



# SECURITY COUNCIL OFFICIAL RECORDS

TWENTY-THIRD YEAR

**1392**<sup>nd</sup> MEETING: 19 FEBRUARY 1968

NEW YORK

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## THIRTEEN HUNDRED AND NINETY-SECOND MEETING

Held in New York on Monday, 19 February 1968, at 4 p.m.

*President:* Mr. Miguel SOLANO LOPEZ (Paraguay).

*Present:* The representatives of the following States: Algeria, Brazil, Canada, China, Denmark, Ethiopia, France, Hungary, India, Pakistan, Paraguay, Senegal, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

### Provisional agenda (S/Agenda/1392)

1. Adoption of the agenda.
2. The question of South West Africa:

Letter dated 12 February 1968 addressed to the President of the Security Council by the representatives of Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, United Arab Republic, Yugoslavia and Zambia (S/8397);

Letter dated 12 February 1968 addressed to the President of the Security Council by the representatives of Afghanistan, Algeria, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Ethiopia, Ghana, Guinea, Iran, Iraq, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Libya, Madagascar, Malaysia, Mali, Mauritania, Morocco, Nepal, Niger, Philippines, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sudan, Syria, Thailand, Togo, Tunisia, Uganda, United Republic of Tanzania, Upper Volta and Yemen (S/8398 and Add.1/Rev.1 and Add.2).

### Adoption of the agenda

*The agenda was adopted.*

#### The question of South West Africa:

Letter dated 12 February 1968 addressed to the President of the Security Council by the representatives of Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, United Arab Republic, Yugoslavia and Zambia (S/8397);

Letter dated 12 February 1968 addressed to the President of the Security Council by the representatives of Afghanistan, Algeria, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Ethiopia, Ghana, Guinea, Iran, Iraq, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Libya, Madagascar, Malaysia, Mali, Mauritania, Morocco, Nepal, Niger, Philippines, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia,

**Sudan, Syria, Thailand, Togo, Tunisia, Uganda, United Republic of Tanzania, Upper Volta and Yemen (S/8398 and Add.1/Rev.1 and Add.2)**

1. The PRESIDENT (*translated from Spanish*): In accordance with the decision taken earlier by the Security Council, if there is no objection I shall invite the representatives of Guyana, Turkey, Chile, Indonesia, Yugoslavia, Nigeria, the United Arab Republic and Zambia to take the places reserved for them at the side of the Council chamber, it being understood that when the representatives wish to speak, the speaker will be invited to take a place at the Council table.

*At the President's invitation, Mr. E. A. Braithwaite (Guyana), Mr. O. Eralp (Turkey), Mr. J. Piñera (Chile), Mr. H. R. Abdulgani (Indonesia), Mr. Z. Jazić (Yugoslavia), Mr. M. O. Ihonde (Nigeria), Mr. M. A. El Kony (United Arab Republic), and Mr. I. R. B. Manda (Zambia) took the places reserved for them at the side of the Council chamber.*

2. The PRESIDENT (*translated from Spanish*): I should like to inform the members of the Security Council that I have received a communication dated 15 February [S/8422], from the representative of Colombia, asking to be allowed to participate without vote in the debate on the question now before us. If there are no objections, I shall invite the representative of Colombia to take the place reserved for him at the side of the Council chamber.

*It was so decided.*

*At the President's invitation, Mr. P. Olarte (Colombia) took a place at the side of the Council chamber.*

3. The PRESIDENT (*translated from Spanish*): The Security Council will now continue its examination of the item on its agenda. The first speaker on the list is the representative of Brazil, and I now call upon him.

4. Mr. DE CARVALHO SILOS (Brazil): Mr. President, allow me, first of all, to express the satisfaction of the Brazilian delegation at your assumption of the responsibilities of the Presidency of this Council. Your experience and wisdom assure us that, under your guidance, the Security Council will be able to proceed effectively on the matters before us. My delegation is extremely gratified by the fact that you represent here a Latin American country to which Brazil is tied by very close links and by a common aspiration for peace and progress. May I also take this opportunity to extend to Ambassador Shahi of Pakistan the deep appreciation of my delegation of the statesmanlike

way in which he conducted the work of this Council last January.

5. The Security Council is seized today of the question of the illegal trial of thirty-four South West Africans and the sentence handed down for thirty-three of them in disregard of resolutions 2324 (XXI) of the General Assembly and 245 (1968) of this Council. My delegation is grateful to the eleven members of the United Nations Council for South West Africa for having requested the meeting of the Security Council to examine this matter.

6. Only three weeks ago, at the news of the forthcoming trial of the South West Africans, the Security Council met [*1387th meeting*] to consider the problem and unanimously adopted resolution 245 (1968), which condemned "the refusal of the Government of South Africa to comply with the provisions of General Assembly resolution 2324 (XXI)" and called upon the Government of Pretoria "to discontinue forthwith this illegal trial and to release and repatriate the South West Africans concerned". In the same resolution the Council decided "to remain actively seized of the matter". On that occasion the Brazilian delegation expressed its deep concern about the fate of the prisoners and strongly supported Security Council resolution 245 (1968).

7. Today this Council is confronted with the fact that the Government of South Africa embarked upon the dangerous course of ignoring the decision of the Council and proceeded to the trial and sentencing of thirty-four of the South West African prisoners. It is a matter of the utmost dismay to my Government that the South African Government thus acted in sheer and challenging disregard not only of that Security Council decision, but also of General Assembly resolution 2324 (XXII) and of the overwhelming expression of indignation by so many independent and private institutions throughout the world.

8. The Brazilian Government's position on the problem of South West Africa and on the question of the thirty-four prisoners in particular has already been made clear. My delegation, together with other Latin American countries, played a significant part in the process by which the twenty-first session of the General Assembly shaped the historic decision contained in resolution 2145 (XXI) terminating the Mandate conferred upon South Africa over the Territory of South West Africa. On the other hand, the Brazilian delegation co-sponsored resolution 2248 (S-V) which established the United Nations Council for South West Africa. During the twenty-second session of the General Assembly Brazil voted for resolution 2325 (XXII).

9. With regard to the illegal arrest, deportation and trial of the South West Africans, Brazil co-sponsored resolution 2324 (XXII), which condemned such acts, as "a flagrant violation by the Government of South Africa of their rights, of the international status of the Territory and of General Assembly resolution 2145 (XXI)".

10. In supporting General Assembly resolution 2324 (XXI) and Security Council resolution 245 (1968), my delegation was moved by the conviction that the illegality of the South African Government's decision was twofold.

In the first place, since the adoption of resolution 2145 (XXI), South Africa had no right to administer the Territory which had come under the direct responsibility of the United Nations. Paragraph 7 of that resolution called upon the Government of South Africa "to refrain and desist from any action, constitutional, administrative, political or otherwise, which will in any manner whatsoever alter or tend to alter the present international status of South West Africa". It is clear from the language of paragraph 7 that the thirty-four South West Africans concerned were not subject to the jurisdiction of South African courts. In the second place, even if those persons had been subject to the jurisdiction of South African courts, the Terrorism Act,<sup>1</sup> under which they have been tried and sentenced, could not be accepted since it incorporates the principle of retroactivity, whose inapplicability in the sphere of criminal law is recognized by the legal doctrines and practice of all modern legal systems.

11. In examining again today the question of the illegal trial and sentencing of the South West Africans, the Security Council should bear in mind the fact that, in the last analysis, that problem and the twin question of jurisdiction over South West Africa should be considered in the broad context of the policy of *apartheid* officially followed by the Government of South Africa. Racial discrimination exists as the product of the complex interplay of social, cultural and economic factors. But in many countries there is a clear-cut realization that racial discrimination is a terrible evil, a curse that can weaken and eventually destroy the very fabric of even the most stable and organized of societies. In many countries there is a lucid endeavour in the economic, political and social fields to change hateful patterns of behaviour and to abolish racial discrimination for ever. Unfortunately, South Africa does exactly the opposite by promoting racial hatred. *Apartheid* is the official doctrine of the State and the whole Governmental apparatus is geared to foster and implement such a doctrine.

12. Today this Council is confronted by the need to act and to act boldly and effectively in order to secure the release of the South West African prisoners. During the debate several delegations submitted concrete proposals on how to come to grips with the issue before us. In evaluating them, my delegation is convinced that this organ should try to base its decision on what the representative of Canada, in his speech at the 1391st meeting last Friday, 16 February, called "the maximum weight of approval possible among the membership of the United Nations".

13. Mr. PARTHASARATHI (India): Mr. President, permit me, first of all, to extend to you the warm congratulations of my delegation on your assumption of the high office of the President of the Security Council for this month. It is a matter of great satisfaction to us to see a distinguished son of a great Latin American nation presiding over our deliberations. You have, Sir, already impressed us with the admirable way in which you carried out the lengthy and delicate consultations before convening this series of

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<sup>1</sup> Act to Prohibit Terroristic Activities and to Amend the Law relating to Criminal Procedure; and to Provide for Other Incidental Matters. Act No. 83 of 1967.

meetings. My delegation has no doubt that under your wise leadership the Council will be able to deal with its tasks in an effective and expeditious manner.

14. I should also like to congratulate Mr. Agha Shahi of Pakistan on the excellent leadership that he provided to the Council during his presidency last month. Mr. Shahi presided over the numerous formal and informal meetings with tact and wisdom. My delegation would like to express its sincere appreciation to him for his notable contribution to our work.

15. The Security Council is once again called upon to consider the tragic and deplorable situation in South West Africa. Barely four weeks ago the Council had met in an emergency meeting to deal with the grave threat to life and liberty which was then facing the thirty-five South West Africans who were being illegally tried in Pretoria. The Council at that time acted with commendable speed and unanimity. But the fact that the Security Council decided to remain actively seized of the matter showed that it had no illusions about the response of the pathologically racist South African authorities. Alas, our worst fears have proved to be justified. The Government of South Africa has dared once again to defy the unanimous decision of the highest organ of the United Nations, in keeping with its unrepentant policy of contemptuous disregard and defiance of world opinion. Within two weeks of the adoption of Security Council resolution 245 (1968) which called upon the Government of South Africa to discontinue forthwith the illegal trial and to release and repatriate the South West Africans concerned, the Supreme Court of South Africa imposed life imprisonment on nineteen South West Africans, twenty-year terms on nine, and five-year terms on two under the universally discredited Terrorism Act. Two of the remaining three South West Africans are sentenced to five years under the Suppression of Communism Act. The last of the prisoners who became ill due to police brutality is yet to be tried. It is reported in the press that Justice Joseph Ludorf, while delivering the sentence, characterized the freedom fighters as "cowards, assassins and ordinary criminals", and warned them that the Court will not necessarily hesitate to impose death sentences in future.

16. We are familiar with the manner in which colonial authorities smear the people fighting for their freedom and independence. But the Council may be interested to know how the movement is viewed by the South West Africans themselves. This has been poignantly expressed by Toivo Herman Ja Toivo who is accused No. 24 in the illegal trial, and I quote:

"We know that whites do not think of blacks as politicians—only as agitators. Many of our people, through no fault of their own, have had no education at all. This does not mean that they do not know what they want. A man does not have to be formally educated to know that he wants to live with his family where he wants to live, and not where an official chooses to tell him to live; to move about freely and not require a pass; to earn a decent wage; to be free to work for the person of his choice for as long as he wants; and finally, to be

ruled by the people that he wants to be ruled by, and not those who rule him because they have more guns than he has."

17. The inhumanity and barbarity explicit in the judgement are obvious and do not need any detailed comment from my delegation. The so-called trial was a sheer political vendetta against the heroic South West Africans whose only so-called crime was to challenge the illegal occupation of their land by the racist régime of Pretoria. The attempt to hide it behind a judicial cloak was much too transparent and could not deceive the world. The so-called trial has been rightly described by Dr. Larson, a well-known authority on international law, who attended the trial in Pretoria, as "the most monstrous travesty of law I have ever had the misfortune to witness". A similar conclusion has been reached by our distinguished colleague, Mr. Goldberg, in his lucid analysis of the proceedings in his statement last Friday at the 1391st meeting. It is indeed a tragic irony that a court which has no legal jurisdiction over the defendants it is trying under a law which has violated every legal norm as understood in civilized nations, should accuse the innocent people of being guilty of high treason. This Council and the whole world knows who is the guilty party in this case. It is the Government of South Africa which, by its illegal occupation and administration of South West Africa and by its brutal methods to suppress the legitimate aspirations of the nationals of South West Africa, is guilty of the most deplorable and inexcusable offence against the people of South West Africa.

18. That the South African authorities indulge in most barbaric forms of torture is, of course, a well-known fact. The report of the *Ad Hoc* Working Group of Experts set up in accordance with resolution 2 (XXIII) of the Commission on Human Rights throws ample light on the treatment of prisoners in South African jails. Let me, however, give just one example. Mr. Mbindi, a sixty-year old South West African, has been held under detention for about eight months under the infamous Terrorism Act. Four of the accused in the illegal trial have submitted sworn affidavits about the torture inflicted on Mr. Mbindi. According to these affidavits Mr. Mbindi was taken to the offices of the Special Branch on 19 December 1967, handcuffed to an iron water pipe and hung up so that his feet barely touched the floor. He was blindfolded and punched many times in the face and kicked and threatened with death. As a result he suffered facial and ear injuries. Two of the other accused said that they also had been cruelly assaulted by the security police in a similar manner after detention and during interrogation.

19. It is pertinent to ask as to how South Africa, in the face of universal condemnation of the illegal trial, could persist in its blatant defiance. The answer, or at least a substantial part of it, must be found in the fact that South Africa is assured, tacitly or otherwise, that some of its friends and allies will not concur in any action of a coercive nature to be taken against it. It is a matter of profound regret to my delegation that the Governments of countries having diplomatic, economic and other relations with South Africa are not prepared to exercise such pressure as the international community expects of them.

20. The situation now is this. On 25 January 1968, the Security Council acted unanimously in adopting resolution 245 (1968). Operative paragraph 2 of that resolution called upon the Government of South Africa to discontinue forthwith the illegal trial and to release and repatriate the South West Africans concerned. South Africa has defied the resolution by going ahead with the trial and passing severe sentences on South West African patriots. The Security Council is now duty-bound to take early and effective measures to obtain the release and repatriation of the South West Africans concerned. Obviously the starting point for any action by the Council is resolution 245 (1968), or rather South Africa's defiance of that resolution. But a mere re-affirmation of resolution 245 (1968) in howsoever strong terms would be tantamount to adoption of academic postures. My delegation believes that the time has come for effective action against South Africa—effective action which is open to the Council under the provisions of the Charter and in particular Chapter VII thereof. Having unanimously approved resolution 245 (1968) we believe that all members of the Security Council, permanent and non-permanent, have the moral, legal and political obligation to take effective and if necessary coercive action to secure the compliance of the Government of South Africa with the decision of the Council. My delegation is, therefore, prepared to throw its full weight behind any resolution which calls for sanctions against South Africa.

21. The argument is sometimes advanced that all diplomatic possibilities had not yet been exhausted and that the South African Government should be given another chance to comply with resolution 245 (1968). Being aware of South Africa's total defiance of the international community during the last two decades or so, my delegation does not share the view that diplomatic methods have any chance of persuading the South African Government to come to its senses. Those who continue to believe in such methods should put before the Council the basis for their confidence. In its absence the Council must come to the conclusion that sanctions against South Africa can no longer be avoided.

22. Lord CARADON (United Kingdom): Mr. President, first of all let me congratulate you on your Presidency of the Council, and let me join with other members of this Council in paying tribute to the distinguished Ambassador of Pakistan who presided over our deliberations last month. At a critical time Ambassador Shahi set us all an example of courtesy and impartiality and devotion to the best traditions of the Council. He was tireless in his determination to keep us all fully informed and indefatigable in leading us in the search for common ground of agreement which is the overriding obligation of us all. And you, Mr. President, have already shown us what care and skill you bring to the continuing commitment to make this Council a centre not for reflecting and intensifying dispute but for the high endeavour to secure agreement and action in concord. All of us, I am sure, will wish to respond to your lead, and in that co-operative effort to give you every possible support.

23. We return today to consider a question which raises issues of freedom and justice in which everyone of us must be deeply concerned and involved, and I have studied with the greatest care the speeches made last Friday in this

Council. Very respectfully I would say how much I share both the indignation which our debate has already shown and the realization which has been clear that if we wish to serve the best interests of the people of South West Africa in general and the prisoners of Pretoria in particular we must act with a full sense of the heavy responsibility which rests upon us.

24. This is not the time to go over again the arguments which have been so fully discussed in the General Assembly regarding the whole question of the future of South West Africa and the international responsibility for that Territory.

25. On that main issue I have had opportunities before to state in the Assembly the aim my Government set and the method we proposed.

26. The aim is to enable all the people of South West Africa to proceed to free and full self-determination and independence.

27. As to method, our contention throughout has been that we should act together not by words alone, however passionately sincere, but by considered and deliberate action within our clear capacity.

28. But today we put aside the basic issues affecting the future of South West Africa and turn again our attention to the Pretoria trial and the deep concern which we all share that the Government of South Africa has not responded to the urgent pleas of the international community.

29. Let me repeat in very plain terms the attitude which my Government has already stated towards both the Pretoria trial and the Terrorism Act under which it has been conducted.

30. We abhor and condemn that Act.

31. We condemn it because it operates retroactively, and specially we deplore retroactive criminal legislation carrying the death penalty.

32. We condemn it because in a very wide range of circumstances the Act transfers the burden of proof from the prosecution to the defence, and so undermines the basic principle that it is for the prosecution to establish the guilt of the accused.

33. We condemn it because the Act stigmatises virtually any conduct of which the South African administration disapproves as an offence punishable by the same penalties as are provided for the offence of treason.

34. We condemn the Act because it is offensive to the principles which should underlie the framing of criminal legislation: it is indeed at variance with the standards which even the South African Government itself professes to support.

35. It is because of our abhorrence of the Act that we voted for Assembly resolution 2324 (XXII) and Security Council resolution 245 (1968) which condemned the trial and called upon the Government of South Africa to stop it.

36. We did so because we wished to leave no doubt whatsoever by our votes that we wished fully to associate ourselves with the deep international concern provoked by the trial. We wished to join with the overwhelming majority of the Assembly and with all members of this Council in the urgent plea made to the South African authorities.

37. All members of the United Nations were invited by those resolutions to use their influence with the Government of South Africa. This we have done. My Government demonstrated its concern about the trial by sending an observer to its sessions since the trial was resumed on 26 January, and our Ambassador in Pretoria has conveyed to the South African Government the concern of my Government both about the trial and about the legislation under which the prisoners were charged.

38. So much for the action already taken, I go on to say that we welcome the moves already made to enter into consultations on the decisions which we should now reach, and we are very ready to consider proposals already made in this Council and indeed any other proposals which may come forward in the course of consultations.

39. On entering into these consultations let me advocate once more what I have advocated before in the General Assembly and these are arguments which I have put to the Assembly consistently as we have debated questions affecting South West Africa in previous sessions of the Assembly.

40. First, we must act within our clear capacity: if we do not we would be guilty of raising hopes we cannot fulfil.

41. Secondly, we should do everything possible to act in agreement together.

42. Thirdly, I emphasize once again that if we do otherwise we shall give comfort and encouragement not to those whom we wish to help, but only to those whose policies and actions we reject and condemn.

43. Lij Endalkachew MAKONNEN (Ethiopia): Mr. President, since this is the first time that I intervene in the Council after your assumption of the high office of President of the Security Council, allow me to congratulate you and to offer you the assurances of my delegation's compliments and best wishes.

44. I should also like to join those who have spoken before me in expressing appreciation and gratitude to our colleague Ambassador Shahi of Pakistan for the excellent manner in which he has presided over our deliberations during the month of January.

45. A number of my colleagues who have preceded me have already expressed most eloquently and most convincingly the dangers and grave consequences that this latest defiance of South Africa presents to the authority and prestige of the United Nations. They have rightly emphasized the need for strong and effective action in keeping with the international obligation that the United Nations has undertaken for South West Africa and for the future of its people.

46. I have already had occasion in my statement before the Council at its 1387th meeting on 25 January 1968 to sound a warning of South Africa's possible response to the Council's decision contained in resolution 245 (1968)—this in painful anticipation of what I knew to be the inevitable. Long and bitter experience of dealing with the blind-hearted racist government has taught us to expect nothing but the negative from a régime which is the very negation of human values and of international morality.

47. In spite of our fear and suspicion that South Africa might once again reject the call of the Council, we joined in that restrained call, hoping against hope that the solid wall of South Africa's resistance could be penetrated somewhat by reason and common sense and we therefore voted for resolution 245 (1968). But alas, as the saying goes, no amount of saintly supplication can turn Satan from his devilish ways, and in this particular case it appears that it will take more than the mere message of a resolution to bring South Africa to its senses.

48. Not that resolution 245 (1968) has been without effect. We have seen how even South Africa, despite its outward attitude of defiance and arrogance, could be shaken by world opinion and by fear of United Nations action. We have seen how it lacked the courage to go ahead with its previous plans for the trials and how it engaged in an absurd race for time by changing its plans and moving the dates forwards and backwards in a most telling fashion. This is, of course, very reminiscent of the kind of manipulation of judicial process which was a well-known characteristic of the Fascist dictators of Europe of whom South Africa has every reason to be the rightful heir-apparent. It is indicative of what could happen if only the United Nations and this Council acted with decisive will and determination.

49. Again, and perhaps more significant and important from the point of view of our effort in the Council, it is all too evident that had it not been for the timely preoccupation of the United Nations as well as for the mounting pressure of world public opinion, some at least of the South West Africans now imprisoned, notably those sentenced to life imprisonment, would not perhaps be alive today. Thus the United Nations and all civilized humanity can take some consolation from the fact that innocent lives have been spared from the cruel death penalty retroactively imposed by the so-called South African Terrorism Act of 1967.

50. Having thus helped to deter the executioner from committing his final act of crime and injustice, the Council is now duty bound to see to it that its efforts get through, by ensuring that the persons unlawfully imprisoned are set free and that they are repatriated to the country of their origin.

51. In this respect, let me hasten to add that, in the view of my delegation, the challenge hurled by the racist Government of South Africa is two-fold in nature. Having for years refused to recognize any United Nations responsibility and indeed its own responsibility to the people of South West Africa under the League of Nations Mandate, it has now escalated its defiance of the ultimatum by usurping

altogether the international Territory of South West Africa, for which the United Nations has assumed a unique and special responsibility since the adoption of Assembly resolution 2145 (XXI). This defiance has, of course, assumed particular significance with South Africa's rejection of the Council's decision of last month to discontinue forthwith the illegal trial of thirty-five South West Africans in Pretoria.

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

53. It must be made clear in the Council that it had already condemned the trials not because the trials of South West Africans were illegal *per se* but precisely because they had pre-empted United Nations responsibility. Indeed the Council would be treading on flimsy ground if it were to content itself only with the finding that the trials were illegal because the act under which they were conducted violated basic norms of justice and law. Although this aspect is significant and relevant in this specific context, the overriding consideration, I submit, should be that the trials were illegal because they are based on an exercise of power, acquired and now maintained by force.

54. Now after rejection by South Africa of Council resolution 245 (1968), a rejection communicated to us through the Secretary-General, and the meting out of punitive sentences to the South West Africans involved, the question arises as to whether or not this defiance of South Africa comes under the purview of Article 25 of the Charter. The answer to this question is clearly stated in Article 25 of the Charter, and I should like to quote that Article:

“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

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

56. It cannot be too strongly emphasized in this respect that decisions of the Council are decisions of the Organization which, on signing the Charter, each one of us has agreed to honour and carry out. No one can indeed ignore

decisions of the Council without at the same time contravening his Charter obligations, which, I must repeat, are obligations freely entered into.

57. It is because we view the continued defiance of South Africa as a challenge to the authority of the Security Council and, indeed, as a refusal to carry out the decisions of the Council, in the language of Article 25, that we urge that the Council should contemplate more effective measures to see that South Africa carries out Security Council resolution 245 (1968). At any rate, in our assessment, the very least that the Council could do is not to rule out the possibility of invoking more effective action on the basis of Article 25 of the Charter. Any action short of that will indeed be regarded as an inadequate gesture aimed only at appeasing an indignant and aroused public opinion.

58. Sooner or later the Council will, of course, have to face up to the basic problem of South West Africa, and indeed to all the colonial problems in southern Africa. No amount of postponing will eventually remove this eventuality. Thus in a sense any reluctance to respond adequately to the requirements of the situation that now obtains in South West Africa is bound to be counterproductive. Developments of late in southern Africa have shown that the more the United Nations waits the more its detractors interpret this as a signal to escalate their defiance. It cannot be overemphasized that the time to act is now.

59. Our first order of business should therefore be to take more effective action which, in the view of my delegation, must contain the following specific essential provisions: first, South Africa's refusal to comply with the terms of resolution 245 (1968) must be condemned; second, the Council must demand the immediate release and repatriation of the South West Africans concerned; third, the Council must call on all those Member States that have political and economic relations with South Africa to exert a maximum influence in order to make South Africa comply with the decisions of the United Nations on South West Africa, and in this particular case the decision with regard to the release and repatriation of the prisoners; and fourth, in view of South Africa's rejection of a specific decision of the Council, the Council should contemplate more effective action to see that its previous decision is implemented.

60. It seems to my delegation that this is the least that the Council should do as an immediate response to South Africa's challenge.

61. Some delegations have indicated that the Council should content itself with reaffirmation of resolution 245 (1968). It is all very well to affirm past resolutions; but, with all due respect to those who put special emphasis on the need for affirmation, I must say that mere affirmation of a resolution done under changed circumstances, cannot be enough. Any resolution of the Council at the present stage must go beyond resolution 245 (1968) if it is to have any significance to the cardinal issue of United Nations responsibility for South West Africa.

62. We have likewise heard other suggestions made concerning related measures that the Council may take in the

matter; I have in mind suggestions such as the ones put before us by our colleague Ambassador Goldberg and by others. We shall of course give careful consideration to these suggestions. We shall never rule out any reasonable and sincere suggestion that will supplement and enhance the effort of the United Nations and of this Council. But first things must be done first, and that is why we urge that the Council act without delay in the manner described above.

63. Finally, I beg your indulgence to repeat that the question of the trials is obviously but one part of the bigger question of South West Africa. The trials are in fact a test of strength by which the South African Government is trying first to erode and then to destroy the international status of the Territory. The grave and inevitable question that we have to face sooner or later—and I believe that we shall have to face it sooner rather than later—is this: will the United Nations live up to its responsibility for this international Territory and its people, or will it abandon its historic responsibility and high trust?

64. So far as my delegation is concerned, the reply that this question deserves is self-evident. By making the historic commitment of resolution 2145 (XXI) the United Nations has assumed direct responsibility for South West Africa and has taken upon itself the duty of leading the people thereof to self-determination and independence. There cannot and there must not be a failure in the fulfilment of this historic commitment; for such a failure could only undermine the authority of the United Nations Organization and the peaceful future and progress of the whole southern African sub-continent.

65. Mr. BOUATTOURA (Algeria) (*translated from French*): Allow me first, Mr. President, to add my voice to those of the previous speakers and pay a well-deserved tribute to the Ambassador of Pakistan, Mr. Shahi, for the distinction and capability with which he presided over our work during the last month. Allow me also to address to you our best wishes and our hope that your work will be crowned with equal success. We are well acquainted with your great personal integrity and your qualities as a man and as a diplomat, and these are sufficient guarantee to us for the successful outcome of our work under your objective and enlightened guidance.

66. At its meeting on 25 January, the Security Council called upon the South African Government to halt the illegal trial and to release and repatriate the South West African nationals involved. The South African Government responded to this resolution by continuing the trial, which resulted in the sentences of which we are all aware.

67. In a letter dated 30 January 1968 [S/8370], addressed to the Secretary-General of the United Nations, the Permanent Representative of the Republic of South Africa acknowledged receipt of the Secretary-General's telegram and recalled his country's position on the South West Africa question as set forth in the communication of 26 September 1967.<sup>2</sup>

<sup>2</sup> Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 64, document A/6897, annex II, enclosure 2.

68. This situation arises from, among other things, the fact that the Security Council, reaffirming General Assembly resolution 2145 (XXI), wished to place in its true context the problem raised by the arrest and condemnation of South West African nationals, in other words, to test the true intentions of the South African Government in that region by determining whether it would reconsider its decision to maintain its authority over a territory for which the responsibility had fallen to the United Nations, and to the Security Council in particular.

69. The situation was such that in the Security Council a certain humanitarian interpretation led the Council to wish to limit the foreseeable consequences of the adoption of resolution 245 (1968) merely to the release of unjustly imprisoned persons.

70. We repeat and insist that the problem facing the Security Council is political and purely political. Nevertheless, the ambiguity within the Council concerning the real scope of resolution 245 (1968) has produced an equivocal unanimity, with the result that the Council has been unable to draw all the conclusions from the situation.

71. This new meeting of the Security Council results from a merely formal unanimity, solving no problems and leading us today to reconsider the question in its true dimensions.

72. The Council must now re-examine the facts of the matter in regard to the South West African prisoners in the context of the whole situation, namely, the contested authority of the United Nations over a Territory under its trust. At this point, we are faced with an alternative. We can examine the problem as we did on 25 January and arrive at a similar conclusion which would in fact confirm resolution 245 (1968); but we do not see what effect or impact such a decision would have. The alternative is to seek more concrete means of ensuring respect for the United Nations authority over South West Africa, particularly in connexion with the release of nationals of that Territory. Our feeling is that it would be futile to re-examine the problem, if that were to result in the solution of 25 January. We feel instead that other measures, such as those provided for in Article 40 of the United Nations Charter, are necessary.

73. These measures, while of a provisional nature, would make it possible nevertheless to put an end to the illegal detention of the South West Africans and would open up possibilities for achieving a lasting solution of the problem before us.

74. We must realize, however, that in default of a firm stand by the Security Council on the provisional measures that should be taken, there can be no solution.

75. The basic elements of the problem are in fact quite simple: South Africa is illegally occupying and administering a Territory which is under United Nations authority. Within that framework the South African Government has taken irregular decisions consistent with the whole of its *apartheid* policy. The United Nations must specifically put an end to such activities.



76. Consequently, the Security Council must use practical means to halt this violation of law, since, by all indications, South Africa does not intend to abide by its obligations.

77. This was already the situation when resolution 245 (1968), constituting the lowest common denominator of the Powers represented in the Council was adopted. The only problem is to determine whether there is any possibility of inducing the Powers possessing effective means to put them to use in order to compel the South African Government to apply the basic principles of law. Otherwise, we must resign ourselves to adopting yet another resolution, which will generously be considered as "strengthened", but which everyone will immediately agree to be ineffectual.

78. Whether the measures to be taken are provisional or final, if they are to have an effect, the great Powers must agree once and for all to throw the weight of their influence into the balance and to reappraise thoroughly the objectives and methods of their policy in regard to South West Africa and particularly the South African Government.

79. It is for that reason that the Algerian delegation, still convinced, despite everything, that there is a real possibility of achieving a solution leading both to the release of the people illegally detained in Pretoria and to a solution of the question of South West Africa in accordance with the principles of the Charter, considers that the Security Council must, at the present meeting, decide to take such practical steps as will make it possible to put an end to the alarming consequences of the policy of the Government of South Africa.

80. The "Terrorism Act", aptly so named, in that it was intended to spread terror, is but one element of the South African policy of repression against African liberation movements, a policy which is also expressed in various other terms such as "the Suppression of Communism Act", an expression which also reflects the fear of certain States before the will and determination of colonial peoples to regain their independence.

81. It seems to us quite futile to discuss the legalistic casuistries put forward by the South African authorities as legal justification of their hold over South West Africa. This attempt is only part of an imperialist policy aimed at extending *apartheid* and creating a huge white enclave protected forever against the unshakeable resolve of the African peoples to win back their independence.

82. Of course, we have no doubt that the adjective "anti-communist" applied to this terrorist law will win its authors the discreet but eager support of the usual experts who never fail to see the communist menace lurking, in Africa, in Asia and in Latin America, behind every nationalist movement—in other words, whenever their interests are at stake.

83. The problem is thus reduced to determining which interests would be most seriously endangered if the *apartheid* policy of South Africa were to end in failure. The answer is well known, and we shall not dwell on it.

84. Reduced to its simplest elements, the situation is the following: the United Nations now finds itself faced with the responsibility of ensuring respect for the basic principles of law in South West Africa and of leading that country to independent status, providing the conditions for harmonious economic, social and political development.

85. The Council has hitherto been content to draw up pious resolutions and evince its fear of a trial of strength. The South African Government sees this as a clear encouragement to carry on its policy.

86. In no circumstances will the Security Council and the other United Nations bodies be able to abdicate their responsibility, and, willy-nilly, the conflict will have to be resolved in all respects. To postpone such a solution could only make the conditions of settlement yet more unpleasant for the United Nations than they would be today.

87. In our view, the United Nations can assume these responsibilities in one of two ways: either the Security Council will be content to act as it has already done in the case of Rhodesia, or it will confront with courage and perseverance a complex, but not insoluble problem. There is no other choice.

88. In this connexion, we must not be afraid to emphasize that the moral and political authority of certain great Powers is at stake, since their efforts have not met with success in a matter where the concept of interference in the internal affairs of a State was not even implied. Indeed, in a case where the fulfilment of strict international obligations is concerned, such wavering on their part would, if it were to continue, lead to the breakdown of such unanimity as they have tried to bring about within the Council.

89. It is not possible, and it will not be possible, to interpret another retreat on the part of the Council as anything other than a capitulation by these same great Powers which bear the responsibility both for the effectiveness of the Council's action and for South Africa's submission to the rule of law.

90. The Council thus faces a choice which can result in various measures. One possibility is that we shall be content with a mere, ineffectual reaffirmation of resolution 245 (1968); another is that we arrive at a "strengthened" resolution—and we do not see how a strengthened resolution 245 (1968) could be implemented, given that it was impossible to implement the original one; or, lastly, we could decide to take the necessary measures, if only provisional ones, with the object of achieving both the quickest possible release of the prisoners and the legal and political consolidation of the Security Council's position on this matter.

91. To consolidate the political position of the Council means also, in the last analysis, to make full use of the enforcement prerogatives provided in the various articles of the United Nations Charter.

92. In this connexion my delegation wishes to insist that special attention be given to measures which, in the first phase, could support preventive action, while helping to create the conditions necessary for long-term action.

93. With this in mind we would point out that it might be useful to make reference to Article 5 of the Charter; such a reference would help us, if not immediately, to find the way we are seeking in order to give real effect to the direct responsibility assumed by the United Nations for South West Africa.

94. Mr. LIU (China): Mr. President, I wish first of all to associate my delegation and myself personally with the words of welcome that have been so warmly extended to you on your assumption of the Presidency of the Council.

95. Once again the Council is dealing with a situation involving South Africa. Less than a month ago, on 25 January, the Council unanimously called upon the Government of South Africa to discontinue the illegal trial of the South West Africans charged with acts of terrorism. It is no exaggeration to say that the conscience of the world has been profoundly shocked by the judgement of the Supreme Court in Pretoria in defiance of the Council's resolution 245 (1968) and of General Assembly resolution 2324 (XXII). My delegation joins responsible opinion everywhere in strongly deploring the harsh sentences that have been meted out under a bad law in a court without competence.

96. South Africa has always professed to be a nation under the rule of law. This claim can hardly be reconciled with the retroactive Terrorism Act and the trial and conviction of the South West Africans under that Act.

97. The conduct of this case is all the more deplorable when we bear in mind the international status of South West Africa. In the face of Pretoria's defiance the Security Council is in duty bound to take further steps to ensure South Africa's compliance with its resolution.

98. My delegation agrees with those who demand swift and effective action on the part of the Council to secure the release and repatriation of the South West African prisoners. It must, however, be recognized that any steps which the Council may take must have the full and unreserved support of all Members of the United Nations, particularly those who are capable of making their influence felt in South Africa. Without such support, no action taken by the Council will be effective.

99. It is in that light that my delegation will study the proposals that may be put forth in the course of the present debate.

100. The PRESIDENT (*translated from Spanish*): At this stage of the debate, I should like to make a statement in my capacity as representative of PARAGUAY.

101. On 25 January we met in this chamber to examine the situation resulting from the persistence of the South African Government in ignoring the decisions adopted by the General Assembly in its resolution 2324 (XXII), by detaining, deporting and illegally bringing to trial a group of South West Africans in flagrant violation of General Assembly resolution 2145 (XXI), which terminated the Mandate under which South Africa had previously administered the Territory of South West Africa.

102. On that occasion, my delegation felt that, despite all appearance to the contrary, it was perhaps not too late to make another urgent appeal to the South African Government, through the voice and using the influence of the Security Council, with a view to securing the release and repatriation of the persons concerned. The Council then unanimously adopted resolution 245 (1968), condemning South Africa's refusal to comply with General Assembly resolution 2324 (XXII) and calling upon it immediately to halt the illegal trial, to free the prisoners and to return them to their country of origin.

103. We now find ourselves confronted with a new and flagrant violation on the part of South Africa, which not only has ignored the unanimous decision of the Security Council, but has gone so far as to impose sentences—extremely harsh ones—on the majority of the prisoners. If in the opinion of the Security Council which my delegation naturally shared, the detention, deportation and trial were illegal, the imposition of sentences is far more so and thus takes on the character of an open challenge.

104. Other speakers have argued that the laws applied to the prisoners are illegal as being contrary to world practice, and these considerations are certainly very important. But the most important, the basic consideration is still, in view of my delegation, the absence of any right on the part of South Africa to take action in South West Africa, as if it was fully entitled to continue to do so, when that right had been terminated by adoption of General Assembly resolution 2145 (XXI).

105. Now, as then, as in December 1967, the basic objective is the release and repatriation of the prisoners. This factor, along with others, must appear in any decision that may be adopted by the Security Council. South Africa deserves to be condemned once more for challenging Security Council resolution 245 (1968). It must immediately revoke and annul the sentences passed on the prisoners and release and repatriate them forthwith.

106. We must also take into account other prompt and effective measures indicating the subsequent steps to be taken by the Council if South Africa persists in its refusal. Hence until the release and repatriation take place, the Council must retain the question in its agenda.

107. My delegation is confident that the Security Council, which acted unanimously on 25 January, will find a formula for achieving unanimity once more at this new and serious stage of the problem. My delegation believes that the fate of these men who have been sentenced concerns the entire international community and that it depends on the decisions the Security Council will take. We feel sure that the Security Council will somehow find a way to implement resolution 245 (1968) and to obtain prompt compliance on the part of the South African Government. My delegation is prepared to work towards this objective with all the members of the Council.

108. Speaking again as PRESIDENT, the next speaker on my list is the representative of the United Arab Republic. In accordance with the decision adopted earlier by the Security Council, I invite the representative of the United Arab Republic to take a place at the Council table.

109. Mr. EL KONY (United Arab Republic): Mr. President, I wish to express to you and to the members of the Council my gratitude for being allowed to address the Council on the subject under discussion.

110. We have come to the Council, for the second time in less than one month, seeking its assistance and help to secure the release and the repatriation of the thirty-five South West Africans who have been arrested, tried and sentenced in a manner reminiscent of the dark ages and unprecedented in the civilized world.

111. The United Nations Council for South West Africa, which has been legally authorized to administer the Territory of South West Africa until independence, felt duty bound to draw the attention of this august body to a situation which, if allowed to continue, will not only lead to the destruction of human lives, but may shake the faith of millions in this international Organization, as well as in justice and morality.

112. We have come to the Council not seeking its sympathy; commiseration is not what we come for. We have come to the Council not to seek the alleviation of the sufferings inflicted upon the thirty-five South West Africans, because it is neither the first, nor will it be the last case in which the peaceful peoples of South West Africa are subjected to humiliation, degradation and brutal treatment. For, as long as the forces of aggression occupy the Territory of South West Africa, its peoples will be subjected to all kinds of suppression. But we have come today to call on the Council to uphold the principles of the Charter and to preserve the prestige of the United Nations.

113. It will be recalled that the Security Council, on 25 January last, unanimously adopted resolution 245 (1968) by which it called upon South Africa to release and repatriate thirty-five South West Africans. This action of the Security Council was based on three simple facts.

114. The first is that South Africa has no right to administer the Territory and, therefore, it has no jurisdiction over the persons concerned in the trial. On this basis the Security Council concluded that the trial was illegal.

115. The second is that the United Nations has a special responsibility toward the people and the Territory of South West Africa. It is the responsibility of the United Nations Council for South West Africa to lead the people of South West Africa to self-determination and independence through its direct administration of that Territory. Equally, it is the responsibility of the Security Council, according to the resolutions of the General Assembly, to assist and help the United Nations Council for South West Africa in the discharge of its functions. The Security Council, in its resolution 245 (1968), has already recognized the special responsibilities assigned to it by the General Assembly. Needless to say, the Security Council has sufficient powers, under the provisions of the Charter, to cope with any situation resulting from the defiance of the Government of South Africa.

116. The third fact is that States Members of the United Nations, collectively and individually, have an obligation to

assist and help in putting into effect the decisions of the United Nations. Otherwise, as the representative of Guyana said at the 1391st meeting "in the final analysis these resolutions will not be worth the paper on which they are printed . . .".

117. We are faced today with another factor which aggravates further the situation; namely, the utter defiance of the South African Government of the resolution of the Security Council. This is in fact the direct reason which has brought us here today. This defiance is conclusive evidence that the South African Government is determined to impose its jurisdiction and sovereignty over the Territory of South West Africa in violation of the resolutions of the General Assembly and the Security Council.

118. It is a further indication of the South African Government's determination to usurp the powers and authority of the United Nations over the Territory of South West Africa. This matter must not be met with a stilled conscience even by those who have certain interests. It is expected that this Council will act firmly, not only to set in motion the principles and purposes of the United Nations Charter, but also to preserve its prestige and to strengthen its authority. It is high time that the South African Government should learn how to honour its obligations and carry out its responsibilities as a State Member of the United Nations. It is high time that the South African Government should learn how to respect the will of the international community.

119. The following statements indicate how the South African Government views its rights and obligations arising from its membership in this Organization. The Minister of Transport of South Africa stated in Pretoria on 5 September that membership in the United Nations has certain advantages for the present, but this did not mean that the position might not have to be reconsidered in the future. He continued to say that membership gave South Africa the chance to meet its attackers face to face, and that it also gave South Africa membership in certain important world agencies and help it to build up valuable contacts.

120. The Prime Minister of South Africa stated in regard to the trial:

"We say that this question is before the Courts of South Africa and the Courts of South Africa will decide it . . . not the United Nations Organization."

121. It should be clear by now to all of us that the South African Government is determined to break the will of the people of South West Africa in their struggle for freedom and independence. There is no indication whatsoever that South Africa will heed the appeals of this Organization or comply with its resolutions, unless it is forced to do so. One may wonder why South Africa is able to defy the whole international community and yet this Organization does not raise a finger. Is it because the United Nations Charter does not provide the adequate measures to deal with such a situation? Is it because the United Nations has no competence to deal with such matters? Is it because the legal grounds of the case are in doubt? Or is it because of

the unwillingness to act on the part of **certain members** which have the power to shape the decisions **of the Security Council**?

122. It was a source of satisfaction, as well as encouragement to my delegation to note that the **Security Council** adopted unanimously resolution 245 (1968). **There is more reason than ever now that the Security Council should act this time, in the same spirit, in the face of the South African defiance of the unanimous will of the United Nations.**

123. The **PRESIDENT** (*translated from Spanish*): There are no more speakers on my list. If no other **representative** wishes to speak at this stage, I propose to **adjourn** the meeting.

124. Some of the members of the **Council have indicated** that they would like to have time for **consultations**; I therefore suggest that we leave open the **date and time** of our next meeting. I shall keep in touch **with all the members of the Council** to arrange a **date and time** convenient to all; we shall then continue **our discussion** of this item. If there is no objection, I shall **take it** as so agreed.

125. Lij Endalkachew **MAKONNEN** (**Ethiopia**): **Mr. President**, the arrangement that you have announced to us is, of course, in keeping with the **tradition of the Council** to afford itself the opportunity of **consultation after hearing** the policy statements of its members, and to **this extent** my delegation fully agrees with and supports **the proposal** you have made to us. At the same time, I feel **it my duty** to point out that this is a very **urgent matter affecting** the rights, if not the lives, of people who **are unlawfully**

imprisoned—the **illegal manner** in which they have been deported from their country and held prisoner has been recognized by the Council itself. Therefore, while agreeing that a certain amount of time should be given for consultations, I hope that you, **Mr. President**, and the members of the Council will agree with me that we should try to expedite these consultations in order to reach some decision in a matter of a few days. I am thinking in terms of finishing our work possibly by the middle of the week or at the utmost at the end of the week. I hope that consultations will not be so extensive as to prevent us from reaching a decision on the first step that we have to take together, at any rate. As a number of representatives have pointed out, this matter is bound to remain on the agenda of the Council, so that the suggestions that have been made from here and there could always be considered after we had adopted the first decision that is required, namely, a decision calling for the release and repatriation of the prisoners. I feel that a decision on that is most urgent and I appeal to you, **Mr. President**, and to the members of the Council to enable us to take that decision as soon as possible.

126. The **PRESIDENT** (*translated from Spanish*): I believe I am interpreting the view of all the members of the Council correctly if I say that we are all fully aware of the urgency of this debate and the need to reach a decision as soon as possible. I therefore fully subscribe to the appeal which the representative of Ethiopia has just addressed to us.

127. Since there has been no objection to my previous proposal, the meeting is adjourned.

*The meeting rose at 6 p.m.*