent. As stated earlier, however, France had reached different conclusions about the measures to be taken to cause the authorities of South Africa to cease ignoring the obligations undertaken in the Mandate Agreement of 17 December 1920. He pointed out that the South African Foreign Minister's letter stated that the policy of creating autonomous areas would be continued despite the condemnations of that policy. It was to be feared that the successive resolutions adopted over a period of years had not fully achieved their objectives. One might even wonder whether the positions taken by the General Assembly and the Security Council had not served as a pretext for the Government of South Africa to try to justify the regressive legislation it had applied since 1967. Although the text before the Council was placed in a legal framework about which the French delegation had always expressed reservations and which it therefore could not support, it welcomed with sympathy the spirit of moderation that the United Nations, through a realistic appraisal of the situation, could contribute effectively to the solution of the very difficult problem of which the Council was seized (Dossier item 41; 1529th mtg., paras. 57-69).

294. The representative of *India*, a non-member of the Security Council, expressed the view that the Council met under the shadow of South Africa's continued defiance. He said that by its refusal to fulfil its obligations under Article 25 of the Charter, South Africa had forfeited all rights and privileges of membership of the Organization. He suggested that the Security Council decide: firstly, that member States should take effective steps to prevent the flow of arms and other military hardware to South Africa; secondly, that all States must take suitable measures to stop fresh investment in Namibia by their nationals or private companies registered under their laws as long as South Africa continued its illegal occupation of Namibia; thirdly, to ask all States to ensure that their companies and nationals operating in Namibia paid the taxes and levies for such operations not to the South African régime but to the United Nations Council for Namibia; fourthly, to request member States to discontinue recognition of travel documents issued by the South African Government in so far as they pertained to the citizens of Namibia, and to take positive steps to extend recognition to travel and visa documents issued on behalf of the United Nations; fifthly, United Nations Members should be asked to give full legal effect to the United Nations' termination of South Africa's Mandate by all possible means (Dossier item 41; 1529th mtg., paras. 75-84).

295. The delegation of *Nicaragua* stated at the 1527th meeting that the decisions of the Security Council had to be unreservedly accepted and complied with. Since the Security Council acted in accordance with the purposes and principles of the Charter, it might be understood that its extraordinary powers under the Charter constituted obligations rather than rights and that therefore the Security Council did not have absolute sovereignty. It did enjoy sovereign rights in the investigation of any dispute or any other situation which might lead to international friction or give rise to a dispute (Dossier item 39; 1527th mtg., paras. 88, 89). At the 1529th meeting the delegation of Nicaragua agreed with the purport of draft resolution S/9620/Rev. 1. The representative of Nicaragua added that his delegation had slight objections particularly to what was said in paragraph 2 of the draft resolution in which the Council

pronounces itself on the validity of the measures adopted by South Africa since the termination of the Mandate, covering both political and merely administrative acts. In the opinion of the delegation of Nicaragua, the consequences of the illegal activities of South Africa should be determined in the light of both domestic and international law by the courts of Namibia once the rule of law had been established there, or by judges or arbiters selected by the parties affected by the illegal acts of South Africa. However the Nicaraguan delegation would not object to these aspects of the form of the draft resolution since it agreed with its substance (Dossier item 41; 1529th mtg., paras. 86, 87).

296. The representative of *Pakistan* appealed to the Council to adopt a strictly business-like approach to the problem. The Council had already disposed of the legal issues involved in the question of Namibia; no new studies were needed beyond the ones which had already been made. The time had come now for suitable action. The Asian-African member States had proposed action under Chapter VII of the Charter. Given the economic and power realities, action by the Asian-African States alone could hardly make any change in the situation. The responsibility was therefore on the other member States, particularly the permanent members of the Security Council, to come forward with concrete proposals of their own. The permanent members should consult each other and report their agreed conclusions to the Security Council (Dossier item 41; 1529th mtg., paras. 121-124).

297. The representative of *Syria* referred critically to the flow of arms to South Africa which had led to the increasing obduracy of the South African régime; he also stated that there had been co-operation in the matter of the delivery of arms between South Africa and Israel and *vice versa* (Dossier item 41; 1529th mtg., paras. 127-135).

298. The representative of *Burundi* commented that the trend in the Council to shirk its responsibilities seemed now to be turning into a real political doctrine that could well be the doctrine of the ostrich. Through the new resolution the Security Council intended to remove any ambiguity and to take up the challenge to resume the exercise of its rights and rehabilitate itself by rehabilitating mankind (Dossier item 41; 1529th mtg., paras. 148, 149).

299. The representative of the *United States*, in explaining his positive vote on the draft resolution, commented on paragraph 5 which called upon all States, particularly those which had economic and other interests in Namibia, to refrain from any dealings with the Government of South Africa which were inconsistent with operative paragraph 2 of the draft resolution. He called attention to the fact that the criterion established in paragraph 5 was consistent with paragraph 2, which had the effect of reaffirming the illegality of South Africa's continued occupation of Namibia. Such a criterion would obviously not exclude such acts as protests to the South African Government concerning its actions in the Territory, nor would the United States delegation take it to preclude actions aimed at the protection of citizens of United Nations Members or the rights of Namibians themselves, which might be necessitated by the continued illegal control exercised by South Africa (Dossier item 41; 1529th mtg., paras. 155, 156).

General Observations on Security Council Resolution 276 (1970)

300. Security Council resolution 276 (1970) was adopted by 13 votes to none, with 2 abstentions. Finland and the United States, which had abstained in the vote on resolution 269 (1969), voted in favour of resolution 276 (1970). The delegations of France and the United Kingdom expressed at the meetings which

led to the adoption of resolution 276 (1970) the positions they had also taken on earlier occasions which had been favourable to the support of the self-determination of Namibia and opposed to the policy of the creation by South Africa of autonomous areas in Namibia. The representative of the United Kingdom again confirmed the attitude of his Government towards the whole problem and his Government's concurrence in the proposition that South Africa had forfeited the right to administer the Mandate.

301. In the present context, operative paragraph 2, declaring the continued presence of the South African authorities in Namibia to be illegal, and the call upon all States to refrain from any dealings with the Government of South Africa inconsistent with this proposition are of particular relevance. By resolution 276 (1970) the Council also took the important decision to establish the *Ad Hoc* Sub-Committee.

302. It should be noted that resolution 276 (1970) was not only recalled and reaffirmed, respectively, in the preambles of resolutions 283 (1970) and 284 (1970), but that it is referred to in operative paragraph 1 of resolution 284 (1970), which contains the request of 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)*.

X. PROCEEDINGS LEADING TO SECURITY COUNCIL RESOLUTION 283 (1970)

Request for a Meeting of the Security Council

303. On 22 July 1970 in a communication addressed to the President of the Security Council the representatives of Burundi, Finland, Nepal, Sierra Leone and Zambia, the co-sponsors of Security Council resolution 276 (1970) of 30 January 1970, requested that a meeting of the Security Council be convened to resume consideration of the question of Namibia (Dossier item 102; S/9886).

304. The representatives stated in their communication that in resolution 276 (1970) the Security Council had decided, among other matters, to establish an *Ad Hoc* Sub-Committee of the Council¹ to study, in consultation with the Secretary-General, ways and means by which the relevant resolutions of the Security Council, including resolution 276 (1970), could be effectively implemented in accordance with the appropriate provisions of the Charter. The recommendations of the *Ad Hoc* Sub-Committee were to be submitted to the Security Council.

305. The representatives also referred in their communication to the Security Council's further decision, in operative paragraph 9 of resolution 276 (1970), to resume consideration of the question of Namibia as soon as the recommendations of the *Ad Hoc* Sub-Committee were made available. The *Ad Hoc* Sub-Committee had now submitted its report to the Security Council.

Meeting of the Security Council

306. The Security Council considered the question at its 1550th meeting on 29 July 1970 (Dossier item 8).

¹ The *Ad Hoc* Sub-Committee was composed of all members of the Security Council.

*Documents Before the Security Council**Report of the Ad Hoc Sub-Committee*

307. The documents before the Security Council in this connection included the report, dated 7 July 1970, of the *Ad Hoc* Sub-Committee of the Council (Dossier item 101; S/9863, Corr. 1 and Add. 1/Rev. 1). Chapter I of the report referred to the terms of reference of the Sub-Committee; Chapter II contained a review of the work of the Sub-Committee; Chapter III set out the recommendations of the Sub-Committee.

308. Annexes I, II and III to the report set out the replies received by the Sub-Committee from governments, inter-governmental organizations and United Nations bodies in response to inquiries from the Sub-Committee. Additional replies from governments are contained in document S/9863/Add. 1/Rev. 1.

309. The proceedings of the *Ad Hoc* Sub-Committee are contained in documents S/AC.17/SR.1-17 (Dossier items 1 to 7, and 12 to 21). Attention is drawn to the statements made by members of the *Ad Hoc* Sub-Committee at its 17th meeting, expressing certain reservations. These statements are also set out in Annex IV of the report of the Sub-Committee.

*Draft resolutions**(i) Draft resolution S/9891.*

310. A draft resolution sponsored by the delegations of *Burundi, Finland, Nepal, Sierra Leone* and *Zambia* was submitted to the Security Council at its 1550th meeting on 29 July 1970 (Dossier item 103; S/9891).

311. The draft resolution, which was later adopted by the Security Council as resolution 283 (1970), reflected the following recommendations of the *Ad Hoc* Sub-Committee of the Council: recommendations 1, 2, 3, 4 (a), (b) (c) and (d), 6, 7, 9 (a) and (b), 10 and 11¹. It also reflected the last two paragraphs of Chapter III of the Sub-Committee's report.

(ii) Draft resolution S/9892.

312. A draft resolution sponsored by the delegation of Finland was also submitted to the Security Council at its 1550th meeting on 29 July 1970 in document S/9892. The draft resolution, which was later adopted by the Security Council as resolution 284 (1970) (Dossier item 11), was based on recommendation 5 of the *Ad Hoc* Sub-Committee, namely the possibility of requesting an advisory opinion from the International Court of Justice on the legal consequences for States of the continued presence of South Africa in Namibia².

¹ Recommendation 8 of the *Ad Hoc* Sub-Committee referred to the possibility of the Security Council reaffirming its call upon all States to cease forthwith the sale and shipment of arms, ammunition, military vehicles and materials for the manufacture of arms and ammunition to South Africa. On 23 July 1970 the Security Council considered the question of race conflict in South Africa resulting from the policies of *apartheid* and adopted resolution 282 (1970) in which it reaffirmed its earlier resolution on the arms embargo, condemned its violations, and called upon States to strengthen it. [It will be noted that the sixth preambular paragraph of resolution 283 (1970) reaffirms resolution 282 (1970).]

² Resolution 284 (1970) of the Security Council is dealt with in section XI of the present document.

Adoption of Security Council Resolution 283 (1970)

313. The Security Council, at its 1550th meeting on 29 July 1970, adopted the draft resolution S/9891 as resolution 283 (1970) (Dossier item 110). There were 13 votes in favour and none against, with 2 abstentions (France and the United Kingdom) (Dossier item 8; 1550th mtg., para. 155).

Summary of Views Expressed in the Debate

314. The following paragraphs contain references to statements made in the discussions of the Security Council pertaining to resolution 283 (1970).

315. Introducing draft resolution S/9891 the representative of *Burundi* said that a conflagration of unforeseeable dimensions was in preparation in southern Africa. The text proposed by the sponsors had, he said, certain weaknesses deriving from a situation that was well known. The draft resolution was inspired by the main lines of the report of the *Ad Hoc Sub-Committee*. The unanimous adoption of the draft resolution would be the logical crowning of the common endeavour (Dossier item 8; 1550th mtg., paras. 20, 31, 32).

316. The representative of *Finland* said that the various steps proposed in the draft resolution flowed directly from the key provisions of Security Council resolution 276 (1970). These declared that the continued presence of South Africa in Namibia was illegal and called upon all States to refrain from any dealings with South Africa inconsistent with this. The draft resolution translated those declarations into practical terms. It set out a comprehensive programme of action which, once it had been carried out, would substantially increase international pressure on South Africa with regard to Namibia. He added that the draft resolution fell far short of the wishes of some of the members of the Security Council and that, of course, this could not be the end of United Nations efforts to discharge its responsibility towards Namibia and its people. Those efforts must be seen as a continuous process of ever-increasing international pressure. The two draft resolutions (i.e., those which subsequently became resolutions 283 (1970) and 284 (1970)) formed together a programme of action which represented significant progress in the Council's efforts to help the people of Namibia to achieve self-determination and independence to which they, like all other peoples, were entitled (Dossier item 8; 1550th mtg., paras. 36, 37, 43).

317. The representatives of *Sierra Leone*, *Nepal* and *Colombia* supported the draft resolution for the reason that it might lead in some way towards a solution of the situation and because it represented a modicum of progress. The representative of *Nepal* added that the draft resolution contained many positive and novel features lacking in previous resolutions. In addition to providing for complete non-recognition by States of the authority of South Africa over Namibia and termination of all existing relations with South Africa in so far as those relations pertained to the international Territory, the Security Council, under the draft resolution, would call upon States not only to ensure that their national companies ceased all present or future commercial, industrial and concessional enterprises in Namibia but also to withhold protection of any such investments against claims of a future lawful government of Namibia. Those provisions were largely based upon the steps that had been taken recently by the Government of the United States. The provisions for a detailed study of all bilateral and multilateral treaties to which South Africa was a party and which might be considered to apply to the Territory of Namibia were included so that the results of the study might assist States—if indeed assistance were

needed—in the implementation of United Nations resolutions on Namibia. Another novel and significant feature of the joint draft resolution was that under it the Security Council would request the United Nations Council for Namibia to make available to the Security Council its study and proposals regarding not only passports and visas for Namibians for travel abroad, but also regulations governing the travel to Namibia of the citizens of other States. The representative of *Syria* did not belittle the scope of the measures contemplated in the draft resolution, but believed that nothing short of drastic measures in the form of effective sanctions provided by the Charter would deter the Government of South Africa from its thrust into the political and human rights of the Africans and the territorial integrity of their lands (Dossier item 8; 1550th mtg., paras. 44 to 98).

318. The representative of *Zambia* stated that the *Ad Hoc* Sub-Committee could not have obtained better results under the difficult circumstances in which it operated. The report listed a number of measures which were within the reach of every Government to take in order to apply pressure on the South African Government to bring an end to its illegal occupation of Namibia. The refusal of South Africa to comply with Security Council and General Assembly resolutions pertaining to the withdrawal of that country from Namibia was probably the most serious threat ever posed to the very existence of the United Nations as an effective instrument for the maintenance of international peace and security. While, of course, the racial and colonial policies pursued in southern Africa by South Africa, Rhodesia and Portugal were as objectionable as those pursued by South Africa in Namibia, one would have hoped that it would be possible to secure a greater amount of support for measures to be taken to free Namibia by reason of the United Nations direct responsibility for Namibia. The freeing of Namibia was the direct responsibility of the United Nations and of all member States; it was not solely an African concern (Dossier item 8; 1550th mtg., paras. 101, 102, 103).

319. The representative of *Spain* emphasized that there had been a breach of international law as a result of the presence of South Africa in Namibia and as a result of failure to comply with a series of resolutions, including resolution 269 (1969) of the Security Council calling for the immediate withdrawal of South Africa from that Territory before 4 October 1969. If there were added to that illegal situation the fact that the Government of South Africa had been practising in the Territory the unanimously condemned policy of *apartheid*, it would be found that in addition to a violation of international law, there had been a violation of moral law and of the principles of the Charter. In the opinion of the Spanish delegation, the joint draft resolution was a positive step of obvious importance in the direction laid down in resolutions of both the General Assembly and the Security Council. The Spanish delegation, while supporting the draft resolution, entered a reservation to operative paragraph 2 of the joint draft resolution for it felt that juridically speaking it was unnecessary (Dossier item 8; 1550th mtg., paras. 113, 114, 115).

320. The representative of the *USSR* said that inasmuch as South Africa refused to leave Namibia what was needed was to achieve a cessation by the Western Powers of political, military and economic assistance to South Africa because it was a country which violated the Charter of the United Nations. The Soviet Union had repeatedly stressed the need for active measures to be taken by the Security Council and the General Assembly which would indeed exert pressure on South Africa and force it to comply with the decisions of the United Nations on the question of Namibia, and pave the way for a settlement of the Namibian problem in the interests of the people of Namibia. The Soviet delega-

tion had proposed in the Sub-Committee, in order to bring pressure to bear on South Africa, and to end its unlawful occupation of Namibia by South Africa a recommendation to the Security Council to demand that all States comply strictly with the decisions of the Security Council and the General Assembly on Namibia and cease completely all economic, trade, transport and other relations with South Africa. Recent events had confirmed that this approach by the Soviet Union was correct. That was why the recommendations made by the Sub-Committee in its report to the Security Council (doc. S/9863) and subsequently reflected in the draft resolutions, could not in the view of the Soviet delegation be regarded as entirely satisfactory. In order to fulfil the main requirement for the independence of Namibia, which was the expulsion from Namibia of the South African racists and of their administration, and of their military and police forces, it was essential to apply more effective measures than those which were proposed by the Sub-Committee and which were contained in the draft resolution under consideration. However, because the representatives of the Afro-Asian countries members of the Security Council considered that the measures proposed in the draft resolution might to some extent contribute to a solution of the problem of Namibia, the Soviet delegation would support the draft resolution. The representative of the USSR stressed, however, his delegation's reservations to paragraphs 10 and 12 of the draft resolution. He expressed his doubts with regard to the advisability of extending the terms of reference of the United Nations Council for Namibia, particularly with regard to the questions concerning the issuance of passports and visas. Quite apart from the fact that those questions fell strictly within the domestic competence of the member States of the United Nations, the extension of the activities of the Council for Namibia into this sphere would yield no appreciable or tangible results. Rather it would distract attention from the urgent problems related to the question of Namibia and merely give rise to illusions in the minds of the Namibian people. With regard to the recommendations contained in paragraph 12 of the draft resolution concerning the establishment of a United Nations fund for Namibia, the Soviet delegation sympathized with the humanitarian aims of this proposal. However, regarding the possible source of financing the fund, the Soviet delegation believed that such financing should be carried out exclusively through a special tax levied on foreign companies operating on the territories of countries in Africa and also in Namibia and South Africa (Dossier item 8; 1550th mtg., paras. 124, 127, 128, 129, 130, 131).

321. The representative of *Poland*, while recognizing the new elements which the draft resolution introduced and expressing his intention to vote for it, mentioned his reservations towards some of its provisions. The draft resolution concentrated its recommendations solely on the Territory of Namibia. To confine the question to those limits might be, technically speaking, defensible, but politically it was not. His delegation had always considered it an impossibility to deal with Namibia independently from the Republic of South Africa, the occupying Power, and that it was illusory to deal with the question of the economic relations maintained by many States with Namibia while at the same time disregarding their relations with the Republic of South Africa. He questioned the effectiveness of the measures envisaged in a draft resolution the provisions of which were limited to Namibia. He favoured the view that the proposed United Nations Fund for Namibia should be financed through the collection of a levy on the investments of foreign companies operating, in particular, in Namibia (Dossier item 8; 1550th mtg., paras. 138, 139, 140).

322. The representative of the *United States*, in explaining his affirmative vote, said that on 20 May 1970 his Government had announced the new policy

steps which it intended to take to discourage investment by its citizens in Namibia and to deny credit guarantees and other assistance for trade with that Territory. His delegation was gratified to note that the economic measures which States were called upon to take in operative paragraphs 4 through 7 of the resolution contained in document S/9891 were consistent with and in fact, he believed, reflected the policy already enunciated and being implemented by his Government. In his delegation's view, such steps constituted a meaningful contribution to the Council's efforts to deal effectively with the problem of Namibia. In regard to paragraph 2, the United States Government continued to maintain that Member Governments must be free to take appropriate action to protect their own citizens and to assist the people of Namibia. The United States representative also maintained certain reservations made on earlier occasions (Dossier item 8; 1550th mtg., paras. 163-168).

323. The representative of *France*, explaining his abstention in the vote on the joint draft resolution S/9891, repeated the views expressed by the French delegation on the earlier resolutions: disapproval of the extension of a discriminatory and repressive policy to a Territory with international status; this policy to be contrary to the spirit of the Mandate which did not come to an end with the disappearance of the League of Nations; doubt about the power of the United Nations unilaterally to deprive South Africa of the Mandate. It would seem preferable in this difficult and complex matter, and in view of the fact that the soundness of the legal position had not been unquestionably established, not to engage the authority of the United Nations in a course of action which in the past had proved likely to lead to an impasse (Dossier item 8; 1550th mtg., paras. 175, 176, 177, 181).

324. The representative of the *United Kingdom*, who had also abstained in the vote, stated that his delegation's basic position on both the legal and the practical aspects of the question had not changed: the undisputed right to self-determination of the people of Namibia; difficulties about the way in which the Council had sought to help the people of Namibia to exercise that right; practical considerations had to be faced; the United Nations needed to act within its capabilities (Dossier item 8; 1550th mtg., paras. 186-189).

General Observations on Security Council Resolution 283 (1970)

325. For establishing the legal consequences for States of the continued presence of South Africa in Namibia, Security Council resolution 283 (1970) is of particular relevance. In it the Security Council reaffirmed its resolutions 264 (1969) and 276 (1970) by which the continued presence of South Africa in Namibia had been declared illegal and by which it had called upon the Government of South Africa to withdraw its administration from the Territory. The Security Council noted the continued flagrant refusal of South Africa to comply with the decisions of the Council demanding the withdrawal of South Africa from the Territory. The Security Council has therefore established as far as the consequences for South Africa are concerned that South Africa has committed and continues to commit an internationally wrongful act for which it has incurred and continues to incur international responsibility.

326. As far as the legal consequences for States other than South Africa are concerned, the resolution contains decisions in the field of diplomatic, consular and other relations (operative paras. 1-3), it calls upon all States to take measures in regard to dealings with respect to commercial or industrial enterprises or concessions in Namibia (operative paras. 4-7 and 11), it initiates action in regard to bilateral and multilateral treaties (operative paras. 8 and 9), and ex-

presses its interest in actions of the United Nations Council for Namibia in regard to passports and visas (operative para. 10). It calls for reports by States on measures they have taken to give effect to the provisions of the resolution, and re-establishes the *Ad Hoc* Sub-Committee (operative paras. 13-16).

XI. PROCEEDINGS LEADING TO SECURITY COUNCIL RESOLUTION 284 (1970)

327. Like Security Council resolution 283 (1970), resolution 284 (1970) (*Dossier item 11*) goes back to the proceedings and recommendations of the *Ad Hoc* Sub-Committee of the Security Council established in pursuance of resolution 276 (1970). Resolution 284 (1970) is specifically the outcome of recommendation 5 of the *Ad Hoc* Sub-Committee which related to "the possibility of requesting, in accordance with Article 96 (1) of the Charter, an Advisory Opinion from the International Court of Justice on 'the legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council resolution 276 (1970)' " (*Dossier item 9*). The recommendations of the Sub-Committee, including recommendation 5, were considered at the 1550th meeting of the Security Council on 29 July 1970 (*Dossier item 8*). The draft resolution (*Dossier item 10*; S/9892) which became resolution 284 (1970) was sponsored in the Security Council by the representative of Finland (*Dossier item 8*; 1550th mtg., para. 38).

328. Operative paragraph 1 of the draft resolution included the wording of the question on which the advisory opinion of the International Court of Justice is sought in words identical with recommendation 5 of the *Ad Hoc* Sub-Committee, except that a comma was inserted between "in Namibia" and "notwithstanding" as contained in draft resolution S/9892; and in resolution 284 (1970) as adopted the question reads as follows:

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

329. Resolution 284 (1970) was adopted by 12 votes to none with 3 abstentions (Poland, USSR, United Kingdom) after the Council, in a separate vote, had decided to retain the words "notwithstanding Security Council resolution 276 (1970)" by 11 votes in favour to none, with 4 abstentions (France, Poland, USSR and the United Kingdom) (*Dossier item 8*; 1550th mtg., paras. 156 to 160).

330. The present section of this review refers firstly to statements made in the course of the proceedings of the *Ad Hoc* Sub-Committee and thereafter to the statements of the members of the Security Council at its 1550th meeting.

Proceedings in the Ad Hoc Sub-Committee

331. The representative of *Finland*, at the third meeting of the *Ad Hoc* Sub-Committee on 27 February 1970, stated, when dealing with the recommendations to be made by the Sub-Committee to the Security Council, that the Council might also ask the International Court of Justice for an advisory opinion on the legal consequences for member States of the continued illegal presence of South Africa in Namibia. The Finnish delegation believed that the Council might be well advised to ask for such an opinion from the highest international authority on law (*Dossier item 1*; 3rd mtg., A/AC.17/SR.3, p. 8).

332. The representative of *Finland* elaborated his recommendation in regard to a request for an advisory opinion at the twelfth meeting of the *Ad Hoc* Sub-

Committee on 10 June 1970. At that meeting the representative of Finland noted the fact that the Court had not been seized of any issue regarding Namibia since the 1966 *Judgment of the Court in the South West Africa cases* (Second Phase) and the adoption of General Assembly resolution 2145 (XXI). The representative of Finland explained that it was not the purpose of his delegation's suggestion to call into question or to subject to the ruling or opinion of the Court the basic decisions taken by the General Assembly and the Security Council on the termination of the Mandate. He pointed out that the termination of the Mandate was an irrevocable step by which the United Nations had assumed direct responsibility for the future of Namibia. Consequently, the presence of South Africa in Namibia after the termination of the Mandate was illegal. In any further action concerning Namibia, the Security Council would have to build on the totality of the jurisprudence of the United Nations contained in the relevant resolutions of the General Assembly and the Security Council. The representative of Finland observed that an advisory opinion would certainly be very useful for the definition in juridical terms of the consequences which the continued illegal presence of South Africa in Namibia had for other States. It would make it possible to dispel doubts, particularly on questions relating to diplomatic and consular relations, which could be interpreted as implying the recognition of the authority of South Africa over Namibia and concerning the amendment or revision of bilateral and multilateral treaties between the different States and South Africa in so far as these treaties contained provisions applicable to Namibia. To the extent these agreements or treaties did not contain provisions explicitly providing that they were applicable to Namibia, the question of the applicability to the Territory would have to be examined on the basis of the relevant provisions of international law. The representative of Finland went on to say that an advisory opinion would make it possible to define more precisely the rights of Namibians, both those resident in Namibia and those resident abroad. It would prove the inequality of the arbitrary and repressive South African laws concerning *apartheid*. The representative of Finland read in this context paragraphs 33 and 34 of the *Judgment of the International Court of Justice of 5 February 1970 in the matter of the Barcelona Traction, Light and Power Company Limited*, which had a bearing on certain aspects of the Namibian question (*Barcelona Traction Light and Power Company Limited, I.C.J. Reports 1970*, p. 32). He made reference to the paragraphs of the *Judgment* referring to obligations of a State towards the international community as a whole in regard to which, in view of the importance of the rights involved, all States could be held to have a legal interest in their protection. In the view of the representative of Finland, an advisory opinion of the Court would establish clearly for all that South Africa had been deprived of its Mandate for South West Africa because of having violated its terms, because of having acted contrary to its international obligations, the international status of the Territory, international law and the fundamental rights of the inhabitants of the Territory. As regards the formulation of the request to be addressed by the Council to the Court, the representative of Finland said it was simple, direct, of limited scope and sufficiently general to permit the Court to pronounce itself (Dossier item 4; 12th mtg., pp. 2 to 5).

333. The representative of *Syria* believed that an advisory opinion would facilitate the mobilization of public opinion on the subject of Namibia. The representative of *Colombia* stated that his first reaction to the Finnish proposal was entirely positive. By proposing to the Council to ask for another advisory opinion of the Court, the *Ad Hoc* Sub-Committee would give to its work a high

juridical level, without in the least interfering with the previous decisions of the Council and of the General Assembly and without delaying their implementation. The representative of *France* also spoke in favour of asking for an advisory opinion (Dossier item 4; 12th mtg., pp. 5-7).

334. The representative of the *United States* supported with satisfaction the Finnish suggestion in regard to the request for an advisory opinion. A new advisory opinion would without doubt facilitate a constructive effort with a view to solving the difficult problem. The representative of *Spain* also supported the Finnish suggestion. He suggested that in the request to be addressed to the Court the words "legal consequences for States of the continued presence . . .", etc., be replaced by the words "the international legal consequences of the continued presence . . .", etc. The representative of *Finland* stated that he would give full attention to the suggestion of the representative of *Spain*. [It appears that no action on the Spanish representative's suggestion was taken.] (Dossier item 5, 13th mtg., pp. 3 and 4.)

335. The representative of *Burundi* questioned the value of asking the International Court of Justice for a legal opinion. How could countries which did not abide by a General Assembly resolution be expected to abide by an opinion of the Court? The representative of *Sierre Leone* welcomed the Finnish proposal that the International Court of Justice should be asked for an advisory opinion on the Namibian situation. However, he wondered whether the present composition of the Court augured well for a favourable opinion. Many countries, he said, were sceptical in view of the Court's 1966 decision (Dossier item 6; 14th mtg., pp. 5 and 6).

336. The delegation of the *USSR* had doubts as to the advisability of requesting the International Court of Justice to give an advisory opinion on the legal consequences of South Africa's continued presence in Namibia. Its doubts were based on the critical view it took of the 1966 Judgment of the Court. The proposal to request an advisory opinion from the Court could not, in the view of the *USSR*, be regarded as an effective measure which would help to drive South Africa out of Namibia (Dossier item 7; 17th mtg., p. 4; Dossier item 9; S/9863/Add. 1/Rev. 1, Annex IV, p. 7).

337. The representative of the *United Kingdom* referred to reservations expressed earlier and pointed out that the United Kingdom delegation had abstained from voting on the Security Council resolutions, particularly resolution 276 (1970). The United Kingdom Government would be willing to accept the proposal that an advisory opinion should be sought, provided the Court was not debarred from considering the issue as a whole, including the competence of the General Assembly to assign to the United Nations responsibility for the administration of South West Africa, the legal status of which was central to the whole issue (Dossier item 7; 17th mtg., p. 5; Dossier item 9; S/9863/Add. 1/Rev. 1, Annex IV, p. 4).

338. The *Ad Hoc* Sub-Committee took note of the reservations expressed by various delegations, of which those of the United Kingdom and the *USSR* related, *inter alia*, to the recommendation which eventually led to the adoption of Security Council resolution 284 (1970). The *Ad Hoc* Sub-Committee decided that the statements containing these reservations would appear both in the Summary Records and in the report of the Sub-Committee. They were therefore included in Annex IV of the report. Note having been taken of these reservations, the *Ad Hoc* Sub-Committee adopted its draft report to the Security Council (Dossier item 7; 17th mtg., p. 7).

339. On the conclusion of the work of the *Ad Hoc* Sub-Committee, the representative of *Finland* said that his delegation was particularly pleased that

its suggestion relating to the request for an advisory opinion had been accepted and included in the recommendations of the *Ad Hoc* Sub-Committee. In that connection he emphasized again that the purpose of requesting an advisory opinion was not to call into question the basic decisions taken by the General Assembly and the Security Council terminating the Mandate of South Africa over Namibia, nor to delay or prejudice the work of the Security Council on other aspects of the question of Namibia. The Finnish delegation believed, however, that recourse to the International Court of Justice could become a turning point in the work and make it possible to approach the question from a new angle (Dossier item 7; 17th mtg., p. 8).

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340. When the representative of *Finland* introduced draft resolution S/9892 (Dossier item 10), he repeated the main arguments which he had already made in the *Ad Hoc* Sub-Committee: the value of the advisory opinion in defining and spelling out in legal terms the implications for States of the continued presence of South Africa in Namibia; the value in defining more precisely the rights of Namibians in this way perhaps some measure of added protection could be accorded to Namibians whose basic human rights were being suppressed through the application of repressive South African legislation; underlining the fact that South Africa had forfeited its Mandate; to expose the false front of legality which South African authorities attempted to present to the world. The representative of Finland also stated that the step of terminating South Africa's Mandate was irrevocable (Dossier item 8; 1550th mtg., paras. 39, 40, 41, 43.)

341. The representative of *Sierra Leone* said that some delegations entertained genuine misgivings with regard to the draft resolution which sought to reopen the question of Namibia at the level of the International Court of Justice. The delegation of Sierra Leone could understand the basis of their doubts about the wisdom of this step. However, in the light of an article published by Sir Muhammad Zafrulla Khan, the President of the International Court of Justice, in the *UN Monthly Chronicle* of July 1970, about the Court, including its advisory work, he believed that the Security Council should not be discouraged from proceeding further on the matter of Namibia to the International Court of Justice (Dossier item 8; 1550th mtg., para. 51).

342. The representative of *Nepal* said that in voting in favour of draft resolution S/9892, it would be his delegation's understanding that the International Court would limit the scope of its advisory opinion strictly to the question put to it and not review or examine the legality or validity of the resolutions adopted by both the General Assembly and the Security Council. He emphasized that the scope of the question put to the Court was restricted. Recourse to the Court might result in the provision of highest level guidance and assistance for many law-abiding States which sincerely wished to implement the United Nations resolutions on the subject (Dossier item 8; 1550th mtg., para. 81).

343. The representative of *Syria* said that, as he saw it from the draft resolution, the International Court of Justice was not asked to rule on the status of Namibia as such; rather it was requested to elicit the scope of the legal means at the disposal of States which might erect a wall of legal opposition to the occupation of Namibia by the Government of South Africa. According to the Syrian delegation's understanding, the draft sought to add a valuable element to the range of actions that could be taken by States in fulfilment of their

obligations under the Charter and the resolutions of the Security Council (Dossier item 8; 1550th mtg., para. 96).

344. The representative of *Zambia* stated that his delegation would vote in favour of the Finnish draft resolution. In coming to this decision his delegation had had to take into account that the request to the Court might be offensive to African public opinion; that there remained some lingering uncertainty about the outcome of the opinion; that the legal drafting of the question was specific enough to elicit a clear opinion from the Court which would be politically acceptable; that there was some concern that the Court might raise in its opinion doubts about General Assembly resolutions 2145 (XXI) and 2248 (S-V). The delegation of Zambia had taken all these considerations into account and had decided to support the draft resolution on the clear understanding that Namibia was a political problem requiring a political solution (Dossier item 8; 1550th mtg., para. 108).

345. The representative of *Spain* said that the problem of Namibia had confronted the United Nations with one of the most serious questions the Organization had ever faced, that was, the behaviour of one of its Members in respect of failure to comply with the resolutions of one of the Organization's bodies. The Spanish delegation felt that it was therefore most appropriate to request a ruling from the International Court of Justice for this would make it possible for the United Nations to be aware of the international legal consequences of a failure to comply with resolutions of a United Nations body—in particular resolutions 264 (1969), 269 (1969) and 276 (1970). He said that he supported the Finnish proposal in the expectation that this would contribute to the achievement of the objectives the United Nations had set for itself on this question, i.e., the defence of the interests and rights of the Namibians and respect for the decisions of the Organization in discharging its special responsibility towards the Territory of Namibia (Dossier item 8; 1550th mtg., paras. 116-117).

346. The representative of the *USSR* repeated in the Security Council his delegation's serious doubts with regard to the request for an advisory opinion. This approach could not be regarded as an effective measure and would create false illusions as to the possibility of a solution of the problem by legal means rather than by serious political action by the Security Council (Dossier item 8; 1550th mtg., para. 132).

347. The representative of *Poland* understood the intentions of the Finnish delegation and its desire to bring out all features of the situation in Namibia. The Polish delegation had no objection to addressing a request to the International Court of Justice, although it had not forgotten the ruling handed down in July 1966. The representative of Poland stressed, however, that the essential element for achievement of the United Nations objectives in Namibia was political action in the broadest sense of the term (Dossier item 8; 1550th mtg., para. 145).

348. The representative of *Burundi* said it would not be correct to minimize the doubts and apprehensions in Africa and other circles abroad which could be attributed to disappointment felt as a result of the 1966 Judgment. However, the representative believed that a unanimous adoption of this measure by the Security Council would stimulate the deliberations of the judges at The Hague. It would be premature to prejudge or try to foresee, with any degree of mathematical accuracy, the turn that the deliberation of the Court might take. There was always a hope that an impartial judgment, which would be in conformity with the inalienable rights of the Namibian people, would serve to harmonize the position of the Court with the position taken by the General Assembly in

putting an end to South Africa's Mandate over Namibia. Whatever the result, the delegation of Burundi believed that the political decision of the General Assembly, with regard to the status of Namibia, was irrevocable because the political nature of the Namibian problem was such that it was definitely within the sphere of political solutions to be imposed by the Security Council and the General Assembly. It was in recognition of the primary role of those two organs that the delegation of Burundi would vote in favour of the draft resolution (Dossier item 8; 1550th mtg., paras. 150, 151, 152).

349. The representative of *France* requested, under Rule 32 of the Provisional Rules and Procedures of the Security Council, a separate vote on the phrase "notwithstanding Security Council resolution 276 (1970)". The sponsor of the draft resolution, the representative of Finland, did not object to the request to have a separate vote on those words (Dossier item 8; 1550th mtg., paras. 157, 158).

350. The words on which a separate vote was held were retained by 11 votes in favour, none against, with 4 abstentions (France, Poland, USSR, United Kingdom). The draft resolution as a whole was, as already indicated, adopted by 12 votes in favour, none against, and 3 abstentions (Poland, USSR, United Kingdom) (Dossier item 8; 1550th mtg., paras. 159, 160).

351. The representative of the *United States*, in explaining his vote for the draft resolution, welcomed its adoption. He believed that the international community had a serious need for impartial and authoritative legal advice on the question of Namibia. He believed that the Court could and should now give the Council the benefit of its impartial and authoritative views, both as to the duties of South Africa and the responsibility of other Members of the United Nations in light of resolution 276 (1970) (Dossier item 8; 1550th mtg., paras. 169-170).

352. The representative of *France* stated that his delegation was among those that believed that the international status of Namibia did not come to an end with the disappearance of the League of Nations. In the French view, it was doubtful whether the League of Nations had been empowered unilaterally to deprive a country of its Mandate. The representative of France stated that in his view the language of the request to the International Court of Justice was imperfect. Without prejudging the opinion of the Court, it might be appropriate to leave it to the judges to question the legal foundations of the revocation of the Mandate. Because the French delegation considered that it would make it possible for the International Court of Justice to clarify the legal position as regards the legality of the revocation, the French delegation decided to support the text in spite of the imperfect language used. There could be no doubt that the Mandatory Power disregarded its obligations and that the measures which it was planning to adopt, or had adopted, were in contradiction to the commitments emanating from Article 22 of the Covenant of the League of Nations (Dossier item 8; 1550th mtg., paras. 177-180).

353. The representative of the *United Kingdom*, in explaining the abstention of his delegation in the vote on draft resolution S/9892, repeated that it was the United Kingdom's view that full examination and clarification of the legal position would be desirable and helpful. Referring to the statement made in this regard by the United Kingdom representative on the Sub-Committee, he repeated that his delegation's support depended upon the submission to the International Court of the issue of the status of South West Africa as a whole. As formulated, the question did not appear to do this. The United Kingdom representative emphasized again that the question was based on certain assumptions about the legal status of South West Africa which, in the opinion

of his Government, ought themselves to be examined by the Court. These assumptions were not expressly stated in the question itself, but they did clearly emerge from some speeches of the sponsors made in the *Ad Hoc* Sub-Committee and in the Council. There was a question whether the General Assembly was competent to terminate the Mandate as it claimed to do by virtue of General Assembly resolution 2145 (XXI). If it were established that the General Assembly was so competent to terminate the Mandate, there would, in the United Kingdom view, remain a question whether it was entitled to vest responsibility for the Territory in the United Nations. These questions posed complicated legal issues which had not hitherto been the subject of any decision or advisory opinion of the International Court. The United Kingdom Government regretted that the question which it was proposed to submit to the Court was constructed in such a fashion that the Court might feel itself inhibited from pronouncing on the more fundamental issues concerning the present status of South West Africa. It was for these reasons that the United Kingdom Government had abstained on the request for an advisory opinion (Dossier item 8; 1550th mtg., paras. 189-193).

XII. SUMMARY OF THE REVIEW OF PROCEEDINGS

354. The facts which have been reviewed in the present document show that among Members of the United Nations and in the two principal organs concerned, the General Assembly and the Security Council, there has been agreement on the basic questions of fact and also on most of the questions of law relevant to the status of South West Africa (Namibia).

355. At the Twenty-first Session of the General Assembly there was agreement among the 114 delegations which voted for resolution 2145 (XXI) and the three delegations which abstained on that resolution, on the reaffirmation of the right of the people of Namibia to self-determination; the reaffirmation of the Territory's international status; the fact that South Africa had failed to fulfil its obligations and had disavowed the Mandate; that the Mandate is terminated and that South Africa has no other right to administer the Territory. Among the members of the General Assembly other than South Africa and Portugal there was agreement on the facts of the situation and on the ends to be aimed at, although in later years reservations by two permanent members of the Security Council on the methods to be applied were articulated.

356. In two resolutions unanimously adopted by the Security Council in 1968, the Security Council took note of the termination of the Mandate by the General Assembly and took the termination into account. In four additional resolutions adopted in 1969 and 1970, the Security Council, *inter alia*, recognized that the General Assembly had terminated the Mandate, ruled that the continued presence of South Africa in Namibia was illegal, called upon South Africa to withdraw its administration from the Territory, strongly condemned South Africa for its refusal to do so; and declared all acts taken by South Africa, on behalf of or concerning Namibia, to be illegal and invalid.

357. The unanimity and, in certain respects, the quasi-unanimity of the international community as expressed in the proceedings and in the decisions of the General Assembly and of the Security Council has been a phenomenon which is rare and almost unique in the history of the United Nations and in the history of international organization and international relations in general.

**Annex concerning the Effect of Voluntary Abstentions
by Permanent Members of the Security Council¹**

1. The Security Council has not treated a voluntary abstention by a permanent member as a negative vote preventing the adoption of a non-procedural decision². Since the establishment of the United Nations permanent members have abstained voluntarily in the voting upon a part or the whole of 105 resolutions of the Security Council. China has abstained voluntarily some 15 times, France 78, the Soviet Union 148, the United Kingdom 31 and the United States 31.

2. Following is the list of Security Council resolutions in the vote on the whole or part of which one or more permanent members abstained:

<i>Resolution</i>	<i>Date</i>	<i>Subject</i>
4 (1946)	29 April 1946	The Spanish question
15 (1946)	19 December 1946	The Greek question
17 (1947)	10 February 1947	The Greek question
18 (1947)	13 February 1947	Armaments: regulation and reduction
19 (1947)	27 February 1947	The Corfu Channel incidents
21 (1947)	2 April 1947	Trusteeship of strategic areas
22 (1947)	9 April 1947	The Corfu Channel incidents
23 (1947)	18 April 1947	The Greek question
27 (1947)	1 August 1947	The Indonesian question
30 (1947)	25 August 1947	The Indonesian question
31 (1947)	25 August 1947	The Indonesian question
32 (1947)	26 August 1947	The Indonesian question
35 (1947)	30 October 1947	The Indonesian question
36 (1947)	1 November 1947	The Indonesian question
38 (1948)	17 January 1948	The India-Pakistan question
39 (1948)	20 January 1948	The India-Pakistan question
40 (1948)	28 February 1948	The Indonesian question
41 (1948)	28 February 1948	The Indonesian question
42 (1948)	5 March 1948	The Palestine question
44 (1948)	1 April 1948	The Palestine question
46 (1948)	17 April 1948	The Palestine question
47 (1948)	21 April 1948	The India-Pakistan question
48 (1948)	23 April 1948	The Palestine question
49 (1948)	22 May 1948	The Palestine question
50 (1948)	29 May 1948	The Palestine question
51 (1948)	3 June 1948	The India-Pakistan question
52 (1948)	22 June 1948	Atomic energy: international control
53 (1948)	7 July 1948	The Palestine question
54 (1948)	15 July 1948	The Palestine question
55 (1948)	29 July 1948	The Indonesian question
56 (1948)	19 August 1948	The Palestine question
61 (1948)	4 November 1948	The Palestine question

¹ See para. 245 of the review.

² For a discussion of the Security Council's practice treating a voluntary abstention by a permanent member as not preventing the adoption of a non-procedural decision, including reference to the early development of this practice, see Constantin A. Stavropoulos, "The Practice of Voluntary Abstentions by Permanent Members of the Security Council under Article 27, paragraph 3, of the Charter of the United Nations", 61 *American Journal of International Law* 737 (1967).

<i>Resolution</i>	<i>Date</i>	<i>Subject</i>
62 (1948)	16 November 1948	The Palestine question
63 (1948)	24 December 1948	The Indonesian question
64 (1948)	28 December 1948	The Indonesian question
65 (1948)	28 December 1948	The Indonesian question
66 (1948)	29 December 1948	The Palestine question
67 (1949)	28 January 1949	The Indonesian question
69 (1949)	4 March 1949	Admission of new Members to the United Nations (Israel)
70 (1949)	7 March 1949	Trusteeship of strategic areas
71 (1949)	27 July 1949	International Court of Justice (Liechtenstein)
73 (1949)	11 August 1949	The Palestine question
86 (1950)	26 September 1950	Admission of new Members to the United Nations (Indonesia)
89 (1950)	17 November 1950	The Palestine question
91 (1951)	30 March 1951	The India-Pakistan question
92 (1951)	8 May 1951	The Palestine question
93 (1951)	18 May 1951	The Palestine question
95 (1951)	1 September 1951	The Palestine question
96 (1951)	10 November 1951	The India-Pakistan question
98 (1952)	23 December 1952	The India-Pakistan question
101 (1953)	24 November 1953	The Palestine question
102 (1953)	3 December 1953	International Court of Justice (Japan)
103 (1953)	3 December 1953	International Court of Justice (San Marino)
109 (1955)	14 December 1955	Admission of new Members to the United Nations (Albania, Jordan, Ireland, Portugal, Hungary, Italy, Austria, Romania, Bulgaria, Finland, Ceylon, Nepal, Libya, Cambodia, Laos, Spain)
122 (1957)	24 January 1957	The Indian-Pakistan question
123 (1957)	21 February 1957	The India-Pakistan question
126 (1957)	2 December 1957	The India-Pakistan question
128 (1958)	11 June 1958	Complaint by Lebanon
143 (1960)	14 July 1960	The Congo question
146 (1960)	9 August 1960	The Congo question
161 (1961)	21 February 1961	The Congo question
162 (1961)	11 April 1961	The Palestine question
166 (1961)	25 October 1961	Admission of new Members to the United Nations (Mongolian People's Republic)
167 (1961)	25 October 1961	Admission of new Members to the United Nations (Mauritania)
169 (1961)	24 November 1961	The Congo question
171 (1962)	9 April 1962	The Palestine question
176 (1962)	4 October 1962	Admission of new Members to the United Nations (Algeria)
179 (1963)	11 June 1963	Reports of the Secretary-General concerning developments relating to Yemen

<i>Resolution</i>	<i>Date</i>	<i>Subject</i>
180 (1963)	31 July 1963	Question relating to territories under Portuguese administration
181 (1963)	7 August 1963	Question relating to the policies of <i>apartheid</i> of the Government of the Republic of South Africa
183 (1963)	11 December 1963	Question relating to territories under Portuguese administration
186 (1964)	4 March 1964	The Cyprus question
188 (1964)	9 April 1964	Complaint by Yemen
189 (1964)	4 June 1964	Complaint concerning acts of aggression against the territory and civilian population of Cambodia
190 (1964)	9 June 1964	Question relating to the policies of <i>apartheid</i> of the Government of the Republic of South Africa
191 (1964)	18 June 1964	Question relating to the policies of <i>apartheid</i> of the Government of the Republic of South Africa
193 (1964)	9 August 1964	The Cyprus question
199 (1964)	30 December 1964	Questions concerning the Democratic Republic of the Congo
202 (1965)	6 May 1965	Question concerning the situation in Southern Rhodesia
205 (1965)	22 May 1965	The situation in the Dominican Republic
215 (1965)	5 November 1965	The India-Pakistan question
216 (1965)	12 November 1965	Question concerning the situation in Southern Rhodesia
217 (1965)	20 November 1965	Question concerning the situation in Southern Rhodesia
218 (1965)	23 November 1965	Question relating to Territories under Portuguese administration
221 (1966)	9 April 1966	Question concerning the situation in Southern Rhodesia
226 (1966)	14 October 1966	Question concerning the Democratic Republic of the Congo
232 (1966)	16 December 1966	Question concerning the situation in Southern Rhodesia
252 (1968)	21 May 1968	The situation in the Middle East
253 (1968)	29 May 1968	The situation in Southern Rhodesia (assistance to Zambia, operative para. 15)
255 (1968)	19 June 1968	Measures to safeguard non-nuclear weapon States Parties to the Non-Proliferation Treaty
259 (1968)	27 September 1968	The situation in the Middle East
264 (1969)	20 March 1969	The situation in Namibia
265 (1969)	1 April 1969	The situation in the Middle East
267 (1969)	3 July 1969	The situation in the Middle East
268 (1969)	28 July 1969	Complaint by Zambia
269 (1969)	12 August 1969	The situation in Namibia
271 (1969)	15 September 1969	The situation in the Middle East
273 (1969)	9 December 1969	Complaint by Senegal

<i>Resolution</i>	<i>Date</i>	<i>Subject</i>
275 (1969)	22 December 1969	Complaint by Guinea
276 (1970)	30 January 1970	The situation in Namibia
280 (1970)	19 May 1970	The situation in the Middle East
282 (1970)	23 July 1970	Question of race conflict in South Africa resulting from the policies of <i>apartheid</i> of the Government of South Africa
283 (1970)	29 July 1970	The situation in Namibia
284 (1970)	29 July 1970	The situation in Namibia
285 (1970)	5 September 1970	The situation in the Middle East
290 (1970)	8 December 1970	Complaint by Guinea

3. The practice of the Security Council treating a voluntary abstention by a permanent member as not preventing the adoption of a non-procedural decision has been endorsed by each permanent member, and while questioned in 1949 by some delegations, has been accepted by the General Assembly and expressly approved by many member States

4. Treating abstentions of permanent members as preventing the adoption of a non-procedural decision would raise questions with respect to, *inter alia*, the admission to the United Nations of 21 of its Members: Israel [resolution 69 (1949)], Indonesia [resolution 86 (1950)], Albania, Jordan, Ireland, Portugal, Hungary, Italy, Austria, Romania, Finland, Ceylon, Nepal, Libya, Cambodia, Laos, Spain [resolution 109 (1955)], Mongolia [resolution 166 (1961)], Mauritania [resolution 167 (1961)] and Algeria [resolution 176 (1962)]; the status of Liechtenstein and San Marino as parties to the Statute of the International Court of Justice [resolution 71 (1949) and resolution 103 (1953), respectively]; the dispatch of an observation group to Lebanon [resolution 128 (1958)]; the initial establishment of the United Nations Force in the Congo [resolution 143 (1960)]; the creation of the United Nations Force in Cyprus [resolution 186 (1964)]; the validity of the mandatory sanctions imposed against Southern Rhodesia [resolution 232 (1966)]; the measures to safeguard non-nuclear weapon States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons [resolution 255 (1968)].

5. The practice of the Security Council treating a voluntary abstention by a permanent member as not preventing the adoption of a non-procedural decision has occurred in connection with decisions of the Security Council taken in accordance with Chapter VII of the Charter as well as Chapters I, VII and XII. On three occasions decisions of the Security Council based expressly upon one or more articles of Chapter VII were declared adopted notwithstanding the abstention of at least one permanent member [resolution 54 (1948), resolution 221 (1966), resolution 232 (1966)].

6. The practice of treating a voluntary abstention by a permanent member as not preventing the adoption of non-procedural decisions has not varied with the entry into force of the amendments to the Charter [General Assembly resolution 1991 (VXIII)] even though continuation of this practice theoretically permits the adoption of a Council decision with all permanent members abstaining. Since the entry into force of the Charter amendments on 31 August 1965, the Security Council has adopted 25 resolutions in the voting upon the whole or parts of which at least one permanent member abstained.