UNITED
NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/C.10/AC.4/1989/7
27 July 1989

ORIGINAL: ENGLISH

COMMISSION ON TRANSNATIONAL CORPORATIONS
Second Public Hearings on the Activities
of Transnational Corporations in South
Africa and Namibia
Geneva, 4-6 September 1989

THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS IN NAMIBIA

Report of the United Nations Centre on Transnational Corporations

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INTRODUCTION

1. With the implementation of Security Council resolution 435 (1978), the United Nations will have discharged its responsibility of ensuring the exercise of the right to self-determination by the people of Namibia. South Africa's illegal occupation of Namibia, which ensued on the termination of its League of Nations Mandate by the General Assembly in 1966, will also have been brought to an end.

2. The independence of Namibia will mark the beginning of a new, and perhaps more challenging venture: that of nation-building. The primary responsibility for this task will of course devolve on the new sovereign Government of Namibia. The United Nations will doubtless play a supportive role not only by virtue of its development mandate and related activities, but, more particularly, through the technical assistance projects to be carried out in the post-independence phase of the Nationhood Programme for Namibia.

3. One major issue on which a new Namibian Government would need to take urgent policy decisions is the role of transnational corporations in an independent Namibia. The present paper undertakes a brief review of the activities of transnational corporations in Namibia and of future prospects for foreign investments after independence. It is intended primarily as a background paper for the Public Hearings on the Activities of Transnational Corporations in South Africa and Namibia, scheduled for Geneva from 4 to 6 September 1989.

I. THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS IN NAMIBIA

A. Overview of the Namibian economy

4. The Namibian economy has evolved as an appendage of the South African economy and reflects the latter's *apartheid* structure. To start with land ownership, about 60 per cent of the land area (comprising the most arable land) has been allocated to the white settler population - which is less than 10 per cent of the total population. The black majority, comprising over 90 per cent of the population, has been restricted to "native reserves" or "homelands" scattered over the most barren regions of the country. The policy of land deprivation - which originated in the German colonial period and was perfected under *apartheid* - has entailed the virtual destruction of the traditional pastoralist and agricultural economy and greatly accelerated the marginalization of the black population in economic terms. 1/

5. The structure of the economy is characterized predominantly by the extraction of natural resources to service the industrial needs of South Africa and its trading partners, coupled with the importation of manufactured goods (predominantly from South Africa), and related services and commercial sectors. The main sectors of the economy are thus mining (mostly diamonds and uranium), fisheries and some related manufacturing, and agriculture (beef and karakul pelt ranching). These three extractive sectors now account for about 40 per cent of the gross domestic product (GDP) and for over 90 per cent of export earnings. 2/

6. South Africa directly absorbs over 50 per cent of Namibia's exports (a significant proportion being re-exported), and provides over 70 per cent of its imports. 3/ Each of the principal sectors of the economy is dominated by South African companies, alongside other foreign-based companies (see sectoral discussion below). There is no central bank, no separate currency, and no customs tariff, as Namibia is fully integrated into the Rand Monetary Area and the South African Customs Union - although it is not a formal or de jure member of these arrangements.

7. Owing to the pronounced external orientation of the economy, its domination by South African and other foreign companies, and the absence of an autonomous national economic policy or institutions, there is a continual outflow of significant proportions of Namibia's GDP to South Africa and other countries. This outflow is currently estimated at 16-20 per cent, but has been as high as 30-40 per cent in previous years. 4/ It is also estimated that some 5 per cent of South Africa's total export earnings accrue from Namibian products. 5/ In contrast with these outflows, the provision of budgetary subsidies to the Namibian Administration by the South African Government - which is often cited as evidence of South Africa's benevolent role in Namibia - would tend to pale into insignificance.

8. The Namibian labour force has been governed by a system of apartheid as in South Africa. There is a severe shortage of skilled indigenous manpower due to past job restrictions and the absence of higher education and training facilities for the black population. The majority of black Namibians depend on subsistence agriculture or work as contract labourers in the mining, fishing and agricultural sectors. Historically, the income differential between whites and blacks has been higher in Namibia than in South Africa. The proportion of black wage earners living below the poverty line is estimated to be between 80 and 99 per cent (the highest percentage being in northern Namibia). Since 1980 a black wage "elite" of the order of 40,000 households has been created, the majority being teachers, nurses, clerks and artisans in state service. Most of the others are in transnational corporations' employment particularly in mining and finance. This group of households have average incomes about six times the average for the other black households but under one third the average for white households. 6/ The unionization of black workers has been restricted by security legislation, and strenuously resisted by the mining companies until recently. Over the past year both the Consolidated Diamond Mines and Rössing Uranium have signed recognition agreements with the Mineworkers Union of Namibia, itself formed only in 1986.

9. Table 1 provides some basic macro-economic data on Namibia over the past five years. This is followed by a review of the principal sectors of the economy and the extent of involvement by transnational corporations in each sector.

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Table 1

Namibia: macro-economic indicators	1984	1985	1986	1987	1988
GDP at market prices (million Rand)	1 970	2 551	2 929	3 131	-
Real GDP growth %	-1.2	0.4	3.1	2.9	3.5 a/
Consumer price inflation %	8.7	11.9	13.4	12.6	-
Population mn	1.10	1.14	1.18	1.23	1.27 a/
Exports fob $ mn	766	728	878	889	960 a/
Imports fob $ mn	805	565	638	842	920 a/
Current account $ mn	122	173	283	77	90 a/
Uranium oxide production tons	3 692	3 385	3 487	3 540 a/	3 400 a/
Diamond production '000 carats	930	910	1 010	1 020	1 050 a/
Exchange rate (av) R per $ 27 February 1989 R2.482 per $	1.438	2.191	2.269	2.035	2.262

Source: Economist Intelligence Unit, Country Report: Namibia, Botswana, Lesotho, Swaziland, No. 1/1989.

a/ Estimate.

B. Mining

10. Namibia is best known for its mineral resources, mainly diamonds, uranium, copper, lead, tin, and zinc, with significant quantities of cadmium, lithium, arsenic, gold, silver and others. There is also reliable evidence of coal, iron ore, platinum, and natural gas deposits. Mining traditionally accounted for approximately half of the country's GDP until about 1980, after which its contribution to GDP declined to 30-40 per cent owing to falling world market prices. However, this decline has been partially reversed in recent years with the recovery of diamond and base metal prices. The sector has consistently accounted for 70-80 per cent of export earnings. 7/

11. The mining sector is dominated by three transnational corporations, namely: the Anglo-American/De Beers Group of South Africa, with De Beers being the sole owner of Consolidated Diamond Mines (CDM) in Namibia; Consolidated Gold Fields (CGF) Group of the United Kingdom, which is the dominant owner of the Tsumeb Corporation Ltd., through its affiliate Gold Fields of South Africa Ltd. (GFSA);

and the Rio Tinto-Zinc Corporation (RTZ) of the United Kingdom, which has the largest equity interest in Rössing Uranium Ltd. 8/ The Namibian subsidiaries of these three transnational corporations hold about 90 per cent of the total mining investments in Namibia. The remaining mining companies, which are owned by an assortment of South African, West European and North American interests, are far less significant in terms of production, profits and employment.

12. The majority of the earnings accruing from the sales of minerals are transferred to the parent or group holding companies; varying proportions of such earnings are retained by the subsidiaries for operational expenditures, with the remainder being paid to shareholders. Almost none of these profits have been reinvested in mining or in other sectors of the Namibian economy, except for the recent opening of three new mines by the Anglo-American/De Beers group (see paras. 13 to 17 below).

1. Diamonds: Consolidated Diamond Mines

13. The most profitable mining operation in Namibia has been the exploitation of gem diamonds by Consolidated Diamond Mines (Pty) Ltd., incorporated in February 1920 as Consolidated Diamond Mines of South West Africa Ltd. CDM obtained mining rights in Diamond Area No. 1, a 60-mile-wide strip of land running along the Namibian coast for 220 miles from the mouth of the Orange River (Namibia's southern border with South Africa) to a little north of the port of Luderitz. The initial grant was for a 50-year period from 1 January 1921, but has been extended to 31 December 2010.

14. Production from CDM mining operations decreased steadily between 1978 and 1981. It then levelled out around one million carats (half the 1970s and less than half the 1960s peak) and was raised somewhat - to about 1,200,000 carats - with diamond market recovery after 1986. Reserve levels are unknown because it is De Beers' policy to prove and announce only about 12 years normal production reserves. Development in the northern diamond area (near Luderitz) and upstream on the Orange River (an extension of the mining licence area) suggest intention to maintain or restore output and expected life of over 20 years. The wild output fluctuations have always characterized CDM which De Beers has run as a "swing" producer to balance the market, the main objective being to maximize export earnings with scant regard for the fiscal uncertainty this policy imposes on Namibia. By 1989 gross output value appeared to be of the order of R 800 million, total diamond taxes over R 300 million, and profits to De Beers R 200 million. 9/

15. Over the years, CDM has accumulated substantial investments in various subsidiaries within the De Beers group. There are indications that the purchase of shares in these other subsidiaries of De Beers was a mechanism for using CDM profits to finance De Beers' activities outside Namibia. There had been indications of overmining and near-depletion of CDM's deposits in the 1970s and early 1980s, and a prospecting campaign was launched to extend the life of the property "for as long a period as is economically possible" - as announced in a 1979 statement by the Chairman of De Beers. 10/

16. Lately there have been reports of two new diamond mines being opened by CDM. The first, an alluvial deposit at Auchas on the Namibian side of the Orange River, is scheduled to start production in late 1990 with an estimated output of about 43,500 carats per annum over the next 10 years. The second, at Elizabeth Bay south of Luderitz, is scheduled to start in mid-1991 with an estimated output of 250,000 carats per annum (but of smaller gems). Namibia's first gold mine (gold having previously been produced alongside copper) was scheduled to open at Navachab in November 1989 as a joint venture between CDM and Anglo-American. These new investments are seen as indications of confidence in the likelihood of establishing a mutually beneficial relationship with a new Namibian Government. 11/

17. Diamond production and exports have been under the ostensible oversight control of the Diamond Board of Namibia, on which De Beers is represented. However, the De Beers-controlled Central Selling Organisation (CSO), based in London, exercises near-monopoly powers over the global diamond market including, of course, production from Namibia.

2. Uranium: Rössing Uranium Ltd.

18. Rössing Uranium Ltd. was established in 1970 to develop vast uranium deposits acquired by Rio Tinto-Zinc (RTZ) in the mid-1960s. RTZ holds a total of 46.5 per cent of the equity capital, including 10 per cent held through its Canadian affiliate, Rio Algom Ltd. The other shareholders are the state-owned Industrial Development Corporation (IDC) of South Africa (13.2 per cent); the General Mining and Finance Corporation of South Africa (6.8 per cent); Total-Compagnie minière et nucleaire of France, an affiliate of the state-owned Compagnie française des pétroles (10 per cent); and Urangesellschaft of the Federal Republic of Germany (5 per cent). Although RTZ is the largest equity shareholder, it holds only 26 per cent of the voting rights, with South Africa exercising effective veto powers over major decisions through IDC.

19. The Rössing mine reached its planned annual output of 5,000 short tons of uranium oxide in 1979. In reaching that capacity, it became the largest open-cast uranium mine in the world. With the recent declines in CDM's diamond production, Rössing has also become the largest mining operation in Namibia. Although production and marketing figures are kept strictly secret (in conformity with South African legislation), output is believed to have been maintained at around 4,000 tons per year from 1983, and is currently at about 3,500 tons. 12/

20. Deliveries of Namibian uranium have been made under long-term supply contracts to customers in the United Kingdom, Japan, Western Europe, and North America, as shown in the following table.

Table 2. Known and possible uranium contracts as of 1986 a/

Customer	Country Processing	Amount (tonnes)	Contract expires
British Nuclear Fuels Ltd., United Kingdom	United Kingdom	7 500	1984
Comurhex, France	France	11 000	Late 1980s
Veba, Federal Republic of Germany	Netherlands		
Urangesellschaft, Germany	Netherlands	6 140	
Kansai Electric Power, Japan	United States/Canada	8 200	1986
Other Japanese	United States/Canada	23 000	
Taiwan Power Corporation, Taiwan	Netherlands	4 000	2 005

Source: Windhoek Observer (29 January 1983); New Statesman (28 January 1983).

a/ In 1981 RTZ stated that additional amounts would be supplied to British Nuclear Fuels Ltd. Kansai and two other Japanese firms have contracts for around 23,000 tonnes of uranium from South Africa, including from Rio Tinto South Africa. It is assumed that these contracts are supplied from Rössing.

21. It is likely that other supply contracts for Namibian uranium exist or have existed in the past, as information on such contracts sometimes surface unexpectedly. For instance, in April 1988 a newspaper report in Madrid indicated that the Spanish state-owned National Uranium Company (ENUSA) had signed a contract for the delivery of 3,327 metric tons of Namibian uranium through 1991. The Spanish Government later issued a statement confirming the existence of such a contract but stating that it covered deliveries up to 1989 and would not be renewed. 13/ A Canadian Government statement in July 1985 announced the termination of toll-processing of Namibian uranium imported from South Africa that had been carried out by Eldorado Nuclear, a state-owned corporation. 14/

22. Despite the ending of Namibian uranium imports under the British Nuclear Fuels (BNFL) contract in 1984, and the prohibition of such imports by the United States under the Comprehensive Anti-Apartheid Act of 1986, there have been reports that BNFL has continued to process Namibian uranium for customers in the United States, Western Europe, and Japan. 15/ Another major processing company has been Urenco Ltd., of the Netherlands, against which the Council for Namibia instituted legal action in July 1987 in an effort to stop its enrichment operations for other customers. 16/ That case is still pending in the Dutch courts.

23. The terms of the agreement under which Rössing Uranium was established allowed it to recover its initial capital investment before incurring any tax liability. Rössing was thus able to avoid paying taxes until the 1982/83 fiscal year, which

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indicates full recovery of the initial investment of about $380 million by that time. Profits in 1983 were £30.2 million, approximately one-third of total RTZ profits for that year. Although profits have been eroded by the weak uranium oxide market and below-capacity operation in recent years, they have continued at high levels and the initial external borrowing has also been fully repaid. 17/

3. Base metals: Tsumeb Corporation Ltd.

24. Tsumeb Corporation Ltd. (TCL) mines a uniquely complex orebody containing deposits of copper, lead, silver, cadmium and zinc, with grades of arsenous oxide recoverable as a by-product from the smelting of copper and lead. It also produces gold alongside its copper output, and it is also known to be a major supplier of germanium, a rare mineral, to the United States. Tsumeb has mined these deposits since 1948, and accounts for over 70 per cent of base mineral exports from Namibia. The company owns four other base-metal mines (Matchless, Otjihase, Kombat, and Asis West) and operates Namibia's only copper smelter and lead refinery.

25. Gold Fields of South Africa (GFSA), an affiliate of the Consolidated Gold Fields (CGF) Group of the United Kingdom, replaced Amax (United States) as one of the two leading shareholders in 1982 - the other being Newmont Mining Corporation of the United States. In April 1988 Newmont sold its shares to GFSA, which then became the majority owner (78 per cent) of Tsumeb Corporation. British Petroleum Minerals International of the United Kingdom holds 14 per cent, with the balance being held by several South African companies.

26. Between 1971 and 1981 alone, when Amax and Newmont were the majority shareholders (with approximately 30 per cent each), TCL produced over 5.4 million metric tonnes from the Tsumeb mine, 1.16 million metric tonnes from the Matchless mine, 211,000 metric tonnes from Otjihase, and 3.0 million metric tonnes from the smaller mines at Kombat and Asis West. By 1982 the approximate reserves for TCL mines had fallen to 3.5 million metric tonnes at Tsumeb, 740,000 metric tonnes at Matchless, 8.1 million metric tonnes at Otjihase, and 2.0 million metric tonnes at Kombat and Asis West. The Otjihase mine had been closed in 1977 but recommissioned in 1981, and Matchless was placed on a care and maintenance basis in 1985. TCL registered losses for four years in a row until 1984 - partly due to write-offs for a major rehabilitation and restructuring programme. There are some conflicting figures on its subsequent performance, but a net profit of at least R 22 million was recorded in 1985, and R 19.3 million in 1986. A series of pit collapses affected output at the Tsumeb mine in 1987, and there were reports of flooding at a newly developed area of the Kombat mine, with seven miners killed, in late 1988 - which may also affect annual output. 18/

4. Other mining companies

27. Other foreign companies with current or past operations in the Namibian mining sector include Falconbridge of Canada, which opened the Oamites copper mine in 1971 but sold its 75 per cent holding to Metorex of South Africa in 1982. Oamites was closed in 1985. Metorex also acquired the Klein Aub copper mine, previously

operated by General Mining Union Corporation (GENCOR) of South Africa, in 1984; this mine was also closed in 1987. The state-owned Iron and Steel Corporation (ISCOR) of South Africa, through two of its subsidiaries, operates the Rosh Pinah mine (lead, silver and zinc) and the Uis mine (tin) as captive sources of raw materials. Reserves of tin are estimated to be sufficient for about 90 years production, and output at both mines is being expanded. The Rosh Pinah and Uis mines contributed to ISCOR's record profits of R 675 million in 1987/88 - although ISCOR does not disclose what proportion of its revenue is derived from its Namibian operations. 19/

28. Exploration activities continue to be conducted by the leading mining companies as well as by a number of small operators. Eiland Diamante, an affiliate of the Rembrandt tobacco group of South Africa, holds exploration rights for marine diamonds around the Penguin islands off the coast of Namibia. In 1984 Eiland Diamante granted mining rights in the area to the Ocean Diamond Mining Company, which secured some initial financing from a British merchant bank, Baring Brothers. In 1987, an Italian entrepreneur is reported to have established a marble quarrying company, Damara Granite, with an initial estimated output of over 4,000 tons a year. Apart from the Rössing uranium deposits, three others had been located in the 1970s by South African and European companies, several of whom are still engaged in exploration activities. There are also known deposits of coal, natural gas and other minerals, development of which have been held back over the years for various reasons.

C. Finance

29. Most commercial banks in Namibia are branches of two South African banks which are ex-affiliates of two United Kingdom-based transnational banks: Barclays Bank PLC, and Standard Chartered Bank PLC. The First National Bank of Southern Africa, Ltd. replaced Barclays when it divested from South Africa in 1986. Standard Bank Investment Corporation (STANBIC) of South Africa replaced Standard Chartered PLC in 1987. These two South African banks thus took over the Namibian operations of Barclays and Standard, each of which had about 30 branches in Namibia and together held about 70 per cent of total bank deposits. The other major banks in Namibia are Trust Bank of Africa and Nedbank, both based in South Africa; the Bank of South West Africa (SWABANK), an affiliate of Dresdner Bank of the Federal Republic of Germany; and Bank Windhoek, the only locally-owned bank, previously owned by Volkskas of South Africa. South African-based insurance companies, some of whom are affiliates of United Kingdom-based companies, also dominate the insurance sector of Namibia.

30. The banking and insurance sectors exemplify the integration of the Namibian economy into that of South Africa. Being a *de facto* member of the Rand Monetary Area, Namibia uses the South African Rand and has no independent financial sector as such. There are no restrictions on the flow of funds between South Africa and Namibia. A common pool of gold and foreign exchange reserves is held and administered by the South African Reserve Bank, which has maintained a department in Windhoek to handle Namibia's external transactions. Likewise, insurance operations have been under the regulatory control of the South African Registrar of Insurance.

D. Fisheries

31. The fishing industry of Namibia includes both inshore fishing and offshore deep-sea fishing with fish-canning and processing factories in Walvis Bay and Luderitz. This sector has seen a great decline from its position in the 1950s to 1970s, when it was second only to mining; in 1987 agriculture and fisheries together produced about 12 per cent of GDP. Six operating companies control the fishing industry in both Namibia and South Africa; these are Fedfood, Irvin and Johnson, Ovenstone Investments, Willem Barendsz, Kaap-Kunene and the Oceana Fishing Group. The business families which own or have substantial holdings in the operating companies are the du Preez, Ovenstone and Silverman families of South Africa, and the Namibian family of Olthaver and List. Large industrial companies such as Anglo Vaal, Barlow Rand, Premier Milling and Tiger Oats (taken over by Barlow Rand in 1982) also have interests in this sector. Other South African industrial and financial corporations with interests in the fishing industry include the Anglo-American Corporation, Sanlam, Federale Volksbeleggings and Liberty Life.

32. The South African-controlled Administration has traditionally favoured South African companies in the issuance of fishing quotas and licences. These companies escape tax liability in Namibia by not being registered there, and only pay a small fee for licences. The six leading South African companies still hold 11 of the 12 pelagic fish factory licences, the entire lobster concession, and 80 per cent of fishing quotas (reduced from 91 per cent in 1986). Efforts by Namibian interests to acquire a greater share of fishing quotas have proved largely unsuccessful.

33. In the mid-1970s, the six South African companies derived about 35 per cent of their after-tax profits from their Namibian operations. In the same period, the companies recovered about 30 per cent of their turnover in gross profits, which enabled them to recover their total investment in the fishing industry within a period of three to four years. Since about 1978 when sales of fish decreased sharply, the companies have maintained their profit levels by diversifying from fishing into various other investments. They also removed over half of their canning machinery from Walvis Bay factories to new ventures in Chile, although some new facilities for white fish handling have been installed. 20/

34. The profits made by the South African companies resulted from extensive over-fishing. Quota regulations paid little regard to conservation, and pelagic fishing reached a peak with a catch of over 550,000 tonnes of pilchards in 1968. The over-fishing became most evident when the pilchard catch fell dramatically over a period of three and a half months in 1978 to an annual rate of 153,000 tonnes. In the same year, the South African authorities belatedly reduced the fish canning quota to a minimum level and imposed a total catch quota of 30,000 and 35,000 tonnes for 1982 and 1983, respectively. Recovery since has been partial and erratic with inadequate sustained restraints to restore stocks. 21/

35. The second part of the Namibian fishing industry, deep-sea offshore fishing, is reported to be dominated by offshore fleets that have included ships from Japan, Israel, Bulgaria, Poland, Portugal, South Africa, Spain and the Union of Soviet Socialist Republics. Offshore fishing is regulated by the International Commission

for South-East Atlantic Fisheries (ICSEAF), and the International Commission for the Conservation of Atlantic Tunas (ICCAT). In November 1979 the South African Government proclaimed a 200-mile fishing zone off the Namibian coast, thus granting to itself the right to sell fishing rights inside the zone to other nations. 22/ It was estimated that this decision would add R 17 million a year to South Africa's fishing revenues. That decision was condemned by the United Nations Council for Namibia as "illegal, null and void". The Council for Namibia itself decided to proclaim a 200-mile exclusive economic zone for Namibia in 1985, with the endorsement of the General Assembly (resolution 40/97 A of 13 December 1985).

E. Agriculture

36. The two main activities here are livestock and karakul pelt ranching, predominantly on white-owned settler farms. Protracted drought over the past 10 years has led to considerable de-stocking of livestock farms. It is estimated that of about 5,200 settler-owned commercial farms, only about 3,500 were occupied in 1986. The cattle herd declined by almost half between 1979 and 1984, from 2.5 million to 1.3 million head. Most cattle are railed on the hoof for slaughtering in South Africa, and there is some export of frozen cuts and canned beef to European markets.

37. The main involvement by a non-South African company in the agricultural sector has been the karakul fur trading operations of the Hudson's Bay Company, based in Canada. The company's involvement was through Hudson's Bay and Annings (SWA) Pty. Limited, a wholly-owned subsidiary of Hudson's Bay and Annings Limited, based in the United Kingdom, which was 59 per cent owned by the Canadian parent but has now been sold to the former minority partner. The year 1969 was the peak year for the karakul trade when over 35 million pelts were exported with 25 per cent of the total sales in the United States. The serious drought in Namibia led to widespread slaughtering of the karakul herds and by 1981 sales had fallen to 3 million pelts, approximately 35 per cent of total agricultural production. Belgium, the Federal Republic of Germany, Italy, Spain and the United Kingdom are now the prime markets and auction centres for Namibian karakul. 23/

38. The size of the profits earned by Hudson's Bay and Annings from the sale of karakul, a high fashion product marketed under the name of Swakara, has not been made public. The total value of the 3 million pelts exported from Namibia in 1980-1981 was reported as R 45 million. Subsequently drought and falling prices reduced this, but reversal of both negative factors has restored exports to the order of $50 million. Karakul prices reached record highs at the London auction in 1987, and the Karakul Board of Namibia has launched a promotional campaign to expand sales in Europe and the United States. 24/

F. Manufacturing and commerce

39. Namibia's commercial and manufacturing sectors together account for about 15 per cent of GDP. The manufacturing sector comprises fewer than 300 enterprises, accounts for under 5 per cent of GDP and employs 10 per cent of the work force.

Meat and fish canning, the supply of some specialized equipment to the mining industry and some local assembly of materials imported from South Africa comprise the main manufacturing activities. The South African presence is very strong, as in the other major sectors. De Beers Consolidated Mines and the Anglo-American Corporation hold direct and indirect interests in spheres outside mining, such as property, building, drilling, freight services, insurance and banking. South African chains, such as Barlow Rand and OK Bazaars, are very active in the wholesale and retail trade.

40. The South African-controlled Administration has tried to develop a parastatal involvement in this sector through the First National Development Corporation (FNDC), commonly known by its Afrikaans acronym, Enok. Enok was established in 1978 in a merger of development corporations formed for the "homelands" (the most prominent of which was the Ovambo Development Corporation), to participate in new projects in the private sector. To date, its most prominent activity has been the establishment of a meat processing plant at Gobabis in 1980. There have also been some recent contacts with a number of businessmen from Taiwan interested in textile and shoe manufacturing, as well as in minerals and semi-precious stones. 25/

G. Energy

41. Namibia currently depends on oil and coal imports through South Africa for its energy needs. Independence should give a new lease on life to the Kunene hydroelectric project (on the Angolan border) the development of which has been delayed by the war. There are also indications of oil deposits in the Etosha Pan region in the north - for which Etosha Petroleum, owned by Brilund Mining of the United States through an affiliate in Lichtenstein, holds exploration rights. Consolidated Diamond Mines also located coal deposits at Aranos near the border with Botswana in the 1970s, and a significant natural gas field (the Kudu gas field) was discovered in the 1970s 120 kilometres offshore from the mouth of the Orange River, just within Namibian territorial waters. 26/

42. The South African authorities, through the parastatal Southern Oil Exploration Corporation (Soekor) and the Namibian counterpart (Swakor), have sought foreign partners to develop the Kudu gas field - which is reported to be sufficient to support about 20 years production and was projected to satisfy up to 65 per cent of South Africa's present liquid fuel requirements. However, it is believed that major oil companies have been reluctant to commit themselves partly owing to the unsettled political situation. 27/

H. Company law

43. Company law in Namibia is derived from the South African Companies Act (No. 61) of 1963, as amended. The Act provides for the local incorporation of companies as well as for the existence of "external companies". The latter are defined as companies or other association of persons incorporated outside South Africa (or Namibia) the memorandums of which are lodged with the Registrar of Companies (under the predecessor to the 1973 Act), or which have established a

place of business in South Africa (or Namibia). Proclamation 234 of 1978, promulgated by the State President of South Africa, amended the 1973 Act to provide, inter alia, for the establishment of a separate companies registry and the office of Registrar of Companies in Windhoek. The Registrar was to be appointed by the Administrator-General on the designation of the South African Minister of Economic Affairs.

44. There is provision for any person to inspect documents kept by the Registrar, and to obtain copies or extracts of such documents for a fee. But this public information provision is circumscribed by exclusionary provisions under the discretion of the South African Minister of Economic Affairs, as well as by other legislation such as the Atomic Energy Act - which restricts disclosure of information on uranium mining, among others.

I. Tax law

45. Corporate income tax is governed by the Income Tax Act (No. 24) of 1981, which replaced the South African Income Tax Act of 1962 in respect of tax liability on income derived from Namibia - although the 1981 Act is modelled on the latter. With the purported annexation of Walvis Bay in 1977, Walvis Bay reverted to South African administration (as part of the Cape Province) with the result that income derived from sources within Walvis Bay (i.e., most of the fishing companies and others) are taxed as income earned in South Africa. Proclamation No. 85 of 1979 established a Central Revenue Fund for Namibia - combining the erstwhile South West Africa Account and Territory Revenue Fund - into which is paid all tax and other revenue derived from Namibia.

46. The tax rate is determined from year to year and has generally been below that prevailing in South Africa. The tax rate for companies in diamonds is higher than for others, but has remained lower than that prevailing in South Africa - which in turn is lower than that prevailing in neighbouring diamond-producing countries, such as Botswana. The aggregate tax rate on diamond-mining companies has been 60-65 per cent of gross profits compared with at least 75 per cent in Botswana.

47. The additional charges on diamond mining companies, justified on the basis of their exceptional profitability, are the diamond profits tax (15 per cent) and the diamond export duty (10 per cent on gross sales proceeds). However, under the Diamond Taxation Proclamation of 1941, the diamond profits tax is credited against general corporate tax; the export duty, on the other hand, is treated as a deduction or expense towards determination of taxable income.

48. Apart from lower tax rates as compared to those of South Africa and other neighbouring countries, the most significant tax incentive has probably been the provisions allowing immediate write-off or deduction of capital expenditure against gross revenue prior to determination of taxable income. The more common practice in most countries is that of phased deductions on the basis of varying notions of depreciation. The write-off provisions also allow a carry-over of such expenditure in subsequent years and apply to exploration as well as development expenditure, general administrative and management expenditure, and loans. The result is thus

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full recovery of an investment before tax liability accrues - or, in effect, the use of Namibia's natural resources to finance the investments in question.

J. Assessment

49. In recent years, particularly in the difficult economic circumstances of the 1980s, increased attention has been paid to the positive contribution that transnational corporations can make to the development process through the capital, technology, management expertise and other resources that they have at their disposal. Attention has focused on the contribution of transnational corporations not only in providing capital, but also in transferring technology, in assisting in the development of domestic import-substituting industries and in gaining access to foreign markets for industrial goods and other similar exports. By these means, it is argued, transnational corporations can contribute to the industrial development of the developing countries and promote their increased integration into the world economy, while at the same time enhancing their self-reliance by promoting indigenous development. Those potential positive effects of transnational corporations have to be weighed against possible negative consequences, such as the loss of economic and political autonomy, the outflows of foreign exchange to which transnational corporations give rise and various other economic, political, social and environmental effects.

50. Transnational corporations operating in Namibia appear to embody few, if any, of the positive characteristics mentioned above. First, with regard to inflows of capital, such inflows as there have been over the years would tend to have been exceeded by outflows in terms of profits - very little of which has been reinvested in Namibia. It may be noted, for instance, that the initial investment in the Rössing development has been completely recovered already through tax write-off provisions. The three new mines recently reported to have been opened by the De Beers/Anglo-American Group seem to represent the first significant reinvestment of what must be a small proportion of the profits made from Namibia over the years. Indeed, since net fixed capital formation in the private - and especially the mining - sector has been negative since 1980, it is virtually certain that there has been a net outflow of capital compared with direct investment. 28/

51. Similarly, transfer of technology by transnational corporations into Namibia appears to have been negligible because the companies concerned are almost exclusively involved in the mining and extraction of the country's natural resources. In contrast with the situation in many other resource-rich developing countries, no effort has been made by the authorities to increase the host country's share of value-added through local processing of its natural resources - although for practical reasons, fish is processed within Namibia.

52. With regard to the development of the human resource base required for sustained economic development, transnational corporations have made virtually no contribution to Namibia. In contrast with the situation in South Africa, no progress can be claimed with respect to the application of codes of conduct or other inducements to encourage transnational corporations to improve the well-being of their black employees in Namibia or to the upgrading of their skills.

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53. The same is true of industrial capacity. With the exception of fish processing, there has been no significant direct investment in manufacturing by transnational corporations in Namibia. Rather, Namibia has been a captive market for South African and other foreign manufactured products. Neither import substitution nor the promotion of manufactured exports have been a concern of the transnational corporations operating in Namibia. Overall, therefore, it is difficult to identify any significant positive contribution by transnational corporations to the development of the Namibian economy.

54. The negative effects, on the other hand, appear manifest. Transnational corporations have continued to operate in Namibia in defiance of international public opinion and international law. The majority of them, and certainly the most important ones, have been involved in activities leading to the depletion of the country's non-renewable natural resources. Such depletion has also occurred with respect to one renewable natural resource, fisheries, with the result that the rate of renewal has become inadequate to sustain previously existing stocks. The Namibian population appears to have derived little, if any, benefit from this depletion of their natural resources.

55. Rather, the operations of transnational corporations have contributed to sustaining the South African occupation and administration of Namibia. Taxes on profits of transnational corporations have directly contributed to the deployment and maintenance of the South African military forces and to the running of the civilian administration. By 1989 taxes on mineral producers were of the order of R 450-500 million, over half being on diamonds. 29/

56. Recognizing the limited life of their non-renewable resources, other resource-rich countries have sought to derive a fair share of the benefits from the exploitation of those resources. These efforts have included nationalizations in some extreme cases, participation in joint ventures, progressive tax régimes, and a variety of other arrangements. The South African administration has not adopted any such measures *vis-à-vis* corporations operating in Namibia except with respect to the participation of its own parastatals in mining ventures to meet South African needs. The bulk of profits earned by transnational corporations in Namibia are regularly repatriated, either directly to foreign shareholders or for use in the expansion of parent companies in South Africa and elsewhere.

57. The proportion of GDP transferred abroad may have reached a level of 40 per cent in the late 1950s; this dropped to about 30 per cent in the 1960s and early 1970s and may have since narrowed further to about 20 per cent. This fall relates primarily to lower profits as net fixed capital formation in the private sector has been negative. The result has been a constant gap between Namibia's gross domestic product and its gross national product. Gross national product net of repatriated profits and other factor payments made outside Namibia is estimated at between 65 per cent and 80 per cent of gross domestic product. Moreover, in recent years, possibly because of the illegality of their operations in Namibia, few corporations have reinvested any of their profits in the Territory (except for the new De Beers mines noted earlier).

58. On the other hand, South Africa has derived incalculable economic benefits from its occupation of Namibia. Apart from being a captive market for South Africa's manufactured products, Namibia has also been a captive source of raw materials for South Africa's industrial production. Namibia supplies almost all of South Africa's requirements for lead, tin, zinc, and lately, uranium. South Africa benefits from tax revenue on the operations of transnational corporations in Namibia, as well as from the profits of Namibian enterprises that accrue to investors based in South Africa. It also benefits from customs revenue from Namibian imports and, above all, from foreign exchange earnings from its exports. Overall, therefore, the activities of transnational corporations in Namibia would tend to have yielded greater benefits to those corporations and to the South African economy, than to the development of Namibia or to improving the welfare of the majority black population.

II. LEGAL STATUS OF TRANSNATIONAL CORPORATION ACTIVITIES IN NAMIBIA

A. Sovereign authority in Namibia prior to independence

59. Although South Africa continued to exercise *de facto* governmental authority in Namibia despite the termination of its Mandate in 1966, such authority has lacked any legal basis. This view has been recognized by the International Court of Justice in its Advisory Opinion of 21 June 1971, and endorsed by the Security Council in numerous resolutions. 30/

60. One inescapable consequence of this is 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" - as declared by the Security Council in its resolution 276 (1970) of 30 January 1970. The Security Council has also declared, in its resolution 566 (1985) of 19 June 1985, that South Africa's installation of a so-called interim government in Windhoek on 17 June 1985 was "illegal and null and void", and further that "no recognition will be accorded to it either by the United Nations or any Member State or to any representative or organ established in pursuance thereof". 31/

61. The legal status of concessions or contracts, licences, and other authorizations granted by the South African-sponsored Administration in Namibia to transnational corporations and other investors should be seen against this background. Apart from resolutions of the General Assembly and the Economic and Social Council, which assert the illegality of such business arrangements, the Security Council has also addressed this question over the years in terms which imply the invalidity of the contracts involved. For example, in its resolution 283 (1970) of 29 July 1970, the Security Council for the first time called upon Member 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;

> "to withhold from their nationals, or companies of their nationality not under direct governmental control, government loans, credit guarantees and other forms of financial support that would be used to facilitate trade or commerce with Namibia;
>
> "to ensure that companies and other commercial enterprises owned by, or under direct control of, the State cease all further investment activities, including concessions, in Namibia;
>
> "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 to withhold protection of such investment against claims of a future lawful government of Namibia".

That resolution also requested all States to refrain from any relations - diplomatic, consular or otherwise - with South Africa that might imply recognition of the authority of South Africa over Namibia.

62. Again, in its resolution 301 (1971) of 20 October 1971, in which it endorsed the Advisory Opinion of the International Court of Justice referred to above, the Security Council also declared that:

> "franchises, rights, titles or contracts relating to Namibia granted to individuals or companies by South Africa after the adoption of General Assembly resolution 2145 (XXI) [of 27 October 1966] are not subject to protection or espousal by their States against claims of a future lawful Government of Namibia".

B. Decree No. 1 of the United Nations Council for Namibia

63. On 27 September 1974, the United Nations Council for Namibia, which was established by the General Assembly under resolution 2248 (S-V) of 19 May 1967 as the Legal Administering Authority for Namibia until independence, enacted Decree No. 1 for the Protection of the Natural Resources of Namibia. The Decree provided, in paragraph 2, that:

> "Any permission, concession or licence ... whensoever granted by any person or entity, including any body purporting to act under the authority of the Government of the Republic of South Africa or the 'Administration of South West Africa' or their predecessors, is null, void and of no force or effect."

64. The Decree prohibited the exploitation or use of Namibia's natural resources without the permission of the Council, and further provided that any natural resources produced in or emanating from Namibia, and taken by any means whatsoever without the consent and written authority of the Council, shall be subject to seizure by the Council to be held in trust for the people of Namibia. Any violations of the Decree would also be subject to claims by a future lawful Government of Namibia for damages or compensation in respect of the resources illegally extracted.

65. The General Assembly approved the Decree in its resolution 3295 (XXIX) of 13 December 1974, and requested all Member States to take appropriate measures to ensure compliance with its provisions. The Assembly, subsequently, in its resolution 35/227 of 6 March 1981, approving the report of the Council for Namibia, endorsed the view that the Decree was part of Namibia's national law, that the removal of Namibian natural resources without the requisite authorizations was a violation of such national law with international implications, and that entities performing such acts acquired no legal title to the resources taken. However, the Council for Namibia has lacked the de facto authority to enforce the Decree as such, and the General Assembly's request to Member States to assist in such enforcement would not seem to be binding in itself.

66. The Panel of Eminent Persons that conducted Public Hearings on the Activities of Transnational Corporations in South Africa and Namibia in September 1985 also called for the immediate implementation of Decree No. 1 by all Member States, including the prohibition of the importation, processing or sale of the natural resources of Namibia. The Panel further recommended that all affiliates of transnational corporations terminate their business activities in Namibia unless their parent corporations signed a contract or entered into other appropriate arrangements with the Council for Namibia, and that they should cease paying taxes, royalties, or other forms of economic rent to the Government of South Africa in respect of their business operations in Namibia. 32/

C. Implementation and impact

67. The responses of Member States and transnational corporations to Decree No. 1 and other decisions of the United Nations on the Namibian question have been somewhat mixed. Several Member States did express reservations on the legal status of Decree No. 1, and on the binding nature of General Assembly and Security Council resolutions on Namibia. 33/ However, no Member State has considered South Africa's continued occupation of Namibia after the termination of the Mandate to be legal or lawful. Indeed, the Government of South Africa itself came to accept the "separate international status" of Namibia in the course of the protracted negotiations for the implementation of Security Council resolution 435 (1978). 34/

68. But despite the reservations on the binding force of the relevant resolutions, many home countries of transnational corporations have adopted a range of measures prohibiting or restricting certain business operations by their companies or nationals in Namibia, alongside measures taken on South Africa. 35/ The recent spate of disinvestments by transnational corporations operating in South Africa, largely as a result of some of these measures, have in a few cases extended to their investments in Namibia. 36/ Prior to that, several oil companies based in the United States abandoned oil-prospecting activities in Namibia, and another company sold its interests in existing mines in Namibia, soon after enactment of Decree No. 1. 37/ It is also believed that several oil companies have been holding back investments in the off-shore Kudu gas field as a result of the unresolved political situation, as noted in chapter I above.

69. However, the leading transnational corporations involved in Namibia's main extractive sectors have continued their operations in defiance of the United Nations. Indeed, several new mines have been opened recently by the De Beers/Anglo-American group, as noted in chapter I. Rössing Uranium Ltd., established after the termination of the Mandate, has become the largest mining operation with the near-depletion of CDM's diamond concessions. It is also well-known that a number of nuclear-power companies in Europe, North America, and Japan - including several state-owned companies - have held long-term contracts for the supply of uranium from Namibia. Against this background, the Council for Namibia instituted legal action in 1987 against two Dutch companies - Urenco Ltd., and Ultra-Centrifugue Nederland (UCN) - which were known to conduct enrichment or processing operations in respect of Namibian uranium for various customers.

D. The transitional arrangements

70. By virtue of Security Council resolutions 385 (1976) and 435 (1978), the South African Government, acting through the Administrator-General in Namibia, has been entrusted with certain responsibilities in the implementation of transitional arrangements for the independence of Namibia. In fulfilling these responsibilities, the South African Government acts on behalf of the United Nations and, to that extent, South African activities during the transitional period may be regarded as legitimate. However, there is nothing in the transitional arrangements that could have the effect of validating the prior actions of South Africa taken after the termination of the League of Nations Mandate.

III. FUTURE PROSPECTS

71. It is clear that since the termination of the Mandate a number of transnational corporations operating in Namibia have been doing so in open defiance of United Nations resolutions and on the basis of titles of doubtful validity. Transnational corporations which have chosen to follow that course cannot assume that Namibia will, in their case, adopt the usual practice under which a newly independent country recognizes titles granted and contractual obligations entered into by the colonial Power. Clearly the treatment of foreign investors falling into this category will be one of a number of difficult constitutional issues which will have to be considered in the transition to independence. In that context, a range of practical, as well as legal, issues will need to be taken into account.

72. Foreign investors relying on titles granted or contracts made with South African authorities after the termination of the Mandate are a special category. The Government of Namibia immediately following independence will have to consider a much broader issue - what role in general should be assigned to foreign direct investment in the development of the post-independence economy. Ahead of elections, which will determine the political character of the new Government, it would be quite inappropriate for outsiders to make any assumptions about the policies which may emerge. However, should the new government follow what is now a common pattern for developing countries and decide to encourage foreign direct investment or to encourage it in particular sectors of the economy, there are some special factors which should be noted:

(a) Namibia is rich in natural resources but will for some time to come lack the capital and skilled manpower needed to handle complex projects in mining, petroleum and fisheries. Provided an appropriate régime for foreign investment in these sectors can be designed it follows that in the post-apartheid environment there should be many opportunities for new investment projects. If foreign investors can adjust to what are likely to be rapidly changing social and economic conditions, there is a structural basis for a very fruitful collaboration with the host country;

(b) As discussed earlier in the paper, foreign investment in Namibia is at present predominantly in the hands of South African companies. Apart from the strictly political significance of that phenomenon it is clear that, if there is to be large-scale foreign investment, it is essential for economic reasons to establish a much more competitive environment. Because of the legacy of the past, positive steps will be required to achieve that result;

(c) To date, foreign investments in Namibia have been made in a context characterized by the colonial status of the country and the distorting factors engendered by the apartheid system. Clearly, foreign investment in the post-independence era will need to be set in an entirely new framework. Government will wish to ensure that new investments are consistent with its development objectives and take proper account of appropriate social and environmental criteria. At the same time it will wish to maintain an hospitable climate for foreign investors. That may not be an easy task and it must be anticipated that in designing and executing new policies the Government will seek to supplement its own manpower resources with a considerable technical assistance component.

Notes

1/ See, for example, Heinrich Vedder, South West Africa in Early Times (London, Frank Cass, 1968); South West Africa People's Organization, To Be Born a Nation: The Liberation Struggle for Namibia (London, Zed Press, 1981), chap. 1.

2/ The Economist Intelligence Unit, Country Profile: Namibia 1987-88 (London, 1987), p. 14.

3/ There are higher estimates, of up to 90 per cent for both imports and exports. Owing to the uneven nature of available data, research on Namibia resembles assembling a jig-saw puzzle many pieces of which are mismatched or missing. This problem applies to all other data in this report.

4/ United Nations Institute for Namibia [UNIN], Namibia: Perspectives for National Reconstruction and Development (Lusaka, 1986), p. 65; see also United Nations Centre on Transnational Corporations [UNCTC], "Role of Transnational Corporations in Namibia" (1982), p. 10.

5/ The Economist Intelligence Unit, Country Profile: Namibia 1986-87 (London, 1986), p. 37.

Notes (continued)

6/ For more details on the labour and employment situation, see UNIN note 4 *supra*, chap. 18.

7/ United Nations Council for Namibia, "Activities of foreign economic interests operating in Namibia" (A/AC.131/286, 25 July 1988), p. 5.

8/ UNCTC, note 4 *supra*, chap. III; see also A/AC.131/286.

9/ For discussions of the South African (Thirion Commission) report and probable reserves, see "Namibia" in *Africa Contemporary Record* (Africana; New York and London), 1983-84 through 1987-88; for details on exploration and development, see De Beers *Annual Reports*, 1984 to 1988.

10/ UNCTC, note 4 *supra*, p. 33.

11/ A CDM director is reported to have stated recently that while they expect a new Namibian Government to seek "some sort of new arrangement on the shareholding" of mining companies, "we have negotiated with governments all over Africa and are confident we will be able to talk to the new government here": see Economist Intelligence Unit, *Namibia, Botswana, Lesotho, Swaziland: Country Report No. 1/1989* (London, February 1989), p. 23.

12/ See A/AC.131/286, p. 10.

13/ *Ibid*., p. 11.

14/ Permanent Mission of Canada to the United Nations, Press Release No. 16, New York, 9 July 1985.

15/ A/AC.131/286, p. 12.

16/ *Ibid*., p. 13.

17/ Rio Tinto-Zinc Corporation PLC, *Annual Reports and Accounts* for years 1976-1988.

18/ Economist Intelligence Unit, note 11 *supra*, p. 25.

19/ *Ibid*.; for details on other mining companies, see UNCTC, note 4 *supra*, chap. III.

20/ Economist Intelligence Unit, note 5 *supra*, p. 19.

21/ UNIN, note 4 *supra*, chap. 5.

22/ *Namibia: The Facts* (International Defence and Aid Fund, London, 1980), pp. 24-25.

Notes (continued)

23/ D. C. Krogh, The Karakul Industry in South West Africa with Special Reference to the Marketing of Karakul Pelts (S. W. A. Karakul Advisory Board, Windhoek, 1954); S. W. A. Karakul Advisory Board, Annual Report and Statistics (Windhoek, Namibia), various years; UNIN, note 4 supra, p. 122.

24/ A/AC.131/286, p. 19.

25/ Ibid., p. 17.

26/ Financial Mail, 8 March 1985; Windhoek Advertiser, 19 February 1985.

27/ Economist Intelligence Unit, note 5 supra, p. 23.

28/ UNIN, note 4 supra, chaps. 2 and 13.

29/ UNIN, note 4 supra, chaps. 2 and 8; Africa Contemporary Record, note 9 supra, 1986-87; 1987-88.

30/ See, for example, Security Council resolutions 264 (1969) of 20 March 1969; 269 (1969) of 12 August 1969; 276 (1970) of 30 January 1970; 283 (1970) of 29 July 1970; 301 (1971) of 20 October 1971; 385 (1976) of 30 January 1976; 432 (1978) of 27 July 1978; 435 (1978) of 29 September 1978; 439 (1978) of 13 November 1978; 566 (1985) of 19 June 1985; 601 (1987) of 30 October 1987; 629 (1989) of 16 January 1989; 632 (1989) of 16 February 1989.

31/ Similarly, in resolution 439 (1978) which addressed South Africa's decision to proceed unilaterally with the holding of elections in Namibia in December 1978, the Security Council had declared those elections and their results "null and void and that no recognition will be accorded either by the United Nations or any Member States to any representatives or organ established by that process".

32/ See "Report and recommendations of the Panel of Eminent Persons", in Transnational Corporations in South Africa and Namibia: United Nations Public Hearings (New York, 1986), vol. I, pp. 21-22.

33/ See, for example, "Report of the United Nations Council for Namibia" (Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 24 (A/35/24)), 24 November 1980, vol. III.

34/ See "Report of the Secretary-General on the implementation of Security Council resolution 323 (1972)" (Official Records of the Security Council, Twenty-eighth Year, Supplement for April, May and June 1973, document S/10921).

35/ "Sanctions against South Africa" [Background paper, 1989 Hearings].

Notes (continued)

36/ "Disinvestment and non-equity links by transnational corporations in South Africa: trends and impact [Background paper, 1989 Hearings].

37/ Transnational Corporations in South Africa and Namibia: United Nations Public Hearings (New York, 1986), vol. I, p. 114.
