



# SECURITY COUNCIL OFFICIAL RECORDS

TWENTY-SIXTH YEAR

**1584<sup>th</sup>** MEETING: 27 SEPTEMBER 1971

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## FIFTEEN HUNDRED AND EIGHTY-FOURTH MEETING

Held in New York on Monday, 27 September 1971, at 4.30 p.m.

*President:* Mr. Toru NAKAGAWA (Japan).

*Present:* The representatives of the following States: Argentina, Belgium, Burundi, China, France, Italy, Japan, Nicaragua, Poland, Sierra Leone, Somalia, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

### Provisional agenda (S/Agenda/1584)

1. Adoption of the agenda.
2. The situation in Namibia:
  - (a) Letter dated 17 September 1971 addressed to the President of the Security Council from the representatives of Algeria, Botswana, Burundi, Cameroon, the Central African Republic, Chad, the Congo (Democratic Republic of), Egypt, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Liberia, the Libyan Arab Republic, Madagascar, Mali, Mauritania, Mauritius, Morocco, the Niger, Nigeria, the People's Republic of the Congo, Rwanda, Senegal, Sierra Leone, Somalia, the Sudan, Swaziland, Togo, Tunisia, Uganda, the United Republic of Tanzania, the Upper Volta and Zambia (S/10326);
  - (b) Report of the *Ad Hoc* Sub-Committee on Namibia (S/10330).

### Adoption of the agenda

*The agenda was adopted.*

#### The situation in Namibia:

- (a) Letter dated 17 September 1971 addressed to the President of the Security Council from the representatives of Algeria, Botswana, Burundi, Cameroon, the Central African Republic, Chad, the Congo (Democratic Republic of), Egypt, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Liberia, the Libyan Arab Republic, Madagascar, Mali, Mauritania, Mauritius, Morocco, the Niger, Nigeria, the People's Republic of the Congo, Rwanda, Senegal, Sierra Leone, Somalia, the Sudan, Swaziland, Togo, Tunisia, Uganda, the United Republic of Tanzania, the Upper Volta and Zambia (S/10326);
- (b) Report of the *Ad Hoc* Sub-Committee on Namibia (S/10330)

1. The PRESIDENT: In connexion with the question on the Council's agenda this afternoon, I have received

requests for invitations to participate in the Council's discussion from the representatives of Ethiopia, South Africa, Sudan, Liberia and Guyana.

2. I would propose that the Security Council extend invitations in accordance with the usual practice to all the aforementioned representatives. May I take it that the Security Council is in agreement?

3. Mr. FARAH (Somalia): With regard to the request by the representative of South Africa to be invited to participate in our proceedings today, I should like to know in what capacity *vis-à-vis* the question of Namibia he intends to speak. Would he be participating in the capacity of the representative of a Member State which is fulfilling its obligations under the Charter towards Namibia? I should like to have some clarification on that question.

4. The PRESIDENT: I understand that the representative of South Africa would be participating in the debate in the Council as the representative of a member State of the United Nations.

5. Mr. FARAH (Somalia): I do not have a copy of the document which the representative of South Africa submitted to the Security Council asking to participate in our discussion. However, it would interest my delegation to know the nomenclature which he used in referring to the Territory of Namibia.

6. The PRESIDENT: For the information of the members of the Council, I shall read out the letter from the Permanent Representative of South Africa:

"I have the honour to inform you that I have been instructed by the Government of the Republic of South Africa to request that an opportunity be given to Mr. H. Muller, Minister for Foreign Affairs, to participate without vote in the discussion in the Security Council on the item relating to South West Africa on the Council's agenda." [S/10334.]

7. Mr. FARAH (Somalia): I think that the item inscribed on the agenda relates to the question of Namibia. I should like to have some clarification on this point.

8. Mr. TERENCE (Burundi) (*interpretation from French*): In fact, the letter containing the request of the representative of South Africa raises a new element. The Council is seized of a matter directly relating to Namibia, and, in conformity with operative paragraph 1 of General Assembly resolution 2372 (XXII), the country with which we are

concerned is called Namibia. Therefore, further clarification is required because the question as formulated in the letter of the members of the Organization of African Unity, refers to Namibia.

9. Mr. TOMEH (Syrian Arab Republic): Mr. President, I should like to associate myself with the point made by the representative of Burundi. There ought to be uniformity in the terminology that we use. May I draw attention to the report submitted to the Security Council entitled "Report of the *Ad Hoc* Sub-Committee on Namibia" dated 23 September 1971 [S/10330]. The reference there is to Namibia. As correctly pointed out by Ambassador Terence of Burundi, the second item on the provisional agenda reads: "The situation in Namibia". The letter submitted by the Permanent Representative of South Africa refers to "... the discussion in the Security Council on the item relating to South West Africa on the Council's agenda." On the Council's agenda it is established beyond any doubt that we are speaking of Namibia, not of South West Africa. That is true also of the report submitted to the Security Council.

10 I therefore believe that the wording of the letter from the representative of South Africa should be changed to conform with the wording of the agenda we have adopted and with the report submitted to the Security Council.

11. The PRESIDENT: I take note of the fact that some members of the Council have expressed reservations on the terminology "South West Africa" included in the letter of the Permanent Representative of South Africa. As President of the Security Council I do not think I can control the terminology which a Member State of this Organization uses. Therefore, I would recommend that the Security Council invite, together with the other representatives, the representative of South Africa to participate in this debate.

12. Mr. MALIK (Union of Soviet Socialist Republics) (*translated from Russian*): I believe that considerable and serious attention should be paid to such terminological questions in the practice of the United Nations and its organs.

13. The history of the United Nations shows how unjustly some Members of the Organization have acted and continue to act even now by trying in their official documents to impose any names they wish on States—not to mention this particular case. That is why, as the representative of the Soviet Union, I cannot but associate myself with the views expressed by the speakers who preceded me, representatives of Africa and the Arab East. In this connexion, it would be desirable if the United Nations, the United Nations Secretariat, the organs of the United Nations and the officers of those organs would not heed the whims of any given Member of the Organization as to how it happens to want to designate a certain State or Territory, but would adhere to the terminology and designation which the State itself considers to be suitable and acceptable or to the terminology established in official documents and positions and in decisions of the United Nations.

14. We do not have to search far for examples. Only last year one of the great Powers began to use the officially

established name for one of the States which has not yet been admitted to the Organization; until recently—until last year, I think—the United Nations Secretariat referred to the German Democratic Republic as East Germany or some other name, although this was absolutely contrary to reality and common sense, simply because somebody wished it to be so and somebody in the United Nations Secretariat heeded the opinion of a small but influential group of States which thus imposed their will and their terminology.

15. We cannot agree to such a state of affairs. Order must be restored in this regard, and the official designations of States and Territories in accepted international practice must correspond to the designations determined by the Government of the country itself, in the case of a sovereign State, or, in the case of a Territory, to the official designation which is accepted in the United Nations; these names must be respected by the Members of the United Nations and must be used in documents.

16. Mr. PRATT (Sierra Leone): I support the point of order which has been raised by the representative of Somalia. I should like to add that we must follow a strict interpretation of rule 37 of our rules of procedure. Apart from adhering very closely to matters which are relevant—and what is relevant to this debate is Namibia, not South West Africa—we can exercise our discretion in allowing participation by Member States only if at least one of two conditions is fulfilled. Those conditions are clearly spelt out in rule 37. They are that the interests of that Member State could be affected or that the Member State itself has brought the matter to our attention by a resolution or by other means.

17. Now, in the letter which has been read to us, nowhere are we told that the interests of the Member State wishing to participate in the Council's discussion are affected and, without going into the substance, we know that the resolutions of the General Assembly and those of the Security Council have long ago terminated the interests of that particular Member State over the Territory known as Namibia. Accordingly, if it is not a question of interests, we fail to see on what basis that particular Member State can claim a right to speak when its interests have been terminated so that it no longer has any interests in the subject-matter of the debate.

18. Therefore, on that added point—first there is the point of irrelevancy and, secondly, the point that there are no interests that have been shown—I would support the point of order that has been raised.

19. The PRESIDENT: I think the opinion of the members of the Council is divided on whether we should agree to invite the representative of South Africa to participate in this debate.

20. Mr. ORTIZ DE ROZAS (Argentina) (*interpretation from Spanish*): Personally, I think it is regrettable that the note submitted by the delegation of South Africa uses the term "South West Africa" instead of "Namibia" which is the name by which the United Nations refers to that Territory in all its documentation. However, I believe that the fact that the South African delegation is asking to

participate in the debate, under the agenda which the Council has just adopted, in itself implies that the delegation, if it is invited by the Council to participate is going to discuss the situation in Namibia and not the situation in the territory of South West Africa.

21. I think that if the members of the Council engage in a debate on the use of the term as it appears in the letter, they may forget that we have just adopted an agenda in which reference is clearly made to the situation in Namibia. All those who participate in the debate around the Council table will do so making reference to the situation in Namibia and not to the situation in South West Africa.

22. I therefore support the suggestion made by the President that we invite the delegation of South Africa to participate in the debate and—I again state clearly on “The situation in Namibia”.

23. Mr. TERENCE (Burundi) (*interpretation from French*): This is the second time I take the floor to help the Council to allay any misunderstanding. It is a matter not of opposing the participation of South Africa in the debate, but of inviting South Africa to take part in the debate at such time as its request is explicitly in conformity with the item on our agenda. Therefore all misunderstanding must be avoided. If the letter can be prepared during the meeting, the delegation of Burundi will be in favour of having South Africa at this table to take part in the debate. If South Africa is ready only tomorrow to agree to this terminology, let it take part in the debate tomorrow. But if it asks to take part in the debate about a country unknown to the Security Council—or something which has nothing to do with the present debate—there is absolutely no reason to heed its request.

24. Mr. KUŁAGA (Poland) (*interpretation from French*): Mr. President, you spoke of divided counsels here, and I should therefore like to make our position very explicit.

25. We have on the agenda of the Council the specific question of Namibia, a Territory whose legal and political status was defined a few years ago—in 1966—by the competent authorities of the United Nations. As our colleagues had the occasion to state we have on the agenda the “Report of the *Ad Hoc* Sub-Committee on Namibia”. Therefore, I think that the point of order raised by our colleague from Somalia and supported by many other delegations is perfectly valid.

26. Mr. TOMEH (Syrian Arab Republic): We are not, I believe, denying the right of the representative of South Africa to speak. What we are trying to do is to define exactly the terms of reference of the Council itself. What is involved is more than what is in a name. There is much more in a word than what the word conveys. If we look at the report to which I referred, “Report of the *Ad Hoc* Sub-Committee on Namibia”, there is reference to a resolution of the Security Council—resolution 283 (1970)—paragraph 1 of which states:

“Requests 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 Namibia.”

27. How can the Security Council—which has called on all Member States to refrain from recognizing the authority of the Government of South Africa over the Territory of Namibia—accept a letter in which the representative of South Africa wants to speak on a subject upon which already the Security Council has asked all Member States, including the members of the Security Council, not to recognize, namely, “South West Africa”.

28. So what is involved is also the legal aspect of the problem from the point of view of the integrity of the Security Council itself.

29. Sir Colin CROWE (United Kingdom): I do not think we should let questions of terminology prevent us from following our normal practice of allowing a Member State to participate in discussions here in accordance with Article 31 of the Charter and rule 37 of our provisional rules of procedure. No one surely could deny that the interests of South Africa are “specially affected” in this case, and I can hardly imagine that South Africa will not be mentioned in these discussions.

30. I therefore suggest that, having noted the observations made by various members of the Council on the point of terminology, we should at least let the representative of South Africa take a seat.

31. Mr. KOSCIUSKO-MORIZET (France) (*interpretation from French*): I understand full well the feelings of some of our colleagues in making their observations, but I must aver that the debate here seems to go beyond words or even beyond legal considerations. President Moktar Ould Daddah this morning [*1583rd meeting*] asked us to forge ahead and to study the matter seriously and responsibly. Nobody can deny that South Africa is a Member State and that it is concerned in this matter, whatever name it gives to the Territory it occupies. Therefore, the interests at stake are much too considerable for us to fail to seize this opportunity of hearing what the representative of South Africa has to tell us. It is for that reason that I fully share the viewpoint expressed by our colleagues from Argentina and the United Kingdom, and I think that the Council as a whole, starting with the representatives of the African States, must understand that it is in the interest of the Council to hear the representative of South Africa.

32. Mr. BUSH (United States of America): I can hardly believe that after years of wondering why a Government was unwilling to come to the Security Council, now—for what seem to be very legalistic reasons—there is at least the appearance that we are trying to block it from coming here.

33. I have here the Advisory Opinion of the International Court of Justice.<sup>1</sup> On the cover we find these words: “Namibia (South West Africa)”. I find it extremely difficult to understand the technicalities that have been raised, when the Opinion of the Court itself uses those words.

<sup>1</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.*

34. I should certainly like to associate myself with the remarks of the representatives of France, Argentina and the United Kingdom; we should at least have free speech prevail here.
35. Mr. VINCI (Italy): I can share the view expressed by previous speakers that we might regret and even deplore that a Member State of the United Nations does not use the terminology used in these chambers. But for the reasons that have already been expressed by the representatives of France and the United States—namely, that it would be in the interest of this body to hear the representative of a country that has in the past been rather reluctant to come before it—I think it would indeed be in the interest of this body to give the representative of that country the opportunity to appear in this Chamber.
36. Furthermore, I should like to draw the attention of our African friends to two points. First, resolution 2145 (XXI) uses the term “South West Africa”. Secondly, the resolution appearing at the beginning of document S/10330, resolution 283 (1970), has seven paragraphs in which the Security Council requests Member States to take some action concerning the Territory of Namibia. Now, in many of these paragraphs there is mention of bilateral and multilateral treaties. If we were to hold that the term “South West Africa” should not be used, would that not give some countries the chance to say that certain multilateral or bilateral treaties do not concern Namibia and therefore they need take no action in regard to them?
37. If this question—which, in my opinion, is rather formalistic—is pushed further it will be self-defeating. I should really like to draw the attention of my African friends to that important point.
38. Mr. ROMAN (Nicaragua) (*interpretation from Spanish*): My delegation shares the view of the delegations of Argentina, the United Kingdom, France, the United States and Italy that the delegation of South Africa should be invited to participate so that the Council may hear its views since it has for so many years refused to participate in debates on the matter.
39. With regard to terminology, it is true that it would have been preferable to use the word “Namibia”. But if even in the Advisory Opinion of the Court both names are used that means there is not sufficient reason for us to be deprived of the chance to hear South Africa’s views.
40. Mr. LONGERSTAEY (Belgium) (*interpretation from French*): For the reasons adduced by the Ambassador of Argentina and the additional reasons given by the representatives of the United States and France, I think we should decide to invite South Africa to participate in the debate.
41. The PRESIDENT: Although the terminology used in the letter requesting the participation of the permanent representative of South Africa is neither proper nor desirable, I believe that since the International Court of Justice uses, in parenthesis, the words “South West Africa” the representative of South Africa should be invited to participate in the debate. If there are any objections to that ruling, I shall put the matter to the vote.
42. Mr. FARAH (Somalia): I do not believe there is any need to put the matter to the vote. We wanted to place on record our strong reservations concerning the procedure South Africa has adopted in trying to appear before the Council—that is, attempting to avoid any acknowledgement of the fact that the Territory of Namibia is very much within the competence of the United Nations and is a responsibility of the United Nations. Evidently it does not wish to recognize that fact.
43. My delegation will not object to Mr. Muller’s appearing before the Council and giving us his views on the situation in Namibia, but I wish it to be recorded that that does not in any way imply recognition by my delegation that Mr. Muller legitimately represents the people of South Africa. Last year, in another forum, my delegation challenged the credentials of South Africa; at that time we said that the question of credentials went beyond mere formalities and was one of substance. We pointed out that the representatives sent here represent only the white section of the population of South Africa, which numbers no more than 4 million, and that the 17 million non-white people of South Africa have no representation whatsoever in this Organization although their country and their resources enable the white minority to profit and gain.
44. Mr. TOMEH (Syrian Arab Republic): I simply wish to affirm that when I spoke earlier I by no means meant that the representative of South Africa should not be heard. But with regard to the controversy that has arisen I should like to agree with the representative of the United States, Mr. Bush. The Council should use the wording used in the Advisory Opinion of the International Court of Justice: “Namibia (South West Africa)”. But Namibia surely comes first.
45. The PRESIDENT: The observations that have been made will appear in the verbatim record.
46. May I take it that the Security Council is in agreement? Accordingly, it is so decided, and I shall invite the Minister of Communications, Telecommunications and Posts of the Imperial Ethiopian Government, the Minister for Foreign Affairs of the Government of South Africa, the Minister for Foreign Affairs of the Government of Sudan, who is the Chairman of the Council of Ministers of the Organization of African Unity, the Secretary of State of the Government of Liberia, and the Minister of State for External Affairs of the Government of Guyana to participate in the Security Council’s discussion without the right to vote.
47. Owing to the limited number of places provided at the Security Council table, I am unfortunately unable to invite all these very distinguished participants to sit at the Council table during the course of our discussion, but must follow the usual practice of inviting some of them to take the seats reserved for them at the side of the Council Chamber, on the understanding that they will be invited to take a seat at the Council table when it is their turn to speak.
48. I shall accordingly invite the Chairman of the Council of Ministers of the Organization of African Unity, Mr. Mansour Khalid, the Minister for Foreign Affairs of the Sudan,

and the Minister for Foreign Affairs of South Africa, Mr. H. Muller, to take seats at the Council table. I shall then invite the Ministers from Ethiopia, Liberia and Guyana to take the seats reserved for them at the side of the Council Chamber.

*At the invitation of the President, Mr. M. Khalid (Sudan) and Mr. H. Muller (South Africa) took places at the Security Council table, and Mr. T. Makonnen (Ethiopia), Mr. J. R. Grimes (Liberia) and Mr. S. S. Ramphal (Guyana) took the places reserved for them in the Council Chamber.*

49. The PRESIDENT: I have received in addition a letter from the President of the United Nations Council for Namibia [S/10332] requesting, in accordance with a decision of that Council, to be invited to participate without the right to vote in the Security Council's discussion. I would propose that the Security Council extend an invitation to the President of the United Nations Council for Namibia under the provisions of rule 39 of its provisional rules of procedure. As I hear no objection, I take it that the Security Council agrees with my suggestion.

*At the invitation of the President, Mr. E. O. Ogbu, President of the United Nations Council for Namibia, took a place at the Security Council table.*

50. The PRESIDENT: The Security Council will now resume its consideration of the question of the situation in Namibia in accordance with the request of 36 African States, as contained in document S/10326. Also included in the agenda for this meeting is the report of the Security Council's *Ad Hoc* Sub-Committee on Namibia, contained in document S/10330. A number of other important documents have been submitted to the Council in connexion with the question, which I should like to mention very briefly. The Advisory Opinion requested by the Council from the International Court of Justice has been circulated in document S/10267. The decision of the Organization of African Unity to call for this discussion by the Security Council was communicated in documents S/10272 and S/10277. Document S/10288 contains the report of the Secretary-General submitted under paragraph 9 of resolution 283 (1970) on a review of multilateral treaties to which South Africa became a party, and which either by direct reference or on the basis of relevant provisions of international law might be considered to apply to Namibia. In addition the Council has received in documents S/10303 and S/10312 communications on the subject of Namibia from the Acting 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, and in document S/10331 a communication from the Chairman of the ninth meeting of the Joint Meeting of the Special Committee on *Apartheid*, 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 United Nations Council for Namibia, which transmitted a consensus of the Joint Meeting.

51. The Chairman of the Security Council's *Ad Hoc* Sub-Committee on Namibia, the representative of Burundi, will introduce the report of the *Ad Hoc* Sub-Committee. I

give the floor to Ambassador Terence of Burundi, the Chairman of the *Ad Hoc* Sub-Committee on Namibia.

52. Mr. TERENCE (Burundi) (*interpretation from French*): Mr. President, before introducing the report that you have just mentioned, I wish, as the representative of Burundi, to confirm what I said previously about the invitation addressed to South Africa to take part in the debate. Some delegations which spoke after me did not seem to have understood that my delegation had said, and I repeat, that we were in favour of the presence of South Africa at this table to take part in the debate. This feeling is based on the hope that South Africa is here to confirm to the Security Council that it accepts the conclusions of the International Court of Justice. Having said this, I shall now introduce the report.

53. It is with great pleasure that I present this report, after the brilliant statement made by His Excellency Moktar Ould Daddah, President of the Islamic Republic of Mauritania and present President of the Organization of African Unity [1583rd meeting], in the presence of Mr. Mansour Khalid, Minister for Foreign Affairs of the Sudan and the present Chairman of the Council of Ministers, Mr. Makonnen, Minister for Post and Communications of the Imperial Government of Ethiopia, Mr. Grimes, Minister for Foreign Affairs of Liberia, Mr. Arikpo, Minister for Foreign Affairs of Nigeria and Mr. Hassane, Minister for Foreign Affairs of Chad.

54. Three months almost to the day have elapsed since the historic day on which the International Court of Justice declared illegal the presence of South Africa in Namibia and requested that it immediately withdraw from that territory.

55. It was in the light of the report presented to it by its *Ad Hoc* Sub-Committee in July 1970 [S/9863] that the Security Council decided to refer the case of Namibia to the International Court of Justice [resolution 284 (1970)]. As Chairman of that *Ad Hoc* Sub-Committee on Namibia, I am justly pleased to pay a highly deserved tribute to the distinguished judges who discharged their obligations with dignity and equity.

56. President Zafrulla Khan is entitled to special congratulations for his courage since he thus restored to the Hague Court the integrity and the morality belonging to this world judicial organ. All the judges who laboured with extreme energy and assiduity in order to ensure the triumph of the Namibian cause deserve our highest praise.

57. The Judgment of the Court is in itself a resounding victory, not only for Namibia and Africa but, above all, for the United Nations. The verdict of 21 June 1971 has contributed to rehabilitating a Court whose integrity had been breached and had become suspect in the eyes of the world. The Judgment is now a source of comfort for the United Nations, whose trust in the International Court of Justice is now renewed.

58. That preliminary statement enables me to speak now about the report of the *Ad Hoc* Sub-Committee on Namibia [S/10330], the Committee being composed of the 15 members of the Security Council.

59. Since the International Court of Justice decided that South Africa was in duty bound immediately to withdraw from Namibia, two parallel and complementary processes started: on the one hand, the unanimous decision at the last meeting of the Heads of State and Government of the OAU to call an emergency meeting of the Security Council, and, on the other hand, the efforts on the part of the *Ad Hoc* Sub-Committee, in the framework of the terms of reference contained in operative paragraphs 14 and 15 of resolution 283 (1970) of 29 July 1970, to work out recommendations for the Security Council in conformity with the Judgment of the International Court.

60. Now that the *Ad Hoc* Sub-Committee has completed its work, I am happy to present the results of its laborious efforts to the Security Council, and this with a view to the measures that the Security Council will have to take in future. After negotiations in a climate of mutual understanding and friendship, the members of the *Ad Hoc* Sub-Committee came to conclusions, which are found in one single document composed of three specific parts: the first category of recommendations is found in Part A of our report [*ibid.*, para. 18]; it contains the proposals upon which the delegations agreed, generally speaking. However, the Afro-Asian States thought it their imperative duty to submit proposals that would complete the ones I just mentioned and would help the Security Council to assess more correctly its role in the problem of Namibia in view of the Conclusions of the Court. Those proposals will be found in Part B of the report [*ibid.*, para. 19].

61. Since some delegations did not at the time have instructions from their Governments, and since others wished to have more time to consider the Afro-Asian recommendations, no final agreement could be reached.

62. In Part C of the report [*ibid.*, para. 20], the United States and Italy present a proposal, upon which divergencies remain.

63. I also wish to mention that the delegations of the United Kingdom and France expressed reservations about the proposals contained in the report. However, the report in itself is but one step in fulfilling the role which is incumbent upon the Security Council. Therefore, it goes without saying that it is in the Council that unanimity is indispensable. Despite the divergent viewpoints expressed on various parts of the report, all members of this Council are fully aware of the need to approve and to implement the Opinion handed down by the International Court of Justice.

64. In view of my responsibilities on behalf of the *Ad Hoc* Sub-Committee, and especially because of an overriding desire to safeguard the authority of the Council and strengthen its effectiveness, I must address an urgent appeal to all members to abandon their reservations and agree on measures capable of compelling South Africa to respect the resolutions and decisions of the United Nations and its bodies.

65. What would remain of the value and the powers of the United Nations if the Pretoria régime arrogated unto itself the right to defy the Opinion of the International Court of

Justice after having successively challenged the General Assembly and the Security Council? Representatives will see that it is imperative to order South Africa to obey the verdict of the judges in The Hague, because any complacency towards Pretoria would cause serious damage to our Organization.

66. It is therefore imperative to abandon any attempt to interpret the Opinion of the Court in the way most favourable for the respective interests of Member States. Would it not be legitimate to wonder about the *raison d'être* of the International Court of Justice if not only the validity of its Judgments were in dispute but even its authority were contested or ignored?

67. On the other hand, we must stress that the confirmation of the Opinion of the Court by the Security Council, far from being in the interest only of the Namibians or the Africans, will contribute, to a very large extent, to restoring the honour of that body in particular, and of the world Organization as a whole. But to fail to discharge such an obligation to protect the integrity of the Court would be tantamount to a serious infringement of the very prestige of the organs of the United Nations and that of the permanent members, to which the international community quite correctly entrusts the task of preserving the United Nations from the deadly blows which the South African Government is constantly dealing it.

68. Never has the Security Council been in such a crucial situation, where it has to regain possession of a Territory falling within the purview of the United Nations, and therefore of the Council itself. At this crossroads in the history of the Council, will the permanent members choose the humiliation of defeat which South Africa is endeavouring to inflict upon it, or fulfil the sacred mission entrusted to them: that of defending international peace and security against any threat?

69. Reserving my right to speak as representative of Burundi, that is all I want to say in introducing the report presented to the Security Council except that we appeal to representatives to be kind enough to consider that report and come to final conclusions.

70. The PRESIDENT: I call on Ambassador Ogbu, President of the United Nations Council for Namibia.

71. Mr. OGBU (President of the United Nations Council for Namibia): On behalf of the United Nations Council for Namibia, I wish to express my appreciation of the invitation to participate in this debate which the Security Council has extended to me in my capacity as President of that Council.

72. In the long history of the consideration of the question of Namibia, the Security Council's meeting today will stand apart, both in respect of the circumstances under which it has come to be convened and in the expectation which it has already evoked for Namibians and all lovers of freedom throughout the world. The immediate objective is to enable the Security Council to consider measures which it must take in the light of the Advisory Opinion of the International Court of Justice which was handed down on 21 June 1971.



73. That Opinion was historic, since it rejected—for all time—the South African contention that it has any status whatsoever in the Territory; it reaffirmed the international status of Namibia and the responsibility of the United Nations towards the Territory and its people—responsibilities which were to be carried out by the authority created by the United Nations, namely, the United Nations Council for Namibia; and it called upon all Members of the United Nations and non-Member States to see that their bilateral and multilateral relations with South Africa conform to the Court's findings.

74. By acceding to the request of the Council for Namibia to be allowed to participate in this debate, the Security Council has taken a step which further advances the position of the organ over which I have the privilege of presiding at present. I am here then to seek, on behalf of the United Nations Council for Namibia, the Security Council's assistance for Namibia and its people, who, in their oppression, look to the United Nations to take the necessary steps which will be the logical consequences of the Organization's position vis-à-vis the Territory—a position which has been reaffirmed once again by this Organization's highest judicial body.

75. What does the Council for Namibia request of the Security Council?

76. Permit me to begin by saying that we see no need to go into the history of the futile efforts by the Security Council and the General Assembly to compel the racist régime in South Africa to abide by the scores of resolutions which have been adopted with a view to putting an end to its illegal occupation of Namibia.

77. We know, with regret, that no appeals, condemnations or calls for action have so far succeeded in making South Africa budge from its position of defiance of the will of the large majority of the Members of this Organization concerning Namibia. And we know that the inability of the Organization to act in the face of that flagrant defiance is due not to the lack of sincerity or will by that majority but to the inherent weakness in its enforcement machinery, exacerbated by the persistent refusal of a handful of States, great and small, to abide by their Charter obligations. Yet we also know that the Organization cannot allow South Africa to defy indefinitely the will of the majority. Notwithstanding the limitations which the sovereignty and selfishness of a few States have put on the effectiveness of the United Nations, the Organization must act, and act as decisively as possible.

78. As I stated earlier, the Court's Advisory Opinion has confirmed once again that South Africa's continued occupation of Namibia is illegal. The obvious implication of that Opinion is that the only entity that could administer the Territory was the United Nations, which had created the United Nations Council for Namibia to act on its behalf. The Court has, in other words, recognized the Council as the *de jure* Government of Namibia. The Council for Namibia itself has had no doubt whatsoever about the United Nations legal standing vis-à-vis the Territory and its people. Consequently, ever since its creation it has been

carrying out its responsibilities within the limitations imposed upon it by South Africa's intransigence.

79. To date, the Council's identity and travel documents which can be issued to Namibians have been recognized by over 70 Governments as valid travel documents, enabling Namibians to take advantage of the educational and other types of assistance offered to them by sympathetic Governments. The Council has been able to sign agreements with five Member States granting the right of return to Namibians who leave the countries of their residence for purposes such as education and training.

80. The Acting United Nations Commissioner for Namibia has set up a regional office at Lusaka, Zambia, to issue travel documents, and that Office will soon be given additional functions to act as a channel of information between the Council, the Organization of African Unity and the African continent regarding Namibia.

81. But that is not enough. The scope of the activities of the Council for Namibia must be broadened in conformity with its proper status. This can be accomplished by several means which would further enhance the status of that Council as the entity charged with responsibility for the administration of Namibia and, at the same time, further erode the position of and increase international pressure on South Africa. Within its present terms of reference, the Council certainly has the legal powers of a sovereign entity vis-à-vis Namibia, but it lacks the resources and it is unable to exercise those powers, particularly inside the Territory.

82. The *sine qua non* for the success of any measures to be adopted by the Security Council is therefore to put an end to the illegal occupation of Namibia by South Africa. This would require the application of the strongest possible pressures against that country, including the application of the provisions of Chapter VII of the Charter if that became necessary. Once that is accomplished the Council for Namibia will have the opportunity to carry out the responsibilities which have been entrusted to it inside the Territory, provided the Council is given the necessary means, including adequate funds and resources. Such funds and resources must be provided out of the United Nations regular budget, since voluntary contributions cannot guarantee the successful functioning of the United Nations Council for Namibia as an administering body.

83. Another measure which can help in strengthening the Council for Namibia and make it more effective is the appointment of a full-time Commissioner. Although the previous and current Acting Commissioners have carried out their duties with dedication and distinction, the increased tempo of activities which must follow your deliberations here make it imperative for the Council to be assisted by an official who can give fully of his time and energy to the all-important task of executing the policies which will be enunciated by the Council.

84. There is no question that the recent Advisory Opinion of the Court has enhanced the United Nations position relating to Namibia, while at the same time it has dealt a severe blow to the South African stand regarding Namibia.



85. This Organization must, therefore, not allow this victory, achieved by the forces of law and justice against the forces of tyranny and injustice, to be dissipated. The United Nations is duty bound to do what it can in order that the Council is enabled, *inter alia*: (a) to challenge every action which South Africa or its partners may take concerning or on behalf of Namibia, since South Africa has no *locus standi* in the Territory; (b) to give maximum publicity to the positions of the United Nations and South Africa regarding the Territory, so as to let the world know that this Organization's position conforms to law, justice, respect for fundamental human rights and the basic principles of legality, while South Africa's position is in conflict with and a denial of these fundamental principles; (c) to increase, by all available means, pressure on South Africa, seeking full co-operation of the specialized agencies and Members and non-Member States with the Council and its recognition as the sole legal authority with power to act, in the name of the United Nations, on behalf of Namibia.

86. Speaking of co-operation, the United Nations Council was pleased about the co-operation and co-ordination of activities of the three subsidiary organs of the United Nations dealing with the problems of southern Africa, a process which was initiated this year by the holding of joint meetings of the Special Committee of Twenty-Four,<sup>2</sup> the Special Committee on *Apartheid* and the United Nations Council for Namibia. The aims and the hopes of the joint meeting were spelled out in a consensus which was transmitted to the Security Council for the attention of its members, to which you referred recently, Mr. President.

87. The oppressed people of Namibia have seen a ray of hope in the Advisory Opinion of the International Court of Justice which they expect to help loosen South Africa's stranglehold over the Territory and to achieve the cherished desire of its people for freedom and independence. This Organization, which has set itself up as the guardian of the destiny of Namibia as an independent and free country, must not allow the aspirations of its people to die. Nor can this Organization shirk its responsibilities towards other peoples and nations, particularly those in Africa. That continent is directly concerned with the perpetuation of colonialism and subjugation of millions of its sons and daughters. Its interest in the fate of Namibia has been clearly manifested in many ways, as for example, by its recent active participation in this Council's proceedings, in the Court's proceedings, as well as the presence here today of Moktar Ould Daddah, President of the Islamic Republic of Mauritania and the current Chairman of the Organization of African Unity.

88. Through reliable first-hand information, we in the Council for Namibia have learned how joyfully the news of the Advisory Opinion of the Court was received by both educated and uneducated Namibians. We also know that South Africa has been unhappy, to say the least, about that Opinion.

89. The Namibians are now looking forward to the day when they can enjoy the benefits of freedom to which they are entitled and the fruit of their labours.

<sup>2</sup> Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

90. I appeal to the Security Council, and through it to the entire United Nations, not to dash to the ground the hopes of millions of oppressed people. I appeal for decisive action by this Council to remove from the Territory South Africa, which is now the only obstacle to the realization of the goal of the United Nations for the people of Namibia. Finally, I appeal to all nations that have any dealing with South Africa, which touches upon and is at the expense of the well-being of Namibia and its people, to be guided by their conscience and their Charter obligations, rather than by their self-serving material interest.

91. The PRESIDENT: Before calling on the next representative on the list, I should like to inform the Council that I have just received a letter from the Chairman of the African Group of States in which he states that the Ministers for Foreign Affairs of the Sudan, Ethiopia, Nigeria, Liberia and Chad are serving as members of the delegation of the Organization of African Unity, headed by Moktar Ould Daddah, and he requests that they be invited to participate in the Security Council's discussion on the question of Namibia without the right to vote.

92. Inasmuch as three of the Ministers mentioned in that letter have already been invited to participate in the discussion, having submitted separate requests to that effect, I would propose that the Council now proceed to invite the other two members of the OAU delegation—namely, the Ministers for Foreign Affairs of Nigeria and Chad—to participate in the discussion without the right to vote.

93. As there is no objection, it is so decided.

94. I shall now invite the Ministers for Foreign Affairs of Nigeria and Chad to take the places reserved for them at the side of the Council chamber in order to participate in the discussion without the right to vote, on the understanding that they will be invited to take places at the Council table when it is their turn to speak.

*At the invitation of the President, Mr. O. Arikpo (Nigeria) and Mr. B. Hassane (Chad) took the places reserved for them in the Council Chamber.*

95. The PRESIDENT: The next name on the list of speakers is that of the Minister for Foreign Affairs of South Africa, on whom I now call.

96. Mr. MULLER (South Africa): May I first of all express my thanks and appreciation of the opportunity to participate in the discussion of this item in the Security Council. I shall not today embark upon a detailed legal analysis of the International Court's Advisory Opinion of 21 June 1971. But I do wish to state the main reasons why that Opinion is completely unacceptable to my Government and to point out some of the alarming implications of accepting it—implications which stretch well beyond the particular question of South West Africa and which must surely be a matter of considerable concern to all the Members of this Organization. I shall confine myself to the primary issues which were before the Court, namely, the powers of the General Assembly and of the Security Council and the question of the factual justification for the purported

revocation of South Africa's title to administer the Territory.

97. Now, the fundamental issue in dispute was whether there was any provision of the Charter under which the General Assembly could have terminated South Africa's right of administration. After all, the Court itself has said that the powers of the Assembly are derived from and based upon the Charter of the United Nations. It cannot, therefore, act outside the Charter.

98. It has, of course, always been trite law that, apart from some immaterial exceptions which were never in issue, the Charter confers upon the Assembly only the power to discuss and the power to recommend. It cannot make binding decisions and it cannot itself take direct action.

99. Let us look in this connexion at Article 10 of the Charter, which is the cornerstone of the Assembly's powers. It says, so far as it is relevant: "The General Assembly may discuss any questions or any matters within the scope of the present Charter . . . and . . . may make recommendations . . . on any such questions or matters."

100. The other relevant provisions of the Charter dealing with the Assembly's powers are to the same effect. What provision then could possibly have empowered the Assembly to adopt its resolution 2145 (XXI)—a resolution by which it purported to terminate the Mandate for South West Africa with binding effect?

101. As I have said, that was the fundamental question in dispute and one which was argued at length in the proceedings. How did the Court deal with it? It did not even attempt to answer it; it simply evaded the issue. All it said was this, in paragraph 105:

"... it would not be correct to assume that, because the General Assembly is in principle vested with recommendatory powers, it is debarred from adopting, in specific cases within the framework of its competence, resolutions which make determinations or have operative design."

102. This is of course pure question-begging; for the question which the Court was called upon to answer was precisely whether the Assembly's purported revocation was within the framework of its competence. That framework of competence is to be found only in the provisions of the Charter—not in a bare assertion by the Court. And if a provision of the Charter does confer the power claimed, why did the Court not indicate what that provision was?

103. Nor would it help to rely upon a theory of succession to the powers of the League of Nations—a theory in itself highly controversial, to say the least. For the Court itself has in the past repeatedly stressed that even when operating as a successor to the Council of the League, the General Assembly cannot act otherwise than in accordance with the Charter. That is still the law—the Court did not overrule what it had previously said in this connexion. Yet still it failed to indicate what Charter basis could have authorized the Assembly's action.

104. Why? There can be only one answer and it was provided by one of the dissenting judges. He said the following on page 289 of the report of the Court:

"... the whole of this most important aspect of the matter, resulting from the Court's own jurisprudence as it was enunciated in the 1955 *Voting Procedure* case, is now completely ignored, and not even mentioned, in the present Opinion of the Court;—for the sufficient reason no doubt that there is no satisfactory answer that can be given to it."

105. I turn next to the powers of the Security Council. And if the Court's findings are unreasoned and unconvincing in regard to the action taken by the General Assembly, they are even more so in regard to that taken by the Security Council—for here the Court made even less of an effort to meet the issues involved.

106. The language of Article 24 of the Charter makes it abundantly clear that although that Article confers upon the Security Council the primary responsibility for the maintenance of international peace and security, it does not itself confer any powers upon the Council. What it does provide is that in order to discharge that responsibility the Council shall have the specific powers laid down in Chapters VI, VII, VIII and XII.

107. In spite of this, when the Court came to deal with the power of the Council to adopt resolution 276 (1970), it stated that Article 24 confers upon the Council general powers which may be exercised whenever a situation might lead to a breach of the peace. The Court stated that these powers are additional to those specifically granted to the Council under the Chapters indicated and are limited only by the extremely wide purposes and principles of the United Nations. Moreover, according to the Court, should the Council so intend, any decision which it might take would be binding in terms of Article 25.

108. Now these are vitally important and far-reaching findings. One would therefore have expected the Court to motivate them very carefully. But what do we find in fact? We find that the Court simply ignores cogent arguments presented to the contrary. And we find that in support of its interpretation of Article 24 the Court merely refers to a statement by the Secretary-General of the United Nations in 1947. The correctness of that statement was itself an issue which was strongly and extensively controverted during the proceedings. Yet what does the Court do? It accepts its correctness without advancing one single word of reasoning in support thereof.

109. Can there be confidence in this kind of adjudication.

110. Another disquieting feature of the Opinion was the Court's treatment of the question whether, when the Council adopted its relevant resolutions, it was acting for the maintenance of international peace and security. That it was only for this purpose that the Council could validly have acted was accepted by the Court.

111. The evidence, however, was crystal clear that the Council had not acted for that purpose but for a com-

pletely different one: namely, to secure as an end in itself the removal of South Africa from South West Africa so that the United Nations could take over the Territory and bring about its almost immediate independence as a single political entity—regardless of the consequences.

112. To this evidence the Court simply closed its eyes. It asserted that the Council was acting for the maintenance of peace and security—an assertion which, despite the urgings of some of its members, the Council itself deliberately avoided making in any one of its resolutions.

113. The implications which flow from the Court's attempt to attribute to the General Assembly and the Security Council implied powers which they were never intended to have under the Charter, are enormous in their scope.

114. According to the Court's interpretation of the Charter, the Assembly now has the power to make findings of fact and of law—findings which would bind even non-consenting States and, it would appear, States not Members of the United Nations. But the Court has left a host of vital questions completely unanswered. How can the Assembly take binding decisions when the Charter confines its powers to discussion and recommendations? What are the specific cases in which it can do this? What are the limits, if any, on these powers?

115. It would, however, follow from the Opinion itself that merely by invoking Article 10 of the Charter, the Assembly can now oblige States to submit reports to it and to accept its supervision in regard to any matter which the Assembly might choose to discuss.

116. Similarly a State which for reasons of policy voluntarily brings a matter before the Assembly might thenceforth find itself under an obligation to do so.

117. And "within the framework of its competence", whatever that may mean, the Assembly would now even be able to abrogate or alter territorial rights.

118. The powers of the Security Council would, according to the Court's interpretation, if anything, be still more drastic. Its powers under Articles 24 and 25 would be "commensurate with its responsibility for the maintenance of peace and security" and limited only by the "fundamental principles and purposes" of the Charter.

119. It could thus make and enforce decisions on a wide range of matters. The carefully devised safeguards in other chapters of the Charter would count for nothing; simply by invoking Article 24 the Council could, for example, do what it might otherwise be unable to do under Chapters VI or VII.

120. No longer would it be restricted to acting in situations which constituted "a threat to the peace" or which were "likely to endanger" the peace—it would be sufficient that in the Council's view a situation might lead to a breach of the peace. And as one of the dissenting Judges remarked, on page 340:

"There is not a single example of a matter laid before the Security Council in which some Member State could not have claimed that the continuance of a given situation represented an immediate or remote threat to the maintenance of peace."

121. The attempts by one or two of the majority Judges to limit the effects of the Court's Opinion to the particular case of South West Africa are quite unconvincing and indeed meaningless. The principles which hold good for the present case must also hold good for other cases and will inevitably be applied to them.

122. Another disturbing feature of the Court's Opinion is the way in which the Court treated its previous Opinions and Judgments. The Court purported to "adhere to its own jurisprudence". But what it actually did was simply to overrule much of that jurisprudence without explanation and without saying that it was doing so. It relied heavily on those of its previous pronouncements which were adverse to South Africa's contentions while it simply ignored or brushed aside those which substantiated them. Its 1966 Judgment, for example, which tended to support South Africa's position, was invoked only twice—and then merely to try to refute South Africa's argument.

123. On the other hand, where its previous pronouncements did not suit its Opinion, the Court just disregarded them. To give but two examples of such pronouncements:

"it was never the intention that the Council (of the League) should be able to impose its views on the various mandatories—the system adopted was one which deliberately rendered this impossible";

and again,

"resolutions of the United Nations General Assembly . . . subject to certain exceptions not here material . . . are not binding, but only recommendatory in character."

124. Then there is the Court's treatment of another fundamental issue—the question of the factual justification for General Assembly resolution 2145 (XXI). The Assembly based that resolution on South Africa's alleged non-fulfilment of obligations in respect of the administration of the Territory—obligations alleged to have been violated by acts of oppression and repression of the inhabitants of the Territory and by the alleged denial of rights of self-determination, freedom and independence. In particular, the Assembly made no mention of South Africa's refusal to render reports on its administration to the United Nations.

125. Yet this was the very ground upon which the Court relied. Not only then did the Court endorse an act of the Assembly in which the Assembly acted as the judge of complaints brought by itself and which it failed to investigate, but it endorsed it upon a complaint not relied upon by the Assembly itself. The inference is inescapable that the Court did this to avoid having to inquire into the factual justification for the Assembly's action.

126. However, the most extraordinary aspect of the matter was that the Court, having decided not to go into

the factual issues, nevertheless made findings thereon. Moreover, it did so in a decidedly uninformed and prejudiced manner, going out of its way to censure South Africa's policies in the Territory. And to crown it all, it did this after refusing to hear detailed evidence, or to cooperate with South Africa in the holding of a plebiscite, which South Africa had offered in connexion with this very question. The purpose of the Court's censure was clearly political rather than legal and it emphasizes the basically political nature of the Opinion.

127. These are some, though by no means all, of the reasons why the South African Government cannot accept the Court's Opinion, either in its specific application to South West Africa or in its wider implications.

128. Let us, however, for present purposes concentrate on the cardinal issues I have mentioned. For, as long as the questions raised by these issues remain unanswered, there cannot be even the remotest justification for accepting the Opinion. The matter is not merely technical. It is a matter of vital and fundamental importance. It is a matter of acquiescing in an Opinion which, with virtually no supporting reasoning at all, seeks to confer upon the General Assembly and the Security Council powers far surpassing anything agreed upon by the framers of the Charter.

129. Acceptance of the Opinion will mean no more nor less than this: that in almost any situation in which two-thirds of the Members of the Organization wish to impose their will upon a particular State or States, they can now do so—without regard to the provisions of the Charter as these have hitherto been understood. The safeguards incorporated in the Charter might just as well not be there. I do not have to spell out what the end result would be for the future of international co-operation and the rights of individual States. And with particular reference to the question now before this Council, the exercise of such wide powers in an attempt to escalate measures against South Africa could result in the disruption of the peaceful development of all the peoples of southern Africa.

130. There is peace, prosperity and progress in South West Africa today. And I state categorically that there is no threat to international peace and security as a result of conditions there. Nor will there be, unless Members of this Organization artificially create one as a pretext for the realization of ulterior motives.

131. What possible role then is there for the Council to play in the affairs of the Territory? It has been alleged in this Organization that South Africa is oppressing the peoples of the Territory, is failing to promote their welfare, is denying to them their right of self-determination. Indeed, it was on these very grounds that the General Assembly purported to terminate South Africa's title to administer the Territory; and it was on these grounds that the Security Council acted as it did.

132. But nothing could be further from the truth than these allegations. And I propose to show briefly just how ill-founded they really are. I shall do so not only by presenting facts and figures which are incontestable and which illustrate the steady progress and development in the

Territory, but also by quoting informed press reports—most of which emanated from foreign correspondents who saw the conditions in the Territory for themselves only three months ago. It should not be thought that these correspondents were not critical of some aspects of South Africa's policies. They were. But the important feature of their reports was that virtually every one of them rejected the allegations upon which the General Assembly and the Security Council have always so uncritically relied in any action they have taken against my Government.

133. Let me start with the charges that the peoples of the Territory are denied all political rights, including the right of self-determination, and that South Africa has no intention of leading them towards self-government. Now, what are the facts?

134. In the political field, contrary to what is alleged, my Government is making determined efforts to bring the peoples of South West Africa towards self-government. Concrete evidence of this is to be seen in the accelerated development in recent years of governmental institutions in Owambo and Kavango, which now both have their own legislative and executive councils functioning on a federal basis, as well as their own Departments of Government. The Rehobothers have always enjoyed a certain degree of autonomy and self-government and they have been offered more. Positive preparatory steps have already been taken towards the further constitutional development of the Damas and the Caprivians. Consultations aimed at still further political development are continually taking place between the South African authorities and the various peoples of the Territory. This process, I say here today, will continue until the stage of full self-determination, based on the will of the peoples, is reached.

135. This is what *The Times* of London reported in its issue of 21 June 1971:

“The basic object of democracy is to give all the people a say in the management of their own affairs. This basic policy holds in South West Africa—the aim being to extend the franchise to all groups. But with such a diversification of tribes within the country it is important that each tribe govern its own affairs and not those of others.”

136. Several correspondents during their recent tour of the Territory remarked on the heterogeneous population which is the *raison d'être* for South Africa's policies. Thus the London *Daily Express* of 22 June 1971 pointed out that “there is no ‘people’ of South West Africa. The population . . . is made up of a number of disparate peoples, each with its own identity.”

137. The South African Government is committed to the principle of self-determination no less than any other Member of this Organization; and it is our conviction that the peoples of South West Africa wish us to continue to administer the Territory until they have achieved full self-determination under our guidance.

138. It was in order to provide further evidence of their wishes in this regard, and also to refute once and for all the

the factual issues, nevertheless made findings thereon. Moreover, it did so in a decidedly uninformed and prejudiced manner, going out of its way to censure South Africa's policies in the Territory. And to crown it all, it did this after refusing to hear detailed evidence, or to cooperate with South Africa in the holding of a plebiscite, which South Africa had offered in connexion with this very question. The purpose of the Court's censure was clearly political rather than legal and its emphasis is the basically political nature of the Opinion.

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137. The South African Government is committed to the principle of self-determination no less than any other Member of this Organization; and it is our conviction that the peoples of South West Africa wish us to continue to administer the Territory until they have achieved full self-determination under our guidance.

138. It was in order to provide further evidence of their wishes in this regard, and also to refute once and for all the

irresponsible charges of oppression and repression which are continually being made, that we proposed to the International Court that a plebiscite of all the inhabitants of the Territory be held. The inhabitants were to have been asked whether it was their wish that the Territory should continue to be administered by South Africa or whether it should henceforth be administered by the United Nations.

139. What was the reaction to this proposal? It was resisted on the flimsiest and most spurious grounds. The representative of the Secretary-General even stated that a vote in favour of South Africa would really count against it since it would show that the political development of the inhabitants had been neglected. What is one to make of this type of argument? Is it really being suggested that the peoples of South West Africa would not have known it had they really been ill-treated, enslaved and oppressed?

140. In the event the Court rejected the plebiscite proposal. We still think it was a great pity. We still think that those who professed concern for the peoples of the Territory should have availed themselves of that opportunity.

141. Let us look next at the economic development of the Territory. Here we have to do with allegations that the inhabitants are in a state of constant economic servitude, even that they are reduced to starvation. Facts and figures, many of which appear in publications of this Organization, refute these allegations.

142. It must be borne in mind that in South West Africa there are several formidable natural obstacles to economic development. There is the great scarcity of water in many large areas, the great distances between towns and villages, and the very small local market. Yet, in spite of all these inhibiting factors, the economic life of the Territory continues to prosper—and at a gratifying rate. For this the credit is in large measure due to the efforts of the South African Government.

143. Referring specifically to Owambo, the London *Daily Express* of 22 June 1971 observed: "South Africa has clearly taken the least developed region of the territory where most of the alleged atrocities are claimed to have been committed—Ovamboland—and poured millions of pounds into it." The figures speak for themselves. Take, for example, the gross domestic product of the Territory. In 1960 it was \$205.6 million. In 1969, only nine years later, it was no less than \$520.9 million—two and a half times as much. Per capita income is amongst the highest in Africa.

144. Manufacturing suffers most from the restricting factors I have already mentioned. Yet the net value of output has risen by an annual average of \$3,570,000, reaching \$43.5 million in 1967-1968.

145. This progress was made possible by reason of the sound infrastructure established, and to a large extent maintained, by the South African Government. One has only to consider rail and road transport services to appreciate the indispensable role which South Africa plays in the Territory. Vast distances, a small population and a scarcity of water and local fuel result in a disproportionately high capital investment and financial losses.

146. Yet in 1964 South West Africa had 37.1 kilometres of railways per 10,000 of population. Up to 1970 it had cost South Africa no less than \$292 million in capital expenditure to run the railways in the Territory. The system is run at a loss, which in 1970 amounted to \$89 million.

147. Look at road construction. In September 1970 the cost of major road construction projects actually under way was estimated at \$45.2 million. And further projects scheduled for the next four years will cost some \$74.8 million.

148. Consider also postal and telecommunication services in the Territory. Post Office revenue amounted to over \$5.6 million in 1970. The value of telephone, telegraph and radio installations amounted to more than \$33.9 million in 1970. Owambo today has its own FM radio service, its own studios and its own announcers.

149. Of vital importance to South West Africa is the supply of water. Water is scarce and rainfall sparse and irregular. But it is essential to the development of the Territory, and the authorities have therefore devoted much effort and ingenuity as well as money to meeting the problem. How well they have succeeded is shown by the fact that already two-thirds of the total surface and underground supply of the Territory is being utilized.

150. To achieve this development, the Government has spent some \$114 million over the last twenty years. If expenditure by local authorities and private enterprise were added the figure might well be doubled.

151. In 1970 there were 177 domestic water supply schemes constructed and operated by the State in the Territory, besides a vast number of boreholes drilled to supply water for man and beast in outlying areas. It is estimated that by the year 2000 the capital cost of providing the additional water required in the Territory will amount to no less than \$3,766 million.

152. According to a recent publication of the Economic and Social Council, an amount of \$130 million was approved by the Governing Council of the United Nations Development Programme in respect of projects in some 80 countries, mostly developing countries, with a total population of 1,600 million.

153. That means that roughly 8 cents per capita will be expended on a large number of UNDP development projects of various kinds in 80 countries of the world. In Owambo in South West Africa, with a population of 342,000, a total amount of \$22 million has already been expended by the South African Government on water development alone. The costs of Owambo's over-all water supply scheme have been estimated at \$85 million, which gives a per capita figure of \$248.5.

154. Expenditure on water in South West Africa over the next ten years is expected to rise from the current \$28.2 million per annum to about \$59.3 million per annum in 1980. By way of comparison, the budget of the Food and Agriculture Organization of the United Nations for the year

1970-1971 was about \$70.5 million; loans and credits granted by the World Bank and the International Development Association for water and sewerage schemes throughout the world for the year 1970-1971 totalled \$188 million, while in the same year the two organizations together granted \$56 million for the whole of Africa in respect of agricultural projects.

155. The relatively high cost of electrical power is another factor which inhibits the development of South West Africa. The Territory has no usable coal deposits of its own. It must consequently import coal from the Republic of South Africa—by far the cheapest source of supply, but still expensive. What is being done to meet this problem?

156. As the Council is probably aware, South Africa, in collaboration with the Government of Portugal, has already instituted the first phase of a project to utilize the water of the Kunene River as a source of power for the Territory. In this connexion, the *London Daily Telegraph* of 19 June 1971 reported:

“Something like £100 million is being poured into the area (Owambo) under the first five-year plan, much of it for developing the hydro-potential of the Kunene River as a cheap source of power. The completion of the project in 1975 will contribute enormously to sustained economic growth in the south-west.”

The programme for the generation of power over the next fifteen years involves a capital expenditure of the order of \$190 million.

157. In the light of what I have said, members of this Council must surely agree that South Africa is making very great efforts to promote the general welfare of the inhabitants.

158. Of particular significance is the progress of the non-white population groups in recent years. Ever greater numbers of them are availing themselves of increasing opportunities for gainful employment. In response to economic incentives they are improving their qualifications and performance more and more. Their wages compare favourably with, and in many cases are considerably higher than, wages in other African countries. Particularly is this true of unskilled workers, who form the bulk of wage-earners in Africa. The Canadian *Vancouver Sun* reported in its issue of 23 June 1971 that “the journalists saw blacks everywhere working as nurses, teachers, bookkeepers, mechanics and truck drivers and operating their own stores”.

159. Let me now deal with the field of education. The system in South West Africa is directly in line with the modern approach to schooling in Africa, the emphasis being on the importance of African cultures in the education of African youth. The standard is the same as that of whites in South and South West Africa. The total number of pupils of all groups in primary and secondary schools has more than doubled over the past ten years—from 59,000 in 1960 to 130,000 in 1970. The Augustineum High School, Teachers and Technical Training Centre at Windhoek is today an eminent centre of education and technical training.

160. Since 1969, the Owambo Department of Education and Culture has carried the responsibility for the control and development of education in that territory. In 1961 there were 26,000 pupils at 128 schools in Owambo. In 1971, out of a population of 342,000, there were 61,000 pupils at 222 schools. In the same period the number of teachers increased from 600 to 1,260. Owambo also has the Ongwediva educational and training institute, constructed at a cost of about \$6.4 million. It is an impressive complex comprising three institutions in one—a high school, a teachers' training centre and a trades centre.

161. Education is also progressing rapidly in other homelands. In Kavango, for example, which has a total population of some 50,000, there were 84 schools, 245 teachers and 10,300 pupils in 1970. A new secondary teachers' training and vocational centre is under construction.

162. It has been alleged in this Organization that the educational system in the Territory is designed to prepare the indigenous inhabitants for an inferior position in life. Is it possible that the Council can believe that in the light of the verifiable facts and figures I have given?

163. I turn now to health services, which, it is alleged, are far too inadequate to save the black peoples from gradual extinction.

164. In 1970 current expenditure on health services for these peoples amounted to approximately \$6.1 million. The 1969-1970 level of Government expenditure on health services for all population groups represents a per capita outlay of about \$13.1. There are 156 hospitals and clinics in South West Africa. Of these, 139 serve the indigenous peoples only. There are 6,651 hospital beds in the Territory, giving a ratio of almost 89 beds per 10,000 of population. To provide a basis for comparison, I may state that in the United States of America there are 50 beds per 10,000 of population in Government hospitals, and roughly 80 if private hospitals are included.

165. In South West Africa hospital fees for the white population group are charged according to a fixed tariff based on income. But non-white out-patients are charged only 15 cents for admission and in-patients 70 cents, irrespective of the duration of hospitalization, but only if they are able to pay. If not, even that nominal fee is waived. Once admitted to hospital, all non-white patients are treated entirely free of charge. That includes specialist treatment.

166. Scientists and technical personnel play a vital role in improving health conditions in the Territory and in maintaining the standards already achieved. As an example, in the malaria controlled areas of Owambo the average incidence of malaria, which was formerly 16.2 per cent, was down to .06 per cent in 1969.

167. Finally, in replying to the more fantastic allegations concerning genocide and racial extermination, concentration camps and slavery, a huge military build-up and the establishment of a rocket research station, I can perhaps do no better than to quote from the American magazines *Time* and *Newsweek* of 5 July 1971. According to *Time*, the



reporters who visited the Territory recently "found no evidence of genocide or concentration camps (the alleged 'death house' proved to be an institute for aeronomy)".

And *Newsweek* reported to the same effect. It stated:

"There was no indication whatsoever that the 350,000 strong Owambos are ill-treated—as UN critics have charged. In fact, some of the wilder accusations proved to be ridiculously wrong. A so-called desert 'death factory' near Tsumeb—where nuclear weapons and lethal gases were supposedly being manufactured to use against black-governed nations—turned out to be a meteorological station.

"We also saw no evidence of genocide or concentration camps alleged by some critics of the Pretoria Government. There is no injustice against black men in my land," insisted Chief Counselor Ushona Shiimi of the Owambo Executive Council. "I do not think the United Nations know what is going on here".

168. The tangible benefits of South Africa's administration of the Territory, in both human and material terms, are there to be seen. As United Press International reported in the *China Post* of 23 June 1971, there was nothing found in the Territory to substantiate the various charges made by the United Nations against South Africa's administration.

169. And, as proof of my Government's good faith, I again invite the Secretary-General of this Organization, or his representative, to visit the Territory and to see for himself the conditions that prevail there. Should he come, he will see, and here I quote from the *Daily Express* of 22 June 1971, that: "South West Africa is no threat to world peace unless world pressures and United Nations force make it so." And he will agree with *The Times* of London 21 June of this year that "the future development of the tribes in South West Africa depends entirely on there being peace in the country. If this can be maintained, then rapid progress will be made towards the total civilization of the entire population."

170. It has been said that while South Africa has improved the physical and material well-being of the peoples of the Territory, it has ignored their moral well-being and violated their human dignity. A plebiscite could have put this matter to the test. But the representative of the Secretary-General and the Council for South West Africa opposed this and the Court itself rejected our proposal.

71. From what I have said, it will be clear that our links with South West Africa cannot be severed at this stage without grave detriment to the inhabitants of the Territory. As stated by Mr. George F. Kennan, former United States Ambassador to Moscow, who recently visited South West Africa:

"In the event of a forced South African withdrawal . . . all existing administrative and social services would simply cease to exist. In that event it would almost certainly be years before it [the United Nations] could expect to restore to this vast territory even a semblance of such good order and prosperity as it has now achieved."

This, I may add, is an excerpt from an article in which the author was by no means uncritical of conditions in southern Africa.

172. In conclusion, I would sum up briefly the attitude of my Government to the question of South West Africa.

173. Firstly, for the reasons I have already given, we reject the Advisory Opinion of the International Court. As the South African Prime Minister said shortly after the delivery of the Opinion, we regard it as entirely untenable. We say that it was clearly and demonstrably not the result of objective jurisprudence.

174. Secondly, and more important, is our relationship with the inhabitants of the Territory. In this respect, I can do no better than quote the actual words of my Prime Minister. He stated:

"It is our duty to administer South West Africa so as to promote the well-being and progress of its inhabitants. We will carry out this duty with a view to self-determination for all population groups. We have guided and administered the peoples of South West Africa for more than half a century in a manner which has earned their whole-hearted confidence. We have set them on the way of peace, prosperity and self-determination and we do not intend to fail that trust. We shall, therefore, proceed with our task and shall not neglect our responsibility towards South West Africa and its peoples."

175. Mr. GHALIB (Somalia): My delegation, headed by my President, was present at the Summit Conference of the Organization of African Unity when it was decided that the President of that Organization, together with the Foreign Ministers of the Sudan, Ethiopia, Sierra Leone, Chad and Nigeria should address the Security Council on the question of Namibia and when it was decided to impress upon the Council members the united voice of Africa that justice must be done and that the United Nations must embark upon an effective course of action which would guarantee for the people of Namibia their right to self-determination and independence in accordance with the provisions of General Assembly resolution 1514 (XV).

176. This morning we were privileged to hear the African viewpoint expressed through the eminent person of President Ould Daddah of the Islamic Republic of Mauritania. In an eloquent and impassioned way he described the basic facts of the situation; he emphasized the responsibilities of the United Nations; and above all the expectations of the people of Namibia in this vital matter.

177. The President of Mauritania has set the framework within which this debate should take place; and the contribution of my delegation will be to provide details and suggestions as to how this Council could live up to its responsibilities and obligations on this question in accordance with the Charter and its own decisions.

178. The Somali delegation was one of those which took part in the historic debate in October 1966, which led to the termination of South Africa's Mandate over South West Africa. Referring to the possibility that the Government of

South Africa would meet the provisions of resolution 2145 (XXI) with its customary intransigence the Somali representative said then:

"The possible outcome of this resolution is a nettle which must be firmly grasped.

"The United Nations must be prepared to take all the steps necessary to enforce its decisions in this matter, including the possible application by the Security Council of the measures provided for in Chapter VII of the Charter. If this aspect of the question is not accepted, then we may have to add South West Africa to the list of those issues which turn up each year, haunt us briefly, and are then relegated once more to the limbo of unsolved problems."<sup>3</sup>

179. This same concern—that the United Nations would not follow up its declarations with positive action—led the Somali delegation to participate actively in the discussions which are summarized in the report of the *Ad Hoc* Sub-Committee on Namibia [S/10330]. The fear we expressed in 1966 has become a present reality.

180. There have been two Security Council resolutions on Namibia each year since 1968. All have reaffirmed the illegality of South Africa's continued presence in Namibia and either called upon South Africa to comply with United Nations resolutions on Namibia or condemned South Africa's failure to comply with those resolutions. There has, of course, been no response from South Africa. Resolution 283 (1970) brought some progress to the issue since it called upon all States to take specific actions which would help to emphasize the illegality of South Africa's position and assert the authority of the United Nations. This resolution reflected the opinion of a majority of the membership of the United Nations but since there were some States which still entertained doubts about the precise nature of their legal obligations towards Namibia, the Council asked for and received a legal opinion from the International Court of Justice. That opinion is, of course, the point of departure for this debate on the question of the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970).

181. I think it is pertinent to recall that the resolution calling for a legal opinion from the International Court was a unanimous one indicating a consensus on the view that such an opinion was necessary to enable the Council to move forward in the discharge of its responsibilities.

182. The stage has now been reached when, in the words of our representative in 1966, the nettle must be firmly grasped. The Security Council must take positive action to assert its authority over Namibia.

183. It will be seen from paragraph 12 of the report of the Sub-Committee that the Somali delegation initiated the discussions which eventually led to the formulation of a number of constructive proposals. We emphasized then

<sup>3</sup> See *Official Records of the General Assembly, Twenty-first Session, Plenary Meetings*, 1427th meeting, paras. 15 and 16.

—and our feeling was shared by other Afro-Asian States—that the solution of the Namibian problem was not the responsibility of the African States alone but one that had to be shared by all States. Unfortunately, as in most southern African situations, there was limited positive response by other States, and it was the Afro-Asian working draft which formed the basis for the consensus reached in Part A of the proposals [*ibid.*, para. 18]. It is a sad commentary on United Nations affairs that those States which have direct economic interests in South Africa invariably limit their role, in discussions on that area, to criticism of proposals that have been put forward, without submitting better alternatives themselves.

184. The Somali delegation's position on the directions which United Nations action on Namibia should now take is based on a number of premises. I should like to consider first a group of related premises which are political in nature. It is a political fact that Namibia is the direct responsibility of the United Nations.

185. It is important that we should be clear about what this responsibility means. Every United Nations resolution on Namibia so far has affirmed the inalienable right of the people of Namibia to freedom and independence, as recognized in General Assembly resolution 1514 (XV). The sole responsibility of the United Nations towards Namibia is to help its people achieve the goal of independence. That is why my delegation proposed an amendment to the proposal of the United States and Italy, which appears in Part C of the proposals [*ibid.*, para. 20]. Our amendment reinforces sub-paragraph (i) of paragraph 18, and emphasizes that the United Nations has a central role to play in creating conditions under which the people of the Territory shall be able to exercise freely their right to self-determination and independence. As paragraph 20 now stands, the positive nature of that United Nations responsibility is not spelled out. In the view of my delegation, it would be most unfortunate if paragraph 20 were to stand in its present form, which could constitute an excuse for inaction.

186. I would also mention in the context of the question of the right of the people of Namibia to self-determination and independence that that right is threatened by the application of the policy of *apartheid* to that Territory and by the division of the Territory or population into separate tribal units. Sub-paragraphs (ii) and (iii) of paragraph 18 reaffirm the national unity and territorial integrity of Namibia and condemn all moves by the Government of South Africa designed to destroy that unity and territorial integrity through the establishment of Bantustans.

187. It is another political fact that South Africa's right of presence in Namibia is no longer valid. One result of this fact was the provision in Security Council resolution 283 (1970) which called on the Secretary-General to make a detailed study of multilateral treaties to which South Africa is a party and which might be considered to apply to the Territory of Namibia. That resolution also called on Member States to study bilateral treaties which might similarly apply to Namibia. The Secretary-General's study [S/10288 of 12 August 1971] has been completed, and a few States have indicated their compliance with the provisions I have outlined.

188. Sub-paragraph (ix) of paragraph 18 goes a step further and calls for more positive action on the basis of the studies of multilateral and bilateral treaties involving Namibia that have already been undertaken. The whole of sub-paragraph (ix) goes to the heart of the matter of the legal consequences for States of South Africa's continued illegal occupation of Namibia. The sub-sections, it will be noted, follow closely the actual recommendations of the International Court of Justice on those dealings with the Government of South Africa which, to quote the Court, in paragraph 121 of its opinion:

"...under the Charter of the United Nations and general international law, should be considered as inconsistent with the declaration of illegality and invalidity made in paragraph 2 of resolution 276 (1970), because they may imply a recognition that South Africa's presence in Namibia is legal."

189. Our third political premise, and one which centres around the conclusions of the International Court noted in sub-paragraph (v) of paragraph 18, is that South Africa's continued presence in Namibia constitutes an illegal occupation of the Territory. This uncontested political fact demands political action.

190. Two years ago the Security Council called on South Africa to withdraw from Namibia and fixed a deadline for withdrawal. South Africa neither withdrew nor responded in any way. We have been able to assess South Africa's position over the past few years and we have seen the reaction of the South African racist régime to the Opinion of the International Court of Justice. It is evident that the United Nations cannot continue to confine its attitude to this important issue within the framework of condemnations, or appeals or calls on South Africa. The Security Council must, of course, call formally on South Africa to withdraw from Namibia, as it has done before in accordance with its legal obligations towards that Territory. As proposed in sub-paragraph (vii) of paragraph 19, it must also call on South Africa to enter into immediate discussions with the Secretary-General or any other appropriate United Nations medium on the arrangements for its withdrawal from Namibia so as to facilitate the speedy and effective transfer of administration to the people of Namibia. But it is of paramount importance that the Council show clearly its intention to take positive action if this call is again ignored by South Africa.

191. It is for this reason that my delegation strongly supports the proposal that the Security Council declare that any further refusal of the South African racist régime to withdraw from Namibia would constitute, among other things, an act of aggression against the Territory of Namibia and a threat to international peace and security within the context of Chapter VII of the Charter. That proposal is not acceptable to the United States and to West European delegations. But it is difficult to see in what other manner the Namibian situation can be described, since South Africa maintains a military presence in Namibia, since it maintains an illegal presence there, and since it defies the demands of the Security Council that it withdraw from the Territory.

192. Another point which, in the view of my delegation, springs from the premise of South Africa's illegal presence

in Namibia is that if this presence is indeed illegal and if the United Nations can take action on the political and diplomatic levels against this illegality, then the fact must also be accepted that action taken by the people of Namibia to resist that illegal occupation is legitimate. Consequently, we proposed in sub-paragraph (i) of paragraph 19 that the Security Council recognize the legitimacy of the struggle of the people of Namibia against the illegal occupation of the South African authorities in their Territory.

193. The final point which I will mention in the general context of the political premises for our delegation's recommendations and in the particular context of South Africa's illegal occupation of Namibia is that if there is any determination by the United Nations to give credibility to its decisions on Namibia and if South Africa refuses to end its defiance of the United Nations, the result must be a serious confrontation. And yet South Africa is enabled to persist in its defiance because some of the more powerful Member States continue to supply arms to that country.

194. Security Council resolution 283 (1970) recognized the significance to the Territory and people of Namibia of the arms embargo against South Africa. My delegation believes that the Security Council must, at the present time, either reaffirm its resolution 282 (1970) on the arms embargo in the context of Namibia, or call directly on all States to refrain from supplying arms or military equipment to the South African racist régime, as proposed in sub-paragraph (viii) of paragraph 19.

195. So far I have spoken only of the political premises on which the recommendations supported by the Somali delegation are based. I should like to deal now with some legal premises and their consequences, as they are spelled out in the recommendations of the Sub-Committee in its report. The legal fact of overriding importance to my delegation is that the United Nations is the sole legal authority for the welfare and administration of the people and Territory of Namibia until those people assume their responsibilities under General Assembly resolution 1514 (XV). Sub-paragraph (ii) of paragraph 19 is based on that legal fact, and it draws from this fact a consequence: that all relations with or involving Namibia, in order to have legal effect, can be entered into or maintained only through the United Nations.

196. My delegation is concerned that already an investment scramble is taking place over Namibia because of the discovery of large uranium deposits and the favourable prospects for oil and other mining industries. Elsewhere in southern Africa and in other regions of the world, the operations of international combines often have the backing of their Governments. The economic involvement of those Governments makes political solutions difficult in problem areas. That kind of situation is being repeated in Namibia, and the responsibility for preventing its further development and for safeguarding the natural resources of the Territory in the interest of the people now rests with the United Nations.

197. As my delegation emphasized during the discussions of the Sub-Committee, the significance of sub-paragraph (ii)

of paragraph 19 is to ensure that any wealth extracted from Namibian soil should be used to enhance the welfare of the Namibian people rather than to swell the coffers of South Africa and foreign investors. My delegation considered it very important that foreign investors should be informed by their Governments that they would enter into new investments in Namibia entirely at their own risk and that once control of the Territory was wrested from South Africa and vested in Namibia there would be no question of compensation. We also considered that, until such time as Namibia is able to assume control of its territory, foreign firms should pay a proportion of their profits and royalties into a fund to be used for the benefit of Namibians.

198. Another important legal responsibility of the United Nations is to ensure that Namibia is adequately represented and protected when international treaties which would involve the interests of Namibia are being drawn up.

199. The question of adequate representation and protection of the rights of Namibia at the international level leads naturally to the question of the necessity for the United Nations to set up effective machinery for implementing its decisions on Namibia. The General Assembly has established the Council for Namibia to administer the Territory until independence. Unfortunately, although that Council was established at the request of an overwhelming majority of States in the General Assembly, the Council has not been able to discharge its functions because the permanent members of the Security Council have refused to give it support and recognition, and because the South African racist régime has refused to co-operate with it. The Security Council, on its part, has established the Sub-Committee on Namibia. But its terms of reference are only to study further effective recommendations on ways and means by which the relevant resolutions of the Council can be implemented.

200. The position of the Somali delegation on the question of machinery for implementing United Nations resolutions on Namibia has always been that it is not sufficient for the United Nations to stand by its resolution 2145 (XXI) without taking any step to give that declaration tangible and realistic form. It is certainly wrong that after five years the United Nations cannot agree upon an appropriate organ for the administration of Namibia. Since everyone is agreed that South Africa has no rights in Namibia we must advance a step further. As the Secretary-General has observed, the Namibian situation is unique in that there is no intervening sovereign jurisdiction between the General Assembly and the people and Territory of Namibia: no governmental authority exists—other than the General Assembly and the Security Council—with the competence to interpret and apply to Namibia the international obligations which are owing to the latter under the Charter of the United Nations.

201. The United Nations must either reconstitute the Council for Namibia or redefine its powers so as to make it an organ which would have the full backing of the United Nations. Another alternative could be to do away with the Council and devise a completely new organ. What is harmful to the Namibian people is for the United Nations to be divided on this vital question—a division which

obstructs progress towards the implementation of its decisions.

202. Finally, I should like to consider a constitutional premise for an important recommendation supported by my delegation. It is a constitutional fact that there devolves on all States Members of the United Nations, in accordance with the Charter, the duty to abide by the decisions of the Security Council. My delegation believes that if that were not so, the United Nations would be without an essential pillar of its authority. We therefore support sub-paragraph (ix) of paragraph 19, which reaffirms the obligation of all States Members of the United Nations, under Article 25 of the Charter, to accept and carry out the decisions of the Security Council and which also reaffirms the obligation of the United Nations to ensure that States which are not Members of the United Nations act in accordance with the principles of the Charter.

203. There are other recommendations appearing in the Sub-Committee's report which my delegation supports but which I have not singled out for emphasis or explanation because they are self-explanatory. The aim of all the recommendations my delegation has proposed or supported has been to protect the rights of the people and Territory of Namibia and to maintain the authority and the credibility of the United Nations.

204. Before I conclude, I should like to say—with all due respect to you, Mr. President, and the members of the Council—that my delegation has been extremely disappointed by the statement made by Mr. Muller, because it has shown only that South Africa is persisting in its course of action.

205. I should like to remind the representative of the racist régime of South Africa that the whole world, the people of the world—except these racist régimes in southern Africa—are extending their arms with alacrity and in good will, while these racist régimes are defying world opinion. I am not in a position to make any threats here, but I am confident, and Africa is confident, that history will bear witness to the fact that if, today, when the whole world is requesting you to come to reason, you ignore these expressions of good will, there will be a day when you will beg for peace in your own homes.

206. The PRESIDENT: The next speaker on my list is the Minister of State for Foreign Affairs of Guyana. I invite him to take a place at the Council table and to make his statement.

207. Mr. RAMPHAL (Guyana): Mr. President, my first duty is to thank you for affording me an opportunity of contributing to this debate, which I hope to do at no great length. The problem of Namibia is, of course, of urgent and direct concern to the peoples and Governments of the African continent, but it is for that very reason, no less than for reasons arising from its character, a problem of concern to a great many countries beyond Africa, including my own, a small State from another continent. I hope that this contribution will in some modest way be symbolic of the solidarity which other States and peoples beyond Africa are ready to demonstrate with the peoples of Namibia and

on the side of the issues of freedom, and of international legality here involved.

208. In requesting this opportunity to participate in today's debate of the Security Council, it is not my Government's intention to add further to the chronicle of outrage and censure which South Africa's administration of the Mandate, both *de jure* and *de facto*, has inevitably and rightly generated for the better part of five decades. We have placed on record in the General Assembly and elsewhere our criticisms and our condemnations. Nor is it our intention to use this occasion to catalogue the failures which have attended the best efforts of this Organization to ensure the administration of Namibia in the true spirit of the Mandate.

209. Such approaches to this debate may, I suggest, contribute marginally to the rhetoric of persuasion, but might conceivably, at this moment, be counter-productive in the search for new solutions. Our point of departure today is, and we feel must be, the Advisory Opinion of the International Court of Justice delivered on 21 June 1971.

210. It is, regrettably, the case that South Africa's refusal to comply with the resolutions of both the General Assembly and the Security Council, calling upon it to withdraw from Namibia, its continued consolidation of control over the Territory and its extension to Namibia of its own vicious system of *apartheid*, has created a situation which, amid the present realities, no longer admits of simple solutions. We should have been considering, in uncomplicated ways, how we could, as an international community "promote to the utmost the material and moral well-being and social progress of the inhabitants of the territory". Instead, this land, and its unfortunate people, find themselves caught in the cross-winds of international politics—cross-winds which confront each other from the north and the south no less than from the east and the west. Not for the first time in the history of international behaviour there exists a real and present danger that these confrontations could take on a relevance of their own, subordinating, indeed obscuring altogether, the basic problem which has occasioned them, and worse still, the needs of the people who are its victims.

211. Our primary obligation is to the people of Namibia, and this Security Council must at all times maintain those obligations in the forefront of every consideration of the problem. The fate of people, not the fate of issues, must be the criteria by which the value of all solutions and approaches to solutions must be measured.

212. But there is one issue which must command the attention of the Council because in the final analysis it has relevance for the fate of all peoples. We are all willing when it suits us, or when we pay no price for it, to place ourselves on the side of internationalism, to identify ourselves as being among those who stand for an ordered international society and to proclaim our adherence to international law. Yet, it is becoming all too familiar a feature of national behavioural patterns to indulge in semantic gymnastics to avoid the implications of these commitments when they bear upon our short-term national interests. Sometimes these antics are concerned with avoidance of compliance

with decisions of this Organization, and more particularly with decisions of this Council. Where it is possible, whether or not credible, to find some technical justification for avoidance, this more respectable course is followed. But all too frequently States which regard themselves powerful enough to do so with impunity, or who feel they can rely upon the support of powerful friends in the international community, indulge in blatant and unapologetic defiance. There is a current trend of international lawlessness which unless arrested will undermine the fabric of our international life and destroy all hope for the ordered international society for which we work and which is indeed the rationale of this Council's existence. This trend is all too evident in the Namibia situation and it is one that this Council must keep in the forefront of its present considerations.

213. My Government welcomed the initiative taken by this Council in seeking the Advisory Opinion of the International Court of Justice; indeed, in the general debate of the twenty-fifth session of the General Assembly [1876th plenary meeting], I placed on record my delegation's view that there was much in the jurisprudence of the Court to justify optimism about the result. But these processes which proceed on an assumption of international legality will themselves have contributed further to invalidating that assumption unless this quite unique opportunity is taken by this Organization, and of course by the Security Council, to restore the credibility of international law and of the Charter in the minds of all States, but perhaps more especially of the small States of the world who look to international law and to the Charter as their most effective guarantee of survival.

214. In this context, permit me to advert to the special position of the four permanent members represented here, whose privileged position in the process of international decision-making imposes, I suggest with respect, correlative responsibilities. The approbation of privilege involves the loss of the right of reprobate responsibilities and I venture to suggest that the seriousness of the issues with which we are faced imposes special demands upon these members.

215. I suggest also that to justify inaction by reference to the complexity of these issues is to abdicate the basic responsibility for decision-making. If these considerations are both relevant and valid, as my Government considers them, the first question that arises is what action should be taken by the Security Council in the light of the confirming opinion of the International Court.

216. Despite past misconduct, and indeed despite indications of a continuing trend in this direction given since the opinion of the International Court has been delivered—and I regret to say reiterated here this afternoon—this Council, in our submission, should in the first instance proceed on the assumption that South Africa, as a member of this Organization and as a party to the proceedings before the International Court, will at least ultimately acknowledge its obligations to be in accordance with the Court's Opinion. This Council, should, therefore, I suggest, call forthwith upon the Government of South Africa to enter into discussions with the Secretary-General for the purpose of arranging for its orderly withdrawal from Namibia in

accordance with resolutions of both the General Assembly and the Security Council. This withdrawal must, of course, be unconditional. No question can arise as to the conducting of any plebiscite as a condition precedent to withdrawal. In short, whatever may have been the excuses for ambivalence in the past, we can proceed hereafter on no other basis than that of the acknowledged illegality of South Africa's presence in the territory. Once the South African presence is withdrawn the Security Council would, of course, inevitably have to consider the establishment of a United Nations presence in Namibia designed to ensure its territorial integrity and the safety of all its inhabitants.

217. But however right it is to proceed on the assumption that South Africa will at least respond to its international obligations as now explicitly confirmed by the International Court, we must, at least, contemplate the possibility of continued refusal to do so, proceeding, it now seems, on the basis of South Africa's preference for the opinions of dissenting Judges to the Opinions of the Court itself. My Government believes therefore that the Security Council should once more address itself to the means which it can legitimately employ under the Charter to ensure South Africa's compliance. My Government noted with satisfaction the establishment of the *Ad Hoc* Sub-Committee of the Council charged with studying, in consultation with the Secretary-General, "ways and means by which the relevant resolutions of the Council can be effectively implemented in accordance with the appropriate provisions of the Charter of the United Nations in the light of the flagrant refusal of South Africa to withdraw from Namibia . . ." [see resolution 276 (1970)]. Pursuant to the work of that Committee my Government has likewise welcomed the adoption by this Council of resolution 283 (1970) which imposes specific obligations on Member States of this Organization regarding relations with South Africa which might imply recognition of the authority of the South African Government over Namibia and activities of their nationals, including corporate nationals, in relation to Namibia.

218. It is the view of my Government that the Opinion of the International Court explicitly confirms as part of the obligations of Member States the obligations expressly spelled out in resolution 283 (1970). It is a matter for satisfaction that the International Court has specifically adverted in its Opinion to the obligations of non-Member States and has specifically confirmed it to be incumbent upon States which are not Members of the Organization to act in accordance with the relevant decisions of the General Assembly and the Security Council and, in the language of the Secretary-General's report, "to give assistance in the action taken by the United Nations with regard to Namibia".<sup>4</sup> This is a most important aspect of the Court's Opinion and my Government trusts that non-Member States of the Organization that have hitherto considered themselves free to pursue courses of conduct in or in relation to Namibia inconsistent with the decisions of this Organization will henceforth desist and acknowledge themselves as being under obligations of a similar nature to those of all Member States. It is not perhaps without relevance that compliance or non-compliance by non-Member States

with their obligations in relation to Namibia must be regarded as relevant factors in determining their qualifications for future membership of this Organization.

219. My Government, therefore, invites the Security Council to reiterate in relation to all States the specific obligations under resolution 283 (1970), and in doing so to relate them to the confirming authority of the Judgment of the International Court of Justice. Let us hope thereafter that those Member States of the Organization that have sought refuge from compliance in doubts about the legality of United Nations action and those non-Member States which question the existence of obligations at all will now, consistent with their obligations under international law, comply forthwith with these decisions.

220. But it is necessary to examine whether the Security Council should not go further in specifying the implications which necessarily flow from resolutions 276 (1970) and 283 (1970) in which the South African Government was recognized as incompetent to act on behalf of Namibia and was required to withdraw its illegal administration from the territory, which imposed such obligations as that on States to inform the competent branches of their administration that their Governments no longer recognize South Africa as the Administering Authority in Namibia and that such recognition be accorded to the United Nations Council for Namibia from 27 October 1966—the date on which the General Assembly adopted resolution 2145 (XXI). The effect of such action would be to impose legal obligations on these competent authorities to respect the rules and legislation of the Council of Namibia in all matters pertaining to the administration of the territory, including regulations relating to the conduct of all commercial, industrial or investment activities, regulations concerning travel to and from Namibia, regulations concerning the granting of concessions and privileges in Namibia, regulations concerning the extent of and activities within the maritime jurisdiction of Namibia and its continental shelf, among others.

221. My Government also considers that the Security Council should remind Member States of their obligations to desist from any measures or activities which might in any way prejudice the territorial integrity of Namibia, including joint planning, training and exercises of a military nature with the Government of South Africa so long as its administration is not withdrawn from the territory. Similarly, my Government would wish to see this Council remind all States of their obligation to prohibit the sale to South Africa of arms which might be used by South Africa to further consolidate its illegal presence in the territory, to prohibit the achievement of the same result by the transfer of patents and to prohibit the transfer of technology and expertise, including expertise in connexion with insurgency techniques which may be employed to perpetuate South Africa's illegal administration over the territory.

222. All this means that the United Nations Council for Namibia must continue its work with even greater vigour and even more manifest authority. My Government considers, therefore, that the time has indeed come for the proposal for the appointment of a full-time Commissioner

<sup>4</sup> *Ibid.*, Twenty-sixth Session, Supplement No. 1A, para. 299.

for Namibia to be proceeded with, and, mindful of the question of competence, it will pursue this proposal at this session of the General Assembly.

223. Finally, my Government is conscious that none of these measures will succeed in the face of intransigence from the Government of South Africa unless this Organization, through the conduct of all its Members, but more especially of the major Powers, is prepared to demonstrate a will to secure compliance with the just decisions taken by this Organization in relation to the Territory and the people of Namibia. The legality of these decisions has now been specifically upheld by the principal judicial organ of this Organization. There can no longer be any excuse for a less than resolute approach to this matter, particularly at the level of national policy and action. The Government of South Africa may well be on the point of throwing down a challenge to this Organization, to the International Court of Justice, to the international community, indeed to the whole concept of law as a force in international relations. If we fail to take up that challenge now we will betray the people of Namibia and we will betray the people of the world who have such a fundamental and pervasive interest in the maintenance of the rule of law at the international, no less than at the national, level.

224. The PRESIDENT: There are no more names inscribed on the list of speakers for this afternoon. Therefore, I shall now adjourn this meeting. The next meeting will be held at 3 o'clock tomorrow afternoon.

225. Mr. FARAH (Somalia): Mr. President, we have with us a delegation of leaders from Africa. I know that some of them intend to speak, if not tomorrow, at least the day after. I should like to know how you intend to schedule the future meetings so that they can be accommodated.

226. The PRESIDENT: It depends on how many representatives will wish to speak. The meeting tomorrow afternoon will probably be rather short. The meeting schedule for this week is very congested because we must take up the reports of the Missions which we sent to Senegal and to Guinea. I shall try to reconvene the Council on this item at the earliest possible date after the meeting tomorrow afternoon.

227. Mr. FARAH (Somalia): Mr. President, I see that you have scheduled a meeting of the Council for Wednesday to receive the report of the Special Mission which went to Senegal. I understand that this has been arranged to accommodate the President for next month, who was the Chairman of that Mission. That being the case would it be possible for the Council immediately after the representative of Nicaragua has introduced his report, to continue the debate on Namibia so that we can utilize that meeting fully?

228. The PRESIDENT: I think that may be possible. In any case, by tomorrow afternoon we will know what arrangements can be made.

*The meeting rose at 7.45 p.m.*