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CONTENTS

President: Mr. Abdul Rahman PAZHWAK (Afghanistan).

AGENDA ITEM 65

Question of South West Africa: report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (continued)*

1. Mr. DE VILLIERS (South Africa): Inasmuch as this is the first occasion for a member of the South African delegation to come to the rostrum during this session of the General Assembly, I have been requested by the Chairman of the South African delegation to convey to you, Mr. President, his sincerest and warmest congratulations, and those of every member of his delegation, on your election to this high office. You may be assured of our good will and our esteem, as well as of our best co-operation at all times.

2. The South African delegation has asked for an opportunity to be heard early in this debate on the question of South West Africa because it believes that discussion can serve a useful purpose only if it proceeds from correct premises. I shall endeavour to show that a correct appreciation of the relevant facts is of decisive importance in the matter now before this Assembly, and that the contentious proceedings on South West Africa in the International Court of Justice, which were recently concluded by the Judgment of 18 July,[1] are of major assistance in arriving at such an appreciation of the relevant facts.

3. I would point out first that that litigation was not of South Africa's seeking. We were taken to court by others, in an attempt to forge a new weapon in a political campaign. We believed that the Court had no jurisdiction; but in 1962 we were overruled on that issue[2] by the narrow majority of eight to seven. We did not complain. Instead we proceeded to present to the Court our case on the merits, both on the law and on the facts. In the end the Court found in our favour, on a legal basis, albeit by the narrow margin of a casting vote. But what do we find now? We find that opponents are publicly attacking the good name of the Judges who participated in the Judgment of the Court. They are attacking not only the competence but also the integrity of Judges who merely did their duty in giving a Judgment according to their conscience. That alone, I should think, gives cause for sober reflection on the part of everyone who is genuinely concerned about healthy international relations.

4. But the matter does not end there. While South Africa was putting its case to the Court, while South Africa was demonstrating to the Court that it was faithfully complying with the sacred trust with which it had been charged, that it was getting ever increasing support for its efforts from all the peoples and the groups concerned and that ever increasing progress was being made—while all this was happening in Court, bitter attacks and accusations against South Africa continued to be made in the organs and the proceedings of this Organization. Some of these accusations have, through mere repetition, become bywords in these circles: clichés or slogans, if you like. Anyone who does not accept them, and who does not now and again join in bandying them about, is considered to be out of fashion. One might almost say that they are considered to be "not with it" in the modern idiom. This is a most dangerous state of affairs, particularly in an Organization like this which is pledged to the maintenance of international peace and security, and to that end to practice tolerance and to promote international understanding and good neighbourliness.

5. The matter has now come to the point where an artificial sense of urgency is being assigned to the South West Africa question and where, more important, action of the most extreme kind is being proposed by the Committee whose report [A/6300/Rev.1, chap. IV] is before the Assembly and by the representatives who have preceded me to this rostrum. What are these proposals? Their essence is, in brief, that South Africa's administration of South West Africa should be terminated and handed over to the United Nations. If South Africa does not hand over, the Security Council is to take action. That seems to be the general line of thought. When I say that, I am not excluding the proposal made by the Foreign Minister of Liberia. That proposal is obviously just a slightly more drawn-out method of achieving the same end result. He did not attempt to hide that fact and that objective during his address to this Assembly.

*Resumed from the 1414th meeting.

[1] South West Africa, Second Phase, Judgment, I.C.J. Reports 1966, p. 6.

[2] See South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objection, Judgment of 21 December 1962, I.C.J. Reports 1962, p. 319.

At the end of the line, there is to be Security Council action, if necessary under Chapter VII of the Charter, and including, according to one speaker, even armed invasion.

6. Those proposals immediately raise many questions. One of these concerns the purely legal aspect. As to the rights or the powers of this Organization in that respect, let me say at once that there could, under no circumstances, be any legal basis for a decision of this type by the United Nations. That is the firm belief and view of my delegation. And let me say that, for this reason alone, in our view, such a proposal should not even be entertained. But I shall not enter into the technical, legal aspects of that question during this statement. Instead, I wish to come to grips with the substantive grounds which have been advanced as suggested justification for this proposed drastic action. Those grounds, if we leave out of account minor details and minor variations in regard to details, come to three, as we understand them.

7. In the first place, it is said that South Africa is violating and repudiating an obligation to report and account to the United Nations and to accept supervision of the Organization in respect of its administration of South West Africa. Secondly, it is said that South Africa is violating the sacred trust by applying to South West Africa policies that are inhuman, unjust and oppressive of the indigenous inhabitants, and which are denying to them any progress towards self-determination. And thirdly, it is said that circumstances in the Territory constitute a threat to, or are likely to lead to a breach of, international peace and security. Those, as we understand them, are the three substantive grounds upon which this drastic action is being proposed.

8. Let me say at once, and with the greatest respect, that South Africa's firm attitude about all three of these alleged grounds is that they are totally unfounded. What is currently being said about them in the organs of the United Nations is due in part to misconception, but in part also, I regret to say, to wilful misrepresentation.

9. Each of these subjects received the closest attention and consideration during the Court proceedings which have just been concluded with the Judgment of 18 July. But merely because the Judgment of the Court did not deal with these matters, our adversaries and critics have thus far preferred to talk as if the Court case had thrown no new light on these issues at all. The vogue seems to be to write off the Judgment as being "technical", and then to return, quite uninhibited, to the political fray.

10. But it is not as simple as all that. Apart from the Judgment, there are thousands and thousands of pages of record in these Court proceedings which spell out a most significant history, a history which can be neither written off nor ignored. It is my purpose in this statement to bring home to the representatives as concisely as possible, the essence of that history. It may take some time, but the matter seems to us to be of such fundamental importance that I must crave your patience.

11. At the outset I have to stress a matter of great importance, and that is that the proceedings instituted by Ethiopia and Liberia in the International Court did not affect the concern of these two States alone. They acted in a representative capacity. The record in the Court proceedings made that perfectly clear, and again it has been confirmed by the representatives speaking here from this rostrum on behalf of Ethiopia and Liberia [1414th meeting] in this debate, that they acted not in their individual capacities, but on behalf of the African States; as a matter of fact, they went further. In their pleadings in the Court action, they even claimed that in bringing an action against South Africa they were upholding and protecting the legal interests of all the Members of the United Nations and of the Organization itself. But, be that as it may, I must emphasize to the Assembly, in view of what is to follow, that this representative capacity in which the Applicant States acted, is of the utmost importance.

12. That brings me to deal with the first of the three suggested grounds for the proposed action, namely the refusal on the part of South Africa to submit to United Nations supervision in respect of its administration of South West Africa.

13. On this subject, the Committee of Twenty-four and various speakers in the debate have adopted the attitude that the 1950 opinion of the Court[3] has remained "unaffected" or "unimpaired". Those are two of the expressions that have been used in this regard. They have said this particularly of two propositions which were expressed in the 1950 opinion, namely (1) that the Mandate was still in existence despite the dissolution of the League, and (2) that South Africa, as Mandatory, was under a legal obligation to submit its administration of South West Africa to supervision by this Organization. Both these propositions have been subjects of very sharp controversy over the years, as Members know, and South Africa has consistently contested each of them.

14. It is unnecessary for me to deal with the first question, namely the survival or the lapse of the Mandate. It will be recalled that the Court, in its 1966 Judgment, made it very clear and especially emphasized that it was giving no decision whatsoever on this question, and that the question was therefore left open. I am concerned with showing that, even assuming the continued existence in law of the Mandate, the proposition of United Nations supervision thereof is still a wholly unfounded one. I am concerned with showing also that many rather misleading statements are now being made about the 1950 advisory opinion of the Court.

15. In the first place, I must point out that the advisory opinions given in 1955[4] and 1956[5] did not, as is now being suggested, reaffirm the 1950 opinion on the question of United Nations supervision. As will appear from those opinions themselves, they were merely interpretative of the 1950 opinion. Nor did the 1962 Judgment of the Court reaffirm the 1950 opinion on this question, as is also now being suggested. On the contrary, as I shall demonstrate later, there were

3/ International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128.

4/ South West Africa—Voting procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955, p. 67.

5/ Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 23.

features of the 1962 Judgment and separate opinions which cast the strongest of doubts on the correctness of the 1950 opinion in this regard.

16. For these and other reasons, it is most unrealistic to speak of the 1950 opinion as having been left unimpaired or unaffected by the recent contentious proceedings. One might even say that this is an extreme form of special pleading. For a proper appraisal of this whole subject, it is necessary to have regard to quite a number of factors which are now left unmentioned and are ignored by people who so strongly urge reliance upon the 1950 opinion.

17. To begin with, in 1950, two of the Judges who participated in those proceedings, Sir Arnold McNair, as he then was, and Judge Read, very strongly disagreed with the finding of the majority on this particular question. Sir Arnold McNair went so far as to say that this finding was "a piece of judicial legislation".[6] The opinion was, of course, advisory only, and not binding, and very shortly after it was delivered, representatives of the South African Government pointed out in this Organization and elsewhere that certain vital information on the question of suggested United Nations supervision had not been presented to the Court in 1950 and had apparently not been considered by it. That information concerned, in the first place, events which had occurred at the time when the United Nations was formed and when its organs were put into operation. Secondly, it concerned events at the time of the dissolution of the League of Nations. Thirdly, it concerned attitudes which were adopted by representatives of Governments Members of this Organization in debates during the years 1946, 1947, 1948 and 1949, shortly after the League had been dissolved and prior to the 1950 opinion.

18. From this body of evidence, which was presented to the Court for the first time in the past contentious proceedings, it appeared very clearly that the whole idea of an understanding or a tacit agreement that South Africa had consented to submit its administration of South West Africa to United Nations supervision was totally disproved and discountenanced. On the contrary, this very relevant evidence showed that there was, amongst everybody concerned, a clear understanding that South Africa had given no such consent to United Nations supervision and that, in the absence of a trusteeship agreement, the United Nations would have no supervisory powers with respect to South West Africa. That was the clear understanding which emerged from this uncontested and uncontestable evidence on the record. But this information was not before the Court in 1950.

19. In view of these facts, it was not surprising that international lawyers of repute have, on the whole, been very critical of the 1950 opinion on this particular aspect. I do not wish to labour the record with their critical remarks, which were quoted extensively in the contentious proceedings before the Court. But perhaps I need only stress that these critical remarks did not come from politicians; they came from completely disinterested lawyers of the highest repute and renown, men such as Manley O. Hudson, Joseph Nisto, Georg Schwarzenberger, to mention only a few names.

20. As was to be expected, the point became one of the main issues in the recent contentious proceedings brought by Ethiopia and Liberia against South Africa, and it was thoroughly canvassed at successive stages of the proceedings. South Africa contended that, in the light of the full information which was now being presented to the Court, the 1950 opinion on this point could not stand. The Applicants, Ethiopia and Liberia, relied on that opinion and requested the Court to reaffirm it. But they were, at a very early stage of the proceedings, driven to say that they did not "bear the burden of sustaining the validity of the opinion of the International Court of Justice."[7] And later, during the course of the oral proceedings on the merits of this contentious case, the Applicants were forced to admit that some of the reasoning of the Court in 1950 could not bear scrutiny, and they were compelled to change their grounds completely for supporting the conclusion arrived at in the 1950 opinion.

21. Neither in the 1962 Judgment nor in its later Judgment of 18 July 1966 did the Court find it necessary to pronounce upon this issue of accountability and supervision. But in 1962, in giving reasons for dismissing the preliminary objections concerning jurisdiction, seven of the Judges on the then majority side expressed themselves in a manner which was logically opposed to any idea that South Africa was accountable to the United Nations.

22. The eighth Judge on the majority side and three Judges on the minority side—four of them in all—explicitly and emphatically concluded that South Africa's obligation of reporting and accounting under the Mandate had lapsed on the dissolution of the League of Nations. All four of them stressed in this respect the conclusive importance of the information that had not been before the Court in 1950. That was how the matter stood after the 1962 Judgment and separate opinions on the question of jurisdiction.

23. As regards the 1966 Judgment and opinions, let us see first how the Judges on the dissentient side dealt with this point. Representatives will recall that Judges on the dissentient side did not all confine themselves to the question on which the Court had pronounced its Judgment, namely, the question of the legal rights or interests of the Applicant States. Some of the Judges on the dissentient side went further and also dealt with the substance of various of the matters that had been submitted to the Court. Five of them expressed a view in regard to this matter of United Nations supervision of the Mandate. The other two remained silent on that point. They did not express a view on it at all. The five who did express their views were in conformity with the conclusion arrived at in the opinion of 1950. But one of those five Judges advanced no reasons whatsoever for his conclusion.

24. Two of the Judges simply relied on the 1950 opinion, without giving any reasons of their own and without meeting or answering the impact of the new facts and information that had been submitted to the Court. The remaining two of these five Judges did

[6] International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 162.

[7] I.C.J., C.R. 62/43, p. 6.

give reasons of their own for coming to their conclusion. Those reasons were in direct conflict with one another. One of the Judges expressed the view that South Africa had tacitly agreed to accept United Nations supervision of the Mandate. The other Judge directly contradicted this. He conceded explicitly that no such consent had been given by South Africa or any of the other interested parties, and he conceded that his conclusion necessarily had to rest on a so-called teleological concept of interpretation, whereby the Court was virtually to act as a legislature, in order to fill a gap in the Mandate instrument.

25. It is significant that the majority of the Court specifically dealt with this proposition as to whether it was permissible for a court of law to apply such a concept of interpretation; and they emphatically rejected that suggestion. They said that the Court was not entitled to engage in such a process of filling in the gaps, and that if a court were to do that, it would amount to rectification or revision, which would exceed the normal bounds of judicial action.

26. Therefore, that was the position on the dissentient side. On the side of the majority, the position was that, by reason of the grounds upon which the Court rejected the claim of Ethiopia and Liberia—the absence of a legal right or interest in the subject matter of the claim—it was unnecessary for the Court to pronounce on any of the issues raised for adjudication. And save for one of the Judges on the majority side who handed in a separate opinion, the Court specifically and explicitly refrained from making any finding on the question whether the Mandate still existed, and if so, whether there was any accountability under the Mandate to the United Nations.

27. But against the background which I have just indicated, this certainly did not mean that they were leaving the 1950 opinion of the Court on this last question unaffected; it simply meant that the correctness of that opinion, which had been brought so directly in issue in these proceedings, was left an open question. This is evident further from a number of features. The one Judge on the majority side who handed in a separate opinion dealt explicitly with this point in issue, and he found that the 1950 opinion had definitely been wrongly decided. What is more, it appeared from his opinion, and from a formal declaration that had been handed in by another Judge, that he was not alone in thinking so, that at least certain other members of the Court joined with him in this conclusion. Because it appeared from those two documents—this separate opinion and the formal declaration—that the absence of legal rights on the part of the Applicants was not the sole reason upon which their claim had to fail, in the view of at least a number of the members of the Court. And two of the members of the Court, quite apart from the one who gave the separate opinion, two of those members had been members of the quartet, the four, who had in 1962 emphatically said that the 1950 opinion had been wrongly decided.

28. But more than that, there are passages in the very Judgment of 1966 which strongly suggest that the authors of that Judgment considered that there was no longer any entity vested with supervisory powers in respect of the Mandate. I say advisedly that those passages strongly suggested that view on the part of the authors of the Judgment, although I must concede that they did not specifically and explicitly find it.

29. Finally, since the 1966 Judgment was handed down, an article has been published by Judge Sir Gerald Fitzmaurice in which he states emphatically that the 1950 opinion of the Court was an incorrect decision in so far as it concerned the question of United Nations supervision of the Mandate.

30. Therefore, taking all that into account, it must be clear that the 1950 opinion of the Court can no longer be regarded as dispositive of the question whether United Nations has supervisory powers in respect of South West Africa. It is totally unrealistic to speak now, in these circumstances, of the 1950 opinion as having remained unaffected or unimpaired, or as constituting the operative jurisprudence of the Mandate, or to say that the 1950 opinion on this point must be upheld as being part of the rule of law.

31. The fact of the matter is that the contentious proceedings recently concluded have brought very strong support for South Africa's view that the opinion was wrongly decided and that South Africa is under no obligation to submit to supervision of the United Nations in respect of its administration of South West Africa. Consequently, this whole idea that South Africa's refusal to submit to supervision could serve as a substantive ground for the proposed drastic action is, in our respectful submission, completely unfounded.

32. That brings me to the second ground suggested for the proposals before the Assembly, namely, the alleged violation of the sacred trust. Representatives will remember that this charge also goes back a long way in the history of proceedings at the United Nations. The form which it more or less consistently took in this Organization was that South Africa applied to South West Africa policies and measures of so-called "apartheid" or "racial discrimination," which—so it was alleged—were inhuman, unjust and oppressive towards the indigenous peoples of the Territory. Consequently, it was said, South Africa was deliberately flouting its sacred trust obligation of promoting the well-being and progress of the peoples concerned. And in the result, South Africa was alleged to be acting in fundamental violation of the Mandate and also of the principles of the Charter, for example as contained in Articles 76 and 73, concerning Trust and Non-Self-Governing Territories respectively.

33. In the proceedings instituted by Ethiopia and Liberia before the International Court, this charge of oppression, of deliberate breach of trust, was taken over holus-bolus from the findings of committees and organs of the United Nations. The Court case was, of course, confined to alleged violation of the Mandate, assuming that it still existed, and consequently the Court was not asked to rule on the contention of violation of the principles of the Charter. But the substantive question for both purposes was the same, namely whether the policies and measures applied by South Africa, by whatever name they might be called, were in fact oppressive of the indigenous peoples of the Territory, as was alleged. I cannot

stress strongly enough that the important question, the fundamental question, was this question of fact. The issue was not one of a clash of ideological ideas or of principles or of objectives. In South Africa, oppression is as much contrary to law and to morals as in any country on earch. The issue was the question of fact, namely whether South Africa's policies, by whatever name one calls them, were in fact oppressive of the indigenous peoples of the Territory, as was being alleged.

34. The Applicants in the Court proceedings, Ethiopia and Liberia, also emphasized in their pleadings that the question was this one of fact. They said, "We ... speak of apartheid ... as a fact and not as a word",[8] and then went on to allege that apartheid was a system whereby the "Native" or indigenous inhabitants of the Territory were deliberately suppressed and oppressed for the benefit of the white minority. That was the definition which they gave to the system of so-called apartheid; that was the essence of the charge of fact which they were bringing against the South African administration.

35. The United Nations committees and organs which had come to these adverse conclusions about South Africa's policies and administration in South West Africa had done so in the face of repeated protests and warnings by the South African representatives that they were being misled, that these conclusions rested on a completely false and distorted conception of fact. That was said repeatedly by our representatives in organs and committees of this Organization, but the warnings and the information given by our representatives were brushed aside; instead, the majorities in the organs and committees came to rely consistently upon the evidence of petitioners and so-called expatriates from South West Africa and other African territories. In this manner an ever-growing number of serious allegations, increasing also in severity as time went on, were uncritically accepted and endorsed, as if there could be no doubt at all about their accuracy. This was done in reports of committees, in addresses by representatives during debates, and eventually in formal resolutions.

36. When it came to the Court proceedings, some of the more outrageous of these allegations that had been made here were not taken up by Ethiopia and Liberia. As examples, I could give to you allegations that South Africa was practising a policy of genocide of the indigenous population; also that the indigenous population was being herded into concentration camps; that they were subjected to naked terror, and that they were treated like animals. Many representatives will recall how these allegations were made in debates in this Organization, year after year, regularly and seriously. The records abound with them. We had to study those records for the purposes of the Court proceedings, and anybody who wishes to look at them will find these allegations regularly and seriously made, from about the eleventh session on, but particularly round about the fifteenth to the eighteenth sessions of this General Assembly. Yet, when it came to the stage of going to court, it seems that Ethiopia and Liberia were persuaded by their legal advisers that such flights of fancy could stand no chance of being accepted, could not possibly stand scrutiny in an objective inquiry. They were therefore, as I said, not even taken up in those proceedings.

37. But others of the most important allegations and conclusions of fact as arrived at here in the United Nations—all the other more serious ones—were reproduced in the Court case as components of the charge of oppression. They ranged over various spheres of life, particularly the political sphere, the economic sphere and the social and educational spheres. I can give some examples as to what the most salient ones of these accusations amounted to, very briefly.

38. In the first place, it was said, in the political sphere, that the indigenous peoples enjoyed no political rights at all; that there was no prospect of political development for them, and consequently, that they were denied all prospect of self-determination. In short, the allegation was that theirs was to be a lot of perpetual domination of the many by the few.

39. In the economic sphere, it was said that the indigenous population enjoyed no scope or privileges except to work as menial labourers for the white population, in circumstances verging on slavery. It was alleged that they had been deprived of the best land in the Territory, and that that best land had been given to white farmers, and that the indigenous people had been pushed out to the desert and desert-like parts of the Territory.

40. In the educational sphere, it was alleged that the indigenous peoples were given no education at all; or sometimes the variation was that they were given some education, but only sufficient to prepare them for slavery.

41. Finally, in this list of examples which I am giving, it was said that the whole policy was based on conceptions of racial superiority and racial hatred.

42. Those were the expressions used here. This was the nature of the charges made here in the United Nations and taken over, as I have said, holus-bolus into the Court proceedings.

43. By way of documentary support for their allegations in the Court proceedings, Ethiopia and Liberia relied almost exclusively upon documentation emanating from this Organization, from records of debates and decisions in the United Nations. In addition—and this is very important—they stated explicitly in their Memorials that they relied on the "cumulative effect and thrust" of the petitions that had been received by the United Nations and on their "probable accuracy in substance".

44. So, in this manner, the accuracy of the United Nations sources of information concerning South West Africa was squarely submitted to the Court for adjudication. This was indeed in accordance with the intention of the preliminary committees and bodies that had studied the possibilities of Court action. I could quote from a report of one of those

[8] I.C.J. South West Africa Case (Ethiopia [Liberia] v. the Union of South Africa): Memorial submitted by the Government of Ethiopia [Liberia] — April 1961, p. 132.

committees, the 1957 Committee on South West Africa. That Committee had pointed to

> "... the advantage that the Court, in reaching its opinion, would proceed by impartial judicial methods and on the basis of evidence produced to and weighed by the Court". 9/

45. South Africa fully accepted the challenge of having the facts investigated by the Court. The major part of South Africa's written pleadings of some 2,500 pages was devoted to a detailed refutation of the charge of oppression, in each and every one of its ramifications. In a statement of the present compass, it is impossible for me to give even a brief summary of the exposition which was given on South Africa's pleadings. I can only indicate, in the broadest of outlines, some of the main, fundamental features.

46. In the first place, we pointed out that, from long before the inception of the Mandate, the Territory of South West Africa was inhabited not by a homogeneous population but by about ten different peoples or ethnic groups, each one of them occupying, for the greater part, a distinct portion of the Territory. Two of the indigenous groups were of the Khoisan type: they were the Bushman and the Hottentot, or Nama, groups, and about half a dozen were different Bantu peoples or groups. But all of these—the individual Khoisan groups and the individual Bantu groups—each one spoke its own language and had its own standard of development and its own way of life. There was, in addition, a long, rather recent history of strife and warfare between some of these groups.

47. At the inception of the Mandate, there was already a settled white population in the Territory, operating a struggling modern economy in the central and southern portions of the Territory of South West Africa. The only method by which funds could be found for the development of the Territory, for balancing the Territorial budget, for providing for the raising of the standard of living of the indigenous peoples—the only way in which that could be done under the circumstances then prevailing was to encourage further development of the modern economy through private enterprise. This required, especially in the harsh natural and climatic conditions of South West Africa, technology and entrepreneurship entirely foreign to the ways of life, as they then existed, of the indigenous peoples. Consequently, with the full knowledge and approval of the League supervisory organs, further settlement by white people in South West Africa was encouraged, mainly from South Africa itself, for the specific purpose of economic development. But this was strictly confined to certain portions of the Territory which were virtually empty at the time. No indigenous groups whatsoever were dispossessed. In particular, the northern parts of the Territory constituted by far the best farmland and had by far the best water and natural resources and climatic conditions in the whole of the Territory; and those northern portions were reserved exclusively for the use and occupation of the indigenous peoples occupying them. That is so to this day. The same applies as regards reservation of portions of the central and southern parts of the Territory then in occupation by indigenous groups. From time to time, the areas of these various groups were enlarged. The Odendaal Commission 10/ recently recommended very substantial further enlargements and increases, and those recommendations have been accepted in principle by the South African Government.

48. But it is against this background of diversity—not of South Africa's creation, but natural diversity as it existed in the Territory—that differentiation between the different groups must be seen. That differentiation arose naturally, and almost inevitably, from the natural circumstances, the practical circumstances, of the Territory itself. It did not arise from any overriding philosophy. It most certainly did not arise from any concept of racial superiority or racial hatred. The circumstances, the needs, and the legitimate aspirations of each group differed from those of the others in almost every sphere of life. And I could give you some very brief examples.

49. In the political sphere, the need of the white group was for a form of local self-government on a parliamentary model of the kind to which it was accustomed. But the whole concept was, at the time, an entirely foreign one to the indigenous peoples. The need of each of those groups was for a recognition of its traditional system of self-government and for a gradual moulding of that system into something better adapted to the needs of modern life. And that is exactly what was attempted by the South African Government. That is in essence what its policy in the political sphere has meant, and still means today.

50. In the economic sphere, each group needed protected opportunities, particularly to prevent exploitation of the less developed groups by the more developed groups; and each group also required technological assistance in a form adapted to its particular needs. And, again, that was what the South African Government gave in the economic sphere to each of the groups: protected opportunities in its own sphere or area, and technological assistance such as was required.

51. Educationally, the white group immediately required schools and a system of education to which it was accustomed. But the indigenous groups first had to be won over to the whole idea of modern education. Their as yet unwritten languages had to be developed as written languages and as fit media for instruction, particularly for very young children. As is well known, these were problems which were encountered all over the continent of Africa. And that, again, is exactly the line of policy that was followed by the South African Government. Over the years, substantial progress was made in all spheres of government, in all spheres of life. In the new climate that emerged in the post-war years, South Africa adapted its policy so as to provide for accelerated development of each group towards self-determination and self-realization. The investigations and recommendations of the Odendaal Commission were a part of the means employed towards this end. South Africa could learn extensively from

9/ Official Records of the General Assembly, Twelfth Session, Supplement No. 12A (A/3625), para. 19.

10/ Commission of Enquiry into South West African Affairs, 1962-1963 under the chairmanship of Mr. F. H. Odendaal.

experience in numerous parts of the world, and on the basis of that experience South Africa wished to avoid the catastrophic consequences which could result from throwing together in a forced unit peoples who had never formed an entity and who did not wish to do so, especially peoples with a past history of bitter strife. Consequently, political development, including franchise, was planned in such a way as to enable each group to develop towards its own self-determination and to reach and exercise its own self-determination and, thereupon, to decide in what constitutional relationship it wished to stand to the others.

52. Individual groups might decide to join up with one another, in some form or another. Further, over-all common market or commonwealth arrangements were possibilities. They were all possibilities for the future, but the overriding principle is this, that all these arrangements would be matters for free agreement and negotiation as between equals. That is the inherent approach.

53. In the economic sphere, each group was accorded protected opportunities in its own respective area, with no ceilings at all. Within its own protected sphere, any member of any group could rise to the highest possible economic levels, and vast development programmes were under way, including, in particular, economic development programmes in the homelands of the indigenous groups. Wage levels and general standards of living could be measured. We could measure them against information contained in United Nations technical publications concerning other parts of Africa and elsewhere. The resultant comparison was a very favourable one for South West Africa.

54. In the educational sphere, we could indicate, in our pleadings before the Court, that vast progress had been made. Attendance figures for the indigenous group were soaring, and again we could have recourse to United Nations technical publications about circumstances and statistics elsewhere in Africa. Again, the comparison for South West Africa was a most favourable one.

55. On the basis of these facts, South Africa stressed, in its pleadings before the Court, that quite evidently there was no question of oppression, deliberate or otherwise, that South Africa was faithfully pursuing its obligations under the sacred trust, whether these obligations were to be seen as legal or moral. In addition, we pointed out that when the true facts were known, South Africa's policies could be seen to be entirely in accord with the principles and objectives set out in the Charter—for example, in Articles 76 and 73 of the Charter—quite apart from the fact that those provisions were not in issue in the proceedings or, in South Africa's view, of legal application to South West Africa at all.

56. The issue between South Africa and its sincere critics was one of method, not of principle. The issue was how best to achieve the objectives concerned, particularly the objectives of self-determination, human rights and freedoms and the equality of peoples. I am, of course, not referring now to those critics who, regrettably, were not genuinely concerned with the well-being of South West Africa or of its peoples, but with ulterior political motivations.

57. In giving its exposition on the pleadings and in refuting in detail all the allegations of oppression, South Africa gave copious references to documentary sources. In the few instances in which a documentary source was not available, and where the facts were supplied from information at the disposal of officials, we offered that the officials concerned could be called up for questioning if the Court or the Applicants so wished. It was probably the most fully documented exposition of facts that had ever been presented to the Court.

58. Furthermore, part of our demonstration on the pleadings was specifically directed towards showing that the testimony of the petitioners, as relied upon by United Nations bodies and by the Applicants, was wholly unreliable. We dealt with that subject specifically, and, again, by chapter and verse. After this exposition came the real test, the oral proceedings in Court. The big test was now to come. Whose version of the facts was to prevail: the allegations of oppression as accepted by majorities at the United Nations and as taken over by the Applicants, or South Africa's exposition which completely refuted those allegations? The answer to this question came sooner than expected, much sooner, and in a most significant manner.

59. South Africa went to the oral proceedings prepared to submit further evidence in refutation of these charges of oppression. This evidence was to be of a twofold nature. In the first place, we submitted a list of some thirty-eight witnesses and experts whom South Africa wished to call in support of its case. These witnesses and experts were drawn not only from South Africa and South West Africa; they included persons of a very high standing from a number of European countries and from the United States of America. Secondly, at the very first opportunity, South Africa's counsel extended to the Court on behalf of his Government an unqualified invitation to inspect the Territory of South West Africa, an invitation to see anything which either of the parties might want to point out to it or which the Court itself might wish to see. Counsel added that the South African Government had nothing to hide and much that it wished to show to the Court.

60. The invitation included also a limited visit to South Africa itself, in so far as that was relevant to the case concerning South West Africa. In addition, it was suggested, although not as a condition to the invitation, that the Court should visit a few other African countries and territories as well, including the Applicant States, not because they were in the dock in any way or because there was any charge against them, but merely in order that the Court could obtain a proper perspective of African conditions and realities, against which a fair and just assessment of the situation in South West Africa itself could be made. That was the suggestion made, and, as I have said, it was not a condition to the invitation; the invitation was an unqualified one.

61. What did the Applicants offer in support of their case? It soon became evident that they did not have one single witness to offer in support of the charges

which had so glibly been made, and so easily accepted by majorities in organs of this Organization. Not one of the many detractors who had been so ready to accuse when no proof was required could now be put forward to speak up before the Court in the witness box.

62. Following on our treatment in the pleadings of the subject of petitioners, the Applicants' agent, Mr. Gross, explicitly stated in open Court that the "Applicants have not relied upon the accuracy of statements of such petitioners". We could hardly believe our ears. We said, "But please call these petitioners". We said that in open Court, and we added that if that were done we would seriously consider paying their witness fees, so that we could have the privilege of cross-examining them. There was no response.

63. When it came to the inspection proposal, what was the Applicants' reaction? One would have thought that the Applicants would have welcomed this wonderful opportunity for the Court to see for itself whether the charges of ruthless and inhuman oppression of the indigenous peoples of South West Africa were true. Surely the Court, on an inspection, should be able to see that. Surely this was a golden opportunity. And, in addition, the Court would have been able to see for itself the alleged large-scale militarization of the Territory and the terrorization which formed the subject of a separate charge in the Court proceedings. That is the reaction one would have expected from the Applicants, but what, in fact, did we find? The reaction was one of complete consternation, judging from the attitude adopted by the Applicants' representatives in Court. They opposed the proposal as "unnecessary, expensive, dilatory, cumbersome, and unwarranted". Those were the words employed by the Applicants' agent. And so the Applicants proceeded to tell the Court that there was no dispute of fact between the parties at all, and that it was consequently unnecessary to have any oral evidence or any inspection. That is where we ended up. They said that the Court was to be asked to decide a legal question only. Again we were amazed. We asked why, then, all these allegations of oppression, which had been denied by us, were still standing on the pleadings, and why they were incorporated by reference in the Applicants' formal submissions, upon which the Court was asked to pronounce against South Africa.

64. To cut a long story short, we pressed the Applicants and asked them how they could say that there was no issue of fact, no dispute between the parties, and no need for evidence or inspection. And eventually they gave way upon being pressed, bit by bit, until there came the whole dramatic surrender. The Applicants, through their agents, then did two things. In the first place, they formally amended their submissions so as to omit and abandon all the charges of oppression—each and every one of those charges down to the smallest detail. All of them were abandoned and omitted. Secondly, they went further and, in open Court, they formally accepted as true all the averments of fact in South Africa's pleadings, including controversions of allegations that had been made in their own pleadings. These were, in some ways, probably the most important events in the whole of the Court proceedings, and their significance will be readily appreciated by every representative here who knows the background of these charges in the organs of this Organization.

65. The Applicants now relied only on a contention that there existed in the modern world a so-called norm or standard of "non-discrimination and non-separation". They said that this norm was an absolute one in the way in which they defined it—an absolute rule which prohibited all official distinctions between persons on the basis of membership in a race, class or group. It did not matter whether such distinctions were intended to operate, or whether they in fact operated, for the benefit of everyone concerned. The norm was an absolute one; it absolutely prohibited all distinctions.

66. This contention, we had no difficulty in showing, was a totally untenable one; it was, in the final result, not supported by any one of the Judges, even those who delivered minority opinions in the case. And, after most careful investigations on our part, we have demonstrated to the Court that such a contention has never been relied upon by any organs of this Organization. For those reasons, I do not propose to trace in detail how the Court proceedings developed on this question of the norm. It is sufficient to say this. In view of the change in the charge against us, we reduced our witnesses to fourteen experts, and their expert testimony showed that such a rule was not observed in the practice of the States of the world, that there were many situations in the world in which the application of such a rule would not be conducive to the well-being of the peoples concerned, and in many such situations the rule would be positively detrimental to the peoples.

67. Particularly in respect of South West Africa, experts in regard to each of the various spheres of life were emphatically agreed that application of such a rule would lead certainly to a complete collapse of the economy, and most probably, to chaos and bloodshed, to the detriment of all concerned, and particularly of the indigenous peoples. That was a point upon which, as I have said, the experts, in their uncontested testimony, were emphatically agreed. And that was the note upon which the proceedings ended in respect of this suggested norm or standard.

68. I wish to revert to the importance of the complete surrender of the Applicants on the charges of oppression and to their admission of the truth of South Africa's exposition of the facts. It must be remembered that these actions did not come just from an individual litigant in a private controversy. They came formally from two States—Ethiopia and Liberia—which, as I mentioned before, were acting in a representative capacity; they were, as they themselves emphasized here, acting as the representatives of African States, and they were even claiming to be upholding and protecting the legal interest of all the Members of the United Nations and of the Organization itself. These were the parties who made those acknowledgements. Their actions meant, further, that the allegations of oppression upon which South Africa's policy and administration in South West Africa had been condemned at the United Nations over all the years had been found

to be insupportable in fact. But they went further: their actions constituted a formal acknowledgement that the basis of condemnation at the United Nations over all the years had been a false one in fact.

69. To any fair-minded person who gives proper thought to this matter, it must be evident that this is of even greater importance than if the Court had made such a finding; for these representatives of the United Nations majorities that had been bringing these charges against South Africa—these representatives themselves—came to the conclusion that the charges were unfounded, and they consequently found themselves compelled to abandon them, thereby making a formal pronouncement by the Court unnecessary.

70. It is in these circumstances that I suggest to this Assembly that fundamental rethinking has become necessary on the part of all Members of the United Nations. It is surely a mockery simply to carry on as before with those charges of oppression as if nothing has happened in between. But that, I regret to say, is exactly what we find; it is exactly what we are experiencing.

71. The Committee whose report is before this Assembly—the Committee of Twenty-four—speaks of South Africa's "inhuman policies of racial discrimination" in South West Africa; it will not be forgotten that one of the members of that Committee is Ethiopia, one of the litigants that withdrew the charges and made those admissions in the Court. Indeed, the Foreign Minister of Ethiopia, in his address to this Assembly on Friday, 23 September, went much further than the Committee's statement. He repeated the charge that "South Africa, by introducing the obnoxious system of apartheid into the Mandated Territory of South West Africa, has breached the sacred trust of civilization", and the Foreign Minister added that the violations were "becoming so much more repressive that the people are in urgent need of immediate relief" [1414th meeting, para. 32].

72. And what did the representative of Ethiopia offer in support of these charges? He proceeded to read passages from submissions that had been made to the Court in the Applicants' Memorials. This was quite incredible because those submissions, those charges, as he read them from these Court records, from the Applicants' Memorials, formed part of the very allegations and submissions as to oppression which had been refuted in detail in our pleadings, and which had been formally withdrawn by Ethiopia and Liberia. And yet the Foreign Minister comes to this Assembly and reads them again as if they were gospel, as if they must be taken as established rather than abandoned and discredited in the Court proceedings.

73. He came again with allegations about depriving the indigenous population of farm land, of denying them political rights and development and so forth. The representative went further. He brought forth again as if it were something new, the allegation of "barren lands" for the indigenous inhabitants—his expression "barren lands"—and the reservation of "areas with agricultural potential" for the white population. This completely discredited allegation in the Court proceedings, one that had been made for so many years before, one that had been controverted in the Court proceedings where the controversion had been accepted by Ethiopia and Liberia—repeated here as if it were gospel by the Foreign Minister of Ethiopia.

74. The Foreign Minister of Liberia followed, saying among other things, that "the inhabitants of the territory ... are still the victims of treatment which, at its best, is a replica of the unprincipled, invidious and vicious policies of apartheid" [1414th meeting, para. 72]. He added: "The facts also indicate that South West Africa is not even being prepared for independence..." [ibid., para. 73]. And so it goes on. I need not read any further.

75. Various other speakers in this debate and in the general debate, and as recorded in the Committee report, spoke of assertion of racial superiority, of denial of self-determination, of one race holding another in subjection, of inhuman treatment of the indigenous population, of oppressive measures reducing them to a state of animals, of barbaric administration, of exploitation for the benefit of the white settlers, and so forth.

76. Surely the stage has been reached where my country—which is one of the smaller countries of the world—together with anyone in search of the truth, has the right to ask on what evidence or on what version of fact are such assertions based? Surely Members of this Organization may be asked to take notice—serious notice—of the course of events in the Court case, which I have been trying to trace for the benefit of this Assembly this afternoon, to take notice of the fundamental concession which the representatives of our accusers were compelled to make.

77. In your inaugural address, Mr. President [1409th meeting], you expressed the hope that this may be known as the Assembly of reason. My delegation whole-heartedly agrees with you and joins you in that. It is perhaps not too much to hope that reason will not be clouded by a mechanical repetition of slogan-like charges which have become thoroughly discredited.

78. This brings me to the third and last of the substantive matters relied upon in support of the course of action urged upon this Assembly, namely, the alleged threat to or a breach of peace in South West Africa. Apparently, this assertion is intended to serve as the ground for a request for action by the Security Council. Our adversaries are now driven back to this line of attack, now that their plan has failed of obtaining a Judgment of the International Court of Justice to serve as a basis for approaching the Security Council under Article 94 of the Charter.

79. Again the charge is not a new one. Year after year petitioners have alleged before this Organization that there is a vast military build-up in South West Africa with a view to the terrorization of the indigenous population, and that, to this end, military bases have been established, and even nuclear and missile centres. These allegations have for a very long time formed cornerstones of the charge that South Africa's actions in South West Africa constituted a threat to the peace. Majorities in United Nations Committees and organs accepted them as

true and they came to be reflected in one General Assembly resolution after another.

80. Again the proceedings in the International Court at last brought a proper opportunity for putting these allegations to the test. And it was perhaps in this respect that the course and the outcome of the proceedings brought the most vivid demonstrations of the utter baselessness of the charges being brought against South Africa.

81. On the strength of the so-called information supplied by the petitioners at the United Nations, Ethiopia and Liberia alleged in their pleadings that South Africa had breached the Mandate by establishing and maintaining three military bases in South West Africa. Those were the allegations on the pleadings before the Court on the basis of the statements made here by the petitioners. Later the Applicants added a further charge: they said that as a result of general military activities and build-up in South West Africa the whole Territory had been transformed into a military base.

82. South Africa in its pleadings dealt in detail with each one of these allegations and showed that there were no military bases in South West Africa and totally refuted the allegations of a vast military build-up.

83. Again on the basis of this conflict on the pleadings, the oral proceedings would bring the final test. Again South Africa made that offer of inspection, which I have mentioned, and which could so easily have settled this issue about militarization beyond any doubt. Instead, as we have seen, Ethiopia and Liberia accepted all South Africa's averments of fact about the alleged military bases and militarization generally. Their acknowledgements of the correctness of our exposition specifically included that concerning the alleged militarization and the bases.

84. But South Africa went further. South Africa called as a witness General S. L. A. Marshall, an American military expert of renown, who had visited South West Africa on two occasions during 1965, the last time being in September 1965. He had been requested and authorized by the South African Government to go anywhere and to see anything he wished in South West Africa. But he had been requested particularly to inspect the alleged military facilities spoken of by the Applicants and by the petitioners. Then General Marshall came to Court and gave his evidence in October of last year. He told the Court that he had carried out a thorough inspection as requested, and that there was nothing in South West Africa which could be regarded as a military base. He went on to say that the Territory as a whole was, in his own words, "less militarized and more underarmed"[11] than any territory of its size that he had ever seen in the world.

85. He also told the Court that he had inspected a particular facility in the Territory which had been described by petitioners in this Organization as a nuclear reactor station. But when he had come there he had found that it was nothing other than an establishment of the Max Planck Institute for Aeronomy, operated for scientific research in connexion with atmospheric conditions and for long-range weather forecasting. It was open and unguarded, and he had to walk through several rooms before he could find anybody to talk to.

86. So those were the true facts about the alleged militarization of South West Africa.

87. The Applicants had full opportunity to cross-examine General Marshall. But they did not question him on the substance of his testimony at all. On the contrary, the agent for the Applicants informed the Court that General Marshall was "indeed a recognized military authority and widely read"[12] in the United States. He further stated that General Marshall's inspection of the Territory was "the first of which the United Nations would have heard",[13] and—perhaps most important of all—he undertook in open Court that he would transmit to the United Nations the information which the General had furnished to the Court. That was the note upon which the oral proceedings of the Court on the question of alleged militarization concluded.

88. In the final event, only three members of the Court, in individual opinions, dealt with the question of alleged militarization. One of them was on the side of the Court, and the other two on the side of the dissentients. After the course which events had taken during the proceedings, it came as no surprise that all three of them firmly rejected the Applicants' claim as unfounded. One of the dissenting Judges, one of the Judges who had not agreed with the Court's Judgment about the Applicants' legal right and interest, used particularly strong language, saying that "the testimony of one of Respondent's witnesses satisfied me that this charge of the Applicants was completely without foundation".[14]

89. Yet, at the United Nations, the old, old story is told with ever-green enthusiasm. General Marshall, as I have said, gave his evidence in October of last year, and it was then that the Applicants' agent promised to inform the United Nations. But two months later, on 17 December 1965, the General Assembly adopted resolution 2074 (XX). Operative paragraph 7 of that resolution called upon the Government of South Africa

> "to remove immediately all bases and other military installations located in the Territory of South West Africa and to refrain from utilizing the Territory in any way whatsoever as a military base for internal or external purposes".

That resolution was adopted with the full support, and indeed at the initiative of the African States, including Ethiopia and Liberia, on whose behalf the admissions and acknowledgments had been made in the Court. And this occurred despite the fact that the South African representative had drawn the attention of the Fourth Committee specifically to the events that had taken place in the Court.

[11] I.C.J., C.R. 65/81, p. 20.

[12] Ibid., p. 21.

[13] Ibid., p. 23.

[14] South West Africa, Second Phase, Judgment, I.C.J. Reports 1966, p. 330.

90. We therefore ask: where is this going to end? Are there no limits? South Africa is often criticized for declining to comply with General Assembly resolutions. Perhaps this incident will throw some light on the type of reason why South Africa is frequently left with no choice in that respect.

91. The matter of militarization did not end at last year's resolution. In the report of the Committee of Twenty-four—a Committee of which Ethiopia is a member—there are extensive quotations from statements made by certain petitioners, especially one Mr. Nujoma, repeating that military bases had been established in the Territory, that there was a huge military build-up and a stockpiling of war material, and that all this was "a threat to the peace and security not only of the people of [South West Africa] ... and Africa, but of the whole world" [A/6300/Rev.1, chap.IV, para. 85]. And so that theme continues to run, as a basis for suggested action not only by this Assembly, but also by the Security Council.

92. Again I can only ask, on behalf of my country, that those who are genuinely interested in the well-being of the peoples of South West Africa should pause and think.

93. South Africa does not claim perfection in its administration of South West Africa. It would indeed be surprising if there were no shortcomings at all. No Government, even in the best of circumstances, is above criticism. But to say that we are applying an inhuman and oppressive policy or that we are not honestly and to the best of our ability pursuing the sacred trust is to speak either from ignorance of the facts or, I regret to say, from ill will.

94. Nor does South Africa claim that the policy it is pursuing is devoid of problems or imperfections. The important point always to be remembered, especially by genuine critics, is not whether a finger can be pointed to shortcomings, but whether any alternative can be devised that would, in its over-all effect, be more beneficial or less detrimental than the policy that is in fact being pursued by the South African Government. That must always remain the supreme test, and no critic or detractor of the South African Government has ever been able to suggest such an alternative.

95. In particular, I must stress to this Assembly—although the subject is a large one and I do not want to embroider upon it unduly at this stage—one aspect which appeared very forcibly from the uncontested expert testimony in the Court case. That aspect is the following. The idea of treating all the peoples of South West Africa as a single political entity, in which a majority vote is to be decisive for all, is one which will demonstrably plunge the whole Territory and all its peoples into chaos and misery. Anybody who criticizes, anybody who points a finger, must above all always bear these fundamental facts in mind.

96. The South African Government seeks a solution by evolution, not revolution; and it is doing so with the increasing support of all the peoples concerned. Its programme is making marked progress towards closing the economic gap, of which the representative of Senegal spoke so eloquently in the general debate here in the Assembly [1414th meeting]. But it is doing much more. It is moving towards a form of self-determination and self-realization for all the peoples under its guardianship, of whatever racial or ethnic origin, which will enable them to live together in peace, harmony and constructive co-operation and on a basis of equal human dignity. This is not merely a matter of Government policy: it constitutes in increasing measure the wishes and aspirations of the peoples concerned, the way in which they see their own future.

97. And so I come back to the line of action that is now being proposed to this Assembly. I have dealt with the total absence of substantive grounds or justification for such action, and I have urged serious rethinking for that reason. I must, in conclusion, urge rethinking also for another reason, although an associated one. On the version of fact which is being presented to the Assembly by supporters of the proposals, the course of action is said to be necessary in order to free fellow human beings from bondage and oppression. By way of contrast, on the true facts, as they have emerged among others from the Court proceedings, representatives will realize what that action would really mean. That is why I emphasized at the beginning of my statement the decisive importance of a true appreciation of the relevant facts. On the true facts, the proposed course of action would constitute an unwanted and unwarranted attempt at outside interference with a peaceful and progressive group of peoples which are determined to work out their own destiny according to their own conscience. The interference would, moreover, be with a Government that has repeatedly expressed its determination to fulfil fully its responsibilities to all the peoples concerned. Let representatives and their Governments pause and very seriously ask themselves: What consequences may be expected to result from the course of action now being proposed? The answer should not be hard to find.

98. Mr. Swaran SINGH (India): Mr. President, it is a great honour and pleasure for me to offer you, on behalf of the Government of India and my own behalf, our warm and sincere congratulations on the well-earned distinction conferred on you by this world Assembly in choosing you to direct its work as President of the General Assembly at its twenty-first session. It adds to our pleasure to felicitate you on your success not only because you are a fellow Asian, but also because you are an eminent representative of a neighbouring country with whom we have close, vibrant and constructive understanding and relations. As a matter of fact, there is a sense of participation for us in your election to this high office because of the close and brotherly ties extending over centuries which bind India and Afghanistan. I offer you, Mr. President, our wholehearted co-operation in the tasks that lie ahead.

99. There is no graver issue before the United Nations today than the future of the Mandated Territory of South West Africa, with the serious threat it poses to international peace and security. The recent verdict of the International Court of Justice lays on the world body an even greater responsibility to act in the interests of freedom and justice. The people of South West Africa have been deeply injured and sorely neglected for

many decades; and it behoves the United Nations to take swift and effective action to bring to an end their subjugation and oppression.

100. My delegation, like most others, closely followed the proceedings before the International Court instituted by Ethiopia and Liberia. We had hoped that the Court would hand down a learned Judgment on the substance of the complaint, after a thorough examination of all the issues involved, and keeping in mind the basic principles of international law and morality. The earlier advisory opinions of the Court as well as its Judgment in 1962 led many of us to believe that the final verdict of the Court would uphold those principles of international law which govern the conduct and the relations among civilized nations. It was with deep regret and disappointment, therefore, that my country received the Judgment of the International Court of 18 July 1966. The Court chose a most doubtful and controversial technical ground to dispose of the case without dealing with the substantive questions before it. What is worse, the Court took six long years to come to the conclusion that it did in the end. It is deplorable that the Court has now reversed its earlier Judgment of 1962, wherein it clearly recognized the Applicants' standing to take the matter to the Court. The latest Judgment has disturbing implications for the establishment of the rule of law in international affairs and the role of the Court in the settlement of disputes. The Judgment is unlikely to inspire confidence in the International Court. There is growing feeling in the world that the International Court as it is constituted today is outmoded in its concepts and is incapable of responding to the needs of modern times. My delegation does not wish to enter into a detailed discussion of the Court's decision. It is interesting to note, however, that the ground on which the Court has now denied the right to an answer to Ethiopia and Liberia is one which even the Government of South Africa itself did not put forward in its final submission.

101. It is useful to recall that when the League of Nations established the mandates system to make arrangements for the administration of the territories ceded by Germany to the principal Allied Powers at the end of the First World War, it was guided by the following main principles:

(1) The aim of the institution of mandates was to ensure the well-being and development of the peoples inhabiting the territories in question;

(2) The method of attaining this aim was to entrust the tutelage of these peoples to certain advanced nations, which would administer it as a "sacred trust";

(3) The acceptance by a nation of this mission carried with it certain obligations and responsibilities established by law. Like guardians in civil law they were expected to exercise their authority in the sole interest of their wards and to maintain an entirely selfless attitude in their dealings with them;

(4) The territories under their administration were not to be exploited by the Mandatory Powers for their own profit. A mandatory mission was not, by its very nature, intended to be prolonged indefinitely, but only until such time as the peoples under tutelage were capable of managing their own affairs. Furthermore, the Mandatory Power was to be responsible for preparing the people for eventual self-government.

102. It was with these lofty principles in mind that the administration of South West Africa was entrusted to South Africa as a Mandatory Power on 17 December 1920. It is a well-established fact that the administration of this mandated territory has been in utter and callous disregard of these principles. South Africa even claims that its obligations as a Mandatory Power under the League of Nations came to an end with the dissolution of the League in 1946.

103. Indeed, as early as April 1945, at San Francisco, about a year before the dissolution of the League, when the Charter of the United Nations was still being drafted, South Africa announced its intention to incorporate South West Africa as part of the Union of South Africa. At the first session of the General Assembly of the United Nations in 1946, it submitted a formal proposal of incorporation [15] on the ground that South West Africa was sparsely populated and unable to support itself and that a majority of the inhabitants desired its incorporation into the Union. This was a clear and formal indication of South Africa's true intentions in respect of South West Africa.

104. The General Assembly, rejecting the preposterous demand of South Africa by its resolution 65 (I) of 1946, declared that it was unable to accede to the incorporation of the Territory of South West Africa in the Union of South Africa. South Africa was invited to submit an agreement for the purpose of placing the Territory under the Trusteeship System. But the Government of South Africa had no intention of doing so and, predictably, refused to accept the invitation. It informed the United Nations [16] of its decision not to proceed with the incorporation of the Territory and to continue to administer it in the spirit of the Mandate. South Africa also agreed to submit reports on its administration of South West Africa. Subsequently, after submitting only one report, South Africa decided [17] not to furnish any further reports, in clear violation of its solemn undertakings and obligations.

105. South Africa then tried to annex a part of the Territory by proposing [18] to the Good Offices Committee, set up by the General Assembly at its twelfth session [resolution 1143 (XII)], that if the General Assembly were willing to consider a solution based on the partition of the Territory with the northern portion, which contained a majority of the native population, to be placed under Trusteeship and the rest containing the Territory's diamond deposits and other major resources to be annexed to the Union of South Africa, the latter would be willing to investigate the practicability of such a scheme. The designs of South Africa to annex the Mandated Territory were thus further exposed. The proposal for partition met with the opposition of the overwhelming majority of the

15/ Official Records of the General Assembly, Second Part of the First Session, Fourth Committee, annex 13a.

16/ Ibid., Second Session, Fourth Committee, Annex, document A/334.

17/ Ibid., Fourth Session, Fourth Committee, Annex, document A/929.

18/ Ibid., Thirteenth Session, Annexes, agenda item 39, document A/3900, para. 49.

General Assembly and was rightly rejected [resolution 1243 (XIII)].

106. Undeterred by these setbacks, South Africa resorted to various underhand methods of integrating South West Africa with its own territory. It started extending to the Mandated Territory its own hideous policies of apartheid which had already been universally condemned as constituting a crime against humanity. It placed serious restrictions on travel abroad by South West Africans. All political activity by the people of the Territory was suppressed. Legislation, regulations and administrative decrees detrimental to human dignity and violating the fundamental rights and liberties of the African people were adopted. The policy of Bantustans was gradually applied to the Territory. As a climax, the South African Government appointed a temporary committee in June 1964 to ensure the smooth functioning of the interim arrangements in connexion with the recommendations of the notorious Odendaal Commission. The implementation of these recommendations by creating separate homelands for the Africans would undoubtedly result in annexation and absorption.

107. It is thus clear that South Africa has only one aim in view, namely, to annex South West Africa despite its solemn obligations under international agreements. In the words of the International Court of Justice:

> "The mandate was created, in the interest of the inhabitants of the territory and of humanity in general as an international institution with an international object—a sacred trust of civilization." 19/

Article 22 of the Covenant of the League proclaimed "the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant". South Africa's administration of the Territory during the past forty-six years has made a mockery of this sacred trust. Its actions have proved that it is no longer qualified to merit the trust of the international community. It has flouted even the most fundamental principle of civilized behaviour which requires it to fulfil the obligations inherent in the trust. In view of South Africa's intransigence and callous disregard for world opinion, the removal of its authority over South West Africa and the assumption of its administration by the United Nations are the only means of fulfilling what the League of Nations had recognized as obligations owed by the more developed nations to help dependent peoples take their rightful place in the world community.

108. The International Court of Justice has categorically rejected South Africa's contention that its Mandate lapsed with the dissolution of the League. In its advisory opinion delivered on 11 July 1950, the Court unanimously declared that South West Africa was a Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920 and that the Union was not competent to modify its status except with the consent of the United Nations.

In its Advisory Opinion of 1 June 1956, the Court itself interpreted the general purport and meaning of its 1950 Opinion as follows:

> "The general purport and the meaning of the Opinion of the Court of 11 July 1950 is that the paramount purpose underlying the taking over by the General Assembly of the United Nations of the supervisory functions in respect of the Mandate for South West Africa formerly exercised by the Council of the League of Nations was to safeguard the sacred trust of civilization through the maintenance of effective international supervision of the administration of the Mandated Territory." 20/

109. Again, in its Judgment of 21 December 1962, the International Court repeated the conclusion it had reached in 1950 that "to retain the rights derived from the Mandate and to deny the obligations thereunder could not be justified." 21/

110. The 1966 Judgment, despite its grave and disturbing political consequences for the Territory has left unimpaired the validity of the Court's previous decisions. Those decisions remain the basic and authoritative statements of the International Court of Justice on important substantive legal questions, including the existence and scope of South Africa's obligations and the rights of the inhabitants of South West Africa.

111. The most important lesson to be learnt from the long exercise of proceedings before the International Court is that there is not, and cannot be, an effective substitute for the willingness of the members of the international community to enforce, with vigour and conscience, the principles of their own Charter, the dictates of their own decrees and the plain terms of their own undertakings. In other words, the only course of action left to the world community is to terminate South Africa's Mandate and to take upon itself the responsibility of administering the Territory until such time as arrangements can be made for the people of South West Africa to assume the reins of government themselves.

112. That the Mandate is a trust and the abuse of the trust entitles the United Nations to revoke the Mandate is indisputable. As early as 1922, the Indian representative to the Third Assembly of the League of Nations declared:

> "A mandate is, in theory and in essence revocable. These C class territories are a separate legal entity and all possess the indestructible potentiality of independent existence." 22/

113. The absence of any clause for the revocation in the mandate agreement does not imply that it cannot be revoked. The International Court has also affirmed, in its opinion of 1950, that one cannot conclude from the dissolution of the League of Nations that no proper

19/ International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 132.

20/ Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 28.

21/ South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 333.

22/ League of Nations, Records of the Third Assembly, Plenary Meetings, Vol. I (1922), p. 152.

procedure exists for modifying the international status of South West Africa. Under the general principles of international law, breach of agreement by one party justified denunciation by the other. To grant that the misdeeds of the Mandatory Powers could never, in any conceivable circumstances, lead to revocation would merely encourage Governments like that of South Africa in their evil intentions. In the words of Judge Padilla Nervo, and here I quote from his dissenting opinion on the 1966 Judgment:

"The sacred trust is not only a moral idea, it has also a legal character and significance; it is in fact a legal principle. This concept was incorporated into the Covenant after long and difficult negotiations between the parties over the settlement of the colonial issue."[23]

114. If I may quote from another dissenting opinion, Judge Jessup, in discussing the competence of the United Nations to grant a request for the termination of the Mandate, said: "Such competence is one of the highest manifestations of supervisory power".

115. The intention and purpose was to internationalize instead of annex, to make the principle of self-determination applicable, to keep in view the goal of self-government and, in case of abuse of the trust to appeal for redress, to exercise international authority to the full, even to the extent of revoking the Mandate. Surely, what was given by the international community to a member nation as a Mandate to be administered according to certain conditions can also be taken back, if those conditions are grossly violated.

116. The competence of the United Nations to supervise the administration of the territory and to determine the international status of South West Africa is based on very sound grounds. First of all, it is derived from the resolution of the League of Nations of 18 April 1946,[24] which recognized that, on termination of the League's existence, its functions with respect to the Mandated Territories would come to an end, but noted that Chapters XI, XII and XIII of the Charter of the United Nations "embody principles corresponding to those declared in Article 22 of the Covenant of the League". The resolution of 18 April 1946 of the League pre-supposes that the supervisory functions exercised by the League would be taken over by the United Nations. The United Nations is the successor of the League of Nations. In the words of Judge Sir Arnold McNair:

"The policy and principles of the new institution [the mandates system] have survived the impact of the events of 1939 to 1946, and have indeed been reincarnated by the Charter under the name of the 'International Trusteeship System' with a new lease of life."[25]

117. Secondly, the competence of the General Assembly in the matter has been recognized by the International Court, which declared in its advisory opinion of 1950 that the General Assembly derived its competence from the provisions of Article 10 of the Charter which authorises it to discuss any questions or any matters within the scope of the Charter and to make recommendations on these questions or matters to the members of the United Nations. It is in the exercise of this competence that the General Assembly through its various resolutions had adjudged that the official policy of racial discrimination practised in the Mandated Territory was in clear violation of the obligations of South Africa under the Mandate.

118. Thirdly, the International Court, in its Judgment of December 1962, ruled that South Africa's Mandate over South West Africa was in law an international undertaking with the character of a treaty or a convention. Regarding South Africa's objection that the Mandate had not been officially registered by the League of Nations, the Court said that if that was the case South Africa had never had any juridical right at all to administer South West Africa. The Court had already recognized the competence of the United Nations to exercise supervisory powers over the Territory, to receive reports from the Mandatory Power and to hear petitioners from the Territory. Furthermore, it may interest the representatives to know that Judges Spender and Fitzmaurice, in their 1962 joint dissenting opinion, stated that: "the real dispute over South West Africa is between the Respondent State and the United Nations Assembly"[26]—thus underlining the primary and the sole responsibility of the General Assembly to deal with the problem.

119. The ordinary circumstances in which a Mandate would be terminated would be the recognition by the world Organization of the fact that the inhabitants of the Territory are able to manage their affairs and that they need not any longer be denied their separate existence as an independent State. But, since South Africa seeks to annex the Territory, in direct contravention of the spirit of the Covenant and the fundamental principles on which the Mandate System is based, and is further determined not to develop the Territory to stand by itself but to keep it backward and non-self-governing, there is no possibility to terminate the Mandate in that way. The revocation of the Mandate, therefore, is the only step left to the world community. It would be worth recalling here the words of General Smuts who was himself one of the principal architects of the Mandates System. General Smuts stated in 1918:

"The mandatory state should look upon its position as a great trust and honour, not as an office of profit or a position of private advantage for it or its nationals. And in the case of any flagrant and prolonged abuse of this trust the population concerned should be able to appeal for redress to the league, who should in a proper case assert its authority to the full, even to the extent of removing the mandate, and entrusting it to some other state, if necessary."[27]

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[23] South West Africa, Second Phase, Judgment, I.C.J. Reports 1966, p. 453.

[24] League of Nations, Official Journal, Special Supplement No. 194, p. 58.

[25] International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 155.

[26] South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 547.

[27] "The League of Nations — A practical suggestion", reprinted in D. H. Miller, The Drafting of the Covenant, vol. 2 (New York, G. P. Putnam's Sons, 1928), p. 32.

120. Thus there are ample justifications, both by way of provisions in the Charter and through various pronouncements of the International Court of Justice, to put an end to the hideous control of South Africa over South West Africa and thus to assume direct administrative control over it and to take other necessary steps for the promotion of the political, economic, social and educational advancement of the inhabitants of the Territory. The United Nations, acting under the Charter and in its capacity as the representative of the international community and guarantor of the new world order, has the power to decide on the reversion of a mandated territory to the international community. This was recognized even by General Smuts, who stated: "Reversion to the league of nations should be the substitute for any policy of national annexation"[28]/The revocation of the Mandate is now the first necessary step to enable the inhabitants of the Territory to exercise their fundamental right to self-determination, which has been guaranteed to them under the Charter of the United Nations, the Universal Declaration of Human Rights, and resolution 1514 (XV) of 14 December 1960 of the General Assembly.

121. The position of my country on this question is well known. India's attitude has been throughout strongly to support the African peoples in their legitimate demand for the grant of independence. At the very first session of the General Assembly, in 1946, the Government of India focused attention on this issue and expressed its opposition to what amounted to annexation of South West Africa by South Africa. The fate of the people of South West Africa has always been a matter of great concern to us. The inhuman and criminal policies of the racist rulers of South Africa have been condemned by my delegation and by my country on innumerable occasions. It has been our view that the problem of South West Africa is basically a political and colonial problem and that it must be dealt with as such. We fully and unreservedly support the right of the people of South West Africa to become masters of their own destiny by exercising their right of self-determination which has been guaranteed to all colonial countries and peoples by the General Assembly in its resolution 1514 (XV).

122. The time has now come for the United Nations to take firm and decisive action in support of the people of South West Africa to thwart the aggressive plans of the South African Government. Its administration of the Mandated Territory has been a blatant violation of the explicit requirements and implicit principles contained in the Mandate, in the Charter of the United Nations and in the Universal Declaration of Human Rights. The Members of this body assembled here today are only too well acquainted with the number of General Assembly resolutions against racial discrimination that have been ignored by South Africa. The world community has tried everything possible with a view to persuading the racists of South Africa to mend their ways and to discharge their obligations in fulfilment of the sacred trust, and has totally failed in this vital responsibility. The only response of South Africa has been to extend, with increasing severity, its abominable policies of racial discrimination to South West Africa and to strengthen its grip on the Territory. This has been made evident by the various Committees of the United Nations that have examined in detail the nature of the administration of the Mandated Territory.

123. The fact that South West Africa is a political problem and that it has to be dealt with accordingly has been demonstrated forcefully by the recent verdict of the International Court of Justice, which has caused a further deterioration in the situation prevailing in the Territory. My Government believes, as I am sure most of the Members assembled here do, that the United Nations, as the inheritor of the obligation that the League of Nations took upon itself to help the much-wronged peoples of South West Africa to progress towards self-government, cannot now shirk its responsibility. This obligation has recently assumed added significance in view of the disturbing situation obtaining in the adjacent High Commission Territories due to the aggressive policies of South Africa. We are also firmly convinced, as I mentioned earlier, that the United Nations has the right to terminate the Mandate and to assume direct administration of the Territory. I should like to reiterate that our primary concern is to save the indigenous people of South West Africa from being totally subjugated by the white rulers of South Africa. Unless this is done, there is a great danger that the present situation may lead to a most serious racial conflict throughout Africa, endangering international peace and security.

124. My delegation, in common with other like-minded delegations, and conscious of its moral responsibility as a Member of the United Nations, will lend its full and unreserved support to such action as the General Assembly at its current session must and will take to bring justice to the long-suffering people of South West Africa. Any prolongation of the existing state of affairs which permits the pathologically racist rulers of South Africa to continue their criminal policies of apartheid and racial discrimination in the Territory, policies which have been repeatedly condemned by the world community as constituting a crime against humanity, must not be allowed. It is the sincere hope of my delegation that all the Members of this Assembly, leaving aside considerations of narrow, parochial interests, will rise to the occasion and join forces in taking effective action to end the evil and barbarous rule of South Africa in the Mandated Territory of South West Africa.

125. Mr. MGONJA (United Republic of Tanzania): Mr. President, my delegation is speaking for the first time during this session, and it is a great honour for me, on its behalf, to congratulate you on your well-deserved election to this highest office. My delegation has had the happy experience of working closely with you, particularly in the Afro-Asian group, and thus has first-hand knowledge of your great qualities as a diplomat and as an outstanding international personality. In fact, I am happy to say that I had the privilege of working with you before I went back to Tanzania two years ago.

126. Like representatives of many other delegations, I wish to pay tribute to the Foreign Minister of Italy, who served this Organization well as its President during the past year.

[28] Ibid., p. 27.

127. Permit me also to take this opportunity to congratulate the sister-State of Guyana, represented here by the Prime Minister and his delegation, upon its admission to the United Nations. We look forward to the strengthening of the many bonds which unite our two countries and for close co-operation in the struggle for the realization of the ideals for which this Organization was founded.

128. May I also through you, Mr. President, convey to this Assembly the warm and fraternal greetings of my President, Mwalimu Julius Nyerere, and those of the Government and people of Tanzania. It is our hope that under your wise guidance this session will be crowned with great success.

129. I believe that there is only one place in the world where the long words spoken this afternoon by the European from South Africa may have meaning, and that place is in the so-called Parliament of South Africa, where men continue to live in a fool's paradise. Let us hope that the speaker is capable of realizing in the end that his speech has been received with the utter contempt it deserves. My delegation hopes that this Assembly has further witnessed a dramatic display of the strange and sick mentality of the South African racists.

130. At this stage of its development, the South West African problem presents a crucial and urgent challenge to the principle of international commitment to the rule of law, on which the integrity of the whole United Nations depends. For the past twenty years, the United Nations and its Members have patiently suffered frustrations and humiliations from the South African Government's persistent and utter disregard for the General Assembly's resolutions and other attempts to ensure that the "sacred trust" incorporated in the Mandate in respect of South West Africa is realized. Let me make it clear that Tanzania firmly believes that the time has now been reached for terminating forthwith the Mandate entrusted to the Union of South Africa and substituting for it a system which will realize the principle not only of the Mandate but also of the United Nations Charter and dictated under the provisions of resolution 1514 (XV), containing the historic Declaration on the Granting of Independence to Colonial Countries and Peoples.

131. When this burning question of South West Africa came up for discussion last year, we approached it with all the vigour and vigilance that it demanded. This was, and still is, a question of a people and a territory wholly clamped under the shameful and discredited system of the exploitation of man by man. It further involves the vital question of how much longer this Organization, and mankind as a whole, can tolerate the existence of a régime whose avowed aim and practice is to perpetuate and glorify the monstrous doctrines of Hitlerism. The condemnation of this system has been clearly set out in several principled decisions of this Organization, because such a system is absolutely contrary to the principles embodied in the Charter of the United Nations.

132. Hence, it has always been, and still is, our bounden duty as freedom- and peace-loving people and Members of this Organization to do all that is within our power to see to it that that land of South West Africa and its people are liberated; for the people and the Territory of South West Africa, like all peoples and all territories everywhere, have the natural and fundamental right to be free. This right is reiterated in General Assembly resolution 1514 (XV). But, above all else, it is a natural birthright that is inalienable and irrevocable. In pursuing the attainment of independence by the people of South West Africa, we are facing a test case for the upholding of the lofty principles of the rights of man, and the ideals contained in the Charter of this Organization. These principles call for the respect and upholding of the right of independence of all the peoples in Non-Self-Governing Territories, of which South West Africa is one. The principles were embodied in the Mandate, and it is those same basic principles, among other factors, which the racist régime of South Africa has flagrantly violated.

133. The awful record of the policies of apartheid by the South African régime in South West Africa speaks for itself. It is too well known that the economy of South West Africa is operated only in the interests of the white settler minority and foreign investors. The writings of Mr. D. C. Krogh, the Government of South Africa's chief economic witness at the International Court of Justice, indicate that the per capita income of the residents of the Police Zone, where all the European settlers live, is £176 per year, while for the bulk of the Africans outside that area it is only £8.10 per annum. In 1962, white miners had an average income of £1,200 per annum, while their African counterparts had only £100 per annum. The European settlers own twice the amount of land set aside for the Africans, who outnumber the whites seven to one. This, needless to say, is all part and parcel of a calculated pattern for the exploitation and suppression of the African people of the Mandated Territory.

134. As a continuation of their notorious practices, the South African régime has devised what is known as the Odendaal Plan. Implementation of the Odendaal Report involves the uprooting of population to form two artificial racial groupings. The so-called "homelands" dictated by the Odendaal Plan thwart economic growth, and intensify social chaos, disruption and insecurity.

135. Equally oppressive to the Africans is the direct and indirect system of forced labour. Combined pressure of land shortage and poverty through dispossession has forced Africans to leave rural areas for white labour areas. The notorious contract system, which involves herding men into bachelor compounds in the Police Zone, contributes to the breaking-up of African families and the disintegration of society. The abominable racial pass laws, the Native Administration Proclamation of 1962, the Native—Urban Areas—Proclamations of 1951, and the Vagrancy Proclamation of 1920 serve to perpetuate this oppression. The Africans are denied the right to organize themselves and are excluded from any system of collective bargaining and, consequently, are permanent victims of low wages and impoverishment.

136. Such gross exploitation made it necessary for the General Assembly, by its resolution 1899 (XVIII), to request the Committee of Twenty-four, inter alia,

to undertake a study and to assess the economic and political influence of international financial interests operating in South West Africa and how the role they play impedes the attainment of independence by the people of that Mandated Territory. The result of that study, which was endorsed by the General Assembly, only too well proved the fanatical and brutal exploitation of the Territory by the South African apartheid régime and the suppression of the African people. It also revealed how certain international financial monopolies were greatly implicated in that exploitation. In view of the fact that the evidence pertaining to the brutal exploitation of human and rich natural resources is voluminous, I shall restrict myself purely to certain singular examples that show the extent of economic, and, hence, political, influence that the foreign financial giants have over the Territory.

137. It is well known and accepted that mining is one of the most productive industries in South West Africa. In this sphere, the evidence at hand shows that the Consolidated Diamond Mines of South West Africa, Ltd., has acquired a long term lease over an area of well over 21,000 square miles. This mammoth company forms part of the giant Ango-American Corporation that has the substantial financial backing of the Morgan Group. I am sure the representatives can well appreciate what it means to have a control over such a large area. I may add that the lease extends to the year 2010. Hence, it is only natural to find that some of the financial interests operating in South West Africa make as much as 27 per cent profit on the capital invested. I am sure I need not analyse how much such a profit means even in the most advanced capitalist societies. But emphasis must be placed on the fact that such super-profits are made at the cost of the sweat and the blood of the African people and, further, that those profits do not go back to the African people but are, instead, divided among the share-holders in the capitals of Western Europe, and particularly in Britain and the United States, to be distributed and to revitalize the very organizations that originally exploited the African people in their homeland.

138. To this effect, Tanzania shares the view held by many countries that investments must be made to benefit the peoples as a whole, and not only those who have capital. In the case of Southern Africa, it is only the rich capitalists and the minority racist régimes who usurp the profits.

139. What must also be emphasized at this phase is that the companies operating in that colonized territory, by vigorously implementing and following the legislation enacted by the racist régime of South Africa, are acting against the interests of the African people and are, in fact, accomplices of the usurpers. The legislation under which they operate, it must be remembered, has been designed specifically to bar Africans from any gainful participation in the industries and economic life of their land. They are laws aimed at providing the monopolies with cheap labour and ensuring them super-profits. They are exploitative and discriminatory laws. In short, they are laws that are aimed at perpetuating conditions of enslavement for the African people by denying them all basic human rights and natural democratic freedoms. Such a situation is clearly contrary to the declared basic principles of the Charter of this Organization and decidedly a contravention, a monumental contravention, of the provisions of the Mandate.

140. It is encouraging to note that the conscience of mankind has been further aroused and disturbed by the cruel practices maintained by the racist European régimes in the southern part of Africa by Britain, South Africa and Portugal and their allies. In fact, there is today an increasing condemnation of the savage practice of racial discrimination wherever it is found in the world. This impression is reflected in the newspapers and in conversation with men of good will who are found in large numbers all over the world, even in the European-dominated countries, including Britain and the United States of America. The majority of mankind abhor the exploitation of man by man, and have begun to see through the veil of propaganda long created to subject them into complacency by the minority who are so unscrupulous in their greed for personal wealth that they are prepared to risk a racial holocaust. Once again Tanzania solemnly calls on Members of this Organization and freedom-loving peoples all over the world to rise to the occasion before it is too late.

141. The whole world, including many people in those major western countries which derive huge profits from the existence of slave economy in the southern part of Africa, have expressed disquiet at the ominous rise of Vorster, another well-known Nazi supporter in South Africa. This afternoon we have been told that there is no discrimination and no oppression in South Africa, but the newspapers—and I am sure we all read them—even this week still referred to the rise of Vorster, a Nazi supporter, a man who was imprisoned for supporting Hitler. This is the leader of South Africa, whose spokesman came here this afternoon. We hope that this increased awareness of the inflammable situation, which owes its origin and major strength to western Europe and North America, will be turned later, I should say sooner than later, into massive sanctions and other measures to establish sanity in South Africa before it is too late.

142. Tanzania salutes those men of courage who wage the struggle against racism in spite of the many obstacles placed before them by those Governments which cordially embrace and encourage the racists in South Africa, Rhodesia, and Portugal by maintaining economic, military, diplomatic and other relations with them. We are sure that the edifice of unholy European racist alliance and solidarity will one day crumble before the revolutionary forces of freedom, progress and human brotherhood. Many similarly shocking facts about the situation in South West Africa have been exposed by writers such as the American writer Allard Lowenstein in his book, The Brutal Mandate,[29] which I believe is known to many delegations. This brutality must be brought to an immediate end.

[29] New York, The Macmillan Company, 1962.

143. The educational system does not deserve to be called educational. Besides the low number of schools for Africans, the type of education given to them prepares them only to be "hewers of wood and drawers of water", while that given to the whites prepares them for the dominant role in the society. In fact, in years to come, if the South African administration were left in control, the educational system would be even more damaging than in the past years. The cost of expansion of the educational system will have to be borne by the Africans themselves, the group least able, under apartheid, to finance its own services. This policy dooms the African to be permanently submerged as a labourer.

144. All other social services are equally appalling, in terms of what the African gets, and this needs no further elaboration because the evils of apartheid have now acquired a world-wide notoriety.

145. All these policies are bad enough when confined to the territory of the Republic of South Africa, but when they are projected and exercised in an international territory under the supervision of the United Nations they should never be tolerated, and the earliest opportunity must be used to remove the evil-doer from such a territory. This Organization must, as of now, do more than merely watching and advancing only moral condemnation while, contrary to Article 22 of the Covenant of the League of Nations and with utter disrespect for this Organization, the racist South African Government has established military installations in the territory and "the well-being and development" of the "indigenous population", intended to be a sacred trust placed in the hands of the Mandatory Power, is subordinated to the unholy apartheid policies of the racist Government of South Africa.

146. Apart from violating the Mandate, the racist South African Government has, among other things, refused to abide by the solemn declaration of Article 73 of the United Nations Charter, which specifically declares that:

> "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories and to this end:
>
> "a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses".

Evidence of failure on the part of South Africa to conform with this solemn declaration is, as expounded earlier, abundant.

147. In its annual report to the General Assembly on political, economic, social and educational conditions in the Territory, the former Committee on South West Africa observed that racial discrimination was prevalent in the Territory and that the main efforts of the administration were directed almost exclusively in favour of the European inhabitants. It found the situation in the Territory to be "neither in conformity with the principles of the mandate system, nor with Universal Declaration of Human Rights nor with the advisory opinions of the International Court of Justice nor with the resolutions of the General Assembly".[30]

148. The General Assembly approved the Committee's reports. It also endorsed the Committee's conclusions and recommendations regarding the actions which should be taken, particularly for the progressive transfer of responsibility to representative political institutions in which all the inhabitants would be represented, the revision of the system of "native" administration and of the Land Settlement policy, the elimination of social discrimination in public enjoyment and education and of discriminatory restrictions on freedom of movement and residence.

149. The General Assembly knows too well that South Africa, because of its inherently repugnant policy of apartheid and racism, is complete incapable of implementing the recommendations of the Committee endorsed by this Assembly. There remains, therefore, only one realistic solution to the problem; and that is that the United Nations should forthwith terminate the present Mandate and replace it by a system which will realize the principles of the United Nations and the Mandate System.

150. It will be recalled that, at its first session, by its resolution 9 (I), the General Assembly called upon its members to implement Article 79 of the United Nations Charter. All except South Africa conformed and placed the Mandated Territories under the Trusteeship System. By its resolution 65 (I) of 14 December 1946, the General Assembly rejected the South African Government's request for annexing South West Africa, recommended instead that South West Africa be placed under the international Trusteeship System, and invited the South African Government to propose for the Assembly's consideration a trusteeship agreement for the Territory. The South African Government disdainfully refused to conform.

151. In 1947 and again in 1948—by resolutions 141 (II) and 227 (III) respectively—the General Assembly reaffirmed its recommendation that South West Africa be placed under the Trusteeship System and that a Trusteeship Agreement be submitted. The South African Government cynically ignored the position taken by the General Assembly. Contrary to the specific instructions of the General Assembly, it even arrogantly and disrespectfully refused to transmit reports and petitions on South West Africa to the Assembly.

152. Nor would South Africa comply with the unanimous opinion of the International Court of Justice to the effect that South West Africa is a territory under the international Mandate assumed by the Union of South Africa and that the Union "continues to have international obligations" under the League of Nations Covenant and mandate, including the obligation to

30/ Official Records of the General Assembly, Twelfth Session, Supplement No. 12 (A/3626), para. 161.

submit annual reports and to transmit petitions from the Territory to the United Nations.

153. Following this opinion, the Union of South Africa again rebuffed the United Nations by frustrating and refusing to meet and co-operate with the General Assembly's Committee on South West Africa.

154. In view of utter disrespect by South Africa for the instructions of the United Nations regarding this Territory over which the United Nations has jurisdiction, the time has definitely come to terminate the present Mandate and entrust the administration of the Territory to one who not only respects the United Nations but who also has the qualifications and is willing to implement recommendations of the General Assembly regarding the just development of this Territory to earliest independence.

155. Still fresh in our memories is this year's disappointing Judgment of the International Court of Justice on South West Africa, which merely passed on the procedural aspects of the case without tackling the merits. The Judgment leaves unaffected the 1950, 1955, and 1956 opinions of the Court and the 1962 Judgment regarding the same case. That the United Nations has jurisdiction over South West Africa remains therefore unquestionable. We believe that this experience—the most recent Judgment of the International Court—sad as it is, has been a salutary lesson to the newly independent countries in their struggle for effective representation in all international bodies.

156. The present development of the situation has, therefore, now reached a situation whereby it has become a matter of absolute necessity and a clear obligation not only of the General Assembly, but also of the other organs of the United Nations to terminate the present Mandate on South West Africa.

157. It is imperative that we remind members and, in particular, those whose influence is crucial, to pay heed to the full implications of the problem which we are called upon to decide. In the first place, the United Nations has the power and the competence to change the present situation in South West Africa. What is required is the will to effect the change and the translation of this into real action. The United Nations must go beyond mere moral condemnations of policies which it says it does not believe in—and we hear many condemnations of policies which we do not believe in—and proceed to eradicate them effectively. In particular, the more powerful members of this community are called upon to be honest with themselves.

158. The Organization is now confronted with the grave question as to whether this is an organization whereby only the policies and desires of the big Powers can be made effective and whether the just claims and aspirations of the smaller will receive only lip service from the big Powers.

159. The position is now clear. Following the adjudication that South West Africa is an international Territory over which the United Nations has jurisdiction, then the power to terminate the Mandate thereof—once the Mandatory Power has failed to meet the standard of the Mandate and the United Nations Charter—is unquestionably within the competence of the United Nations.

160. The inability of the United Nations to solve the South West Africa problem in favour of the suffering peoples there will, if allowed to continue, destroy the world body as an effective political instrument in support of international justice, peace and security. Such inaction would cast grave doubts on the continuing credibility and effectiveness of the United Nations system. It would dangerously undermine the confidence of peoples all over the world in the principles of international authority and commitment.

161. With every delay, the South African racist régime not only intensifies its repugnant apartheid policies over the people of South West Africa, but exhausts the Territory of its wealth and capacity to develop into an independent viable State. The tightening of the grip of the apartheid system inflames and provokes the nations of Africa and Asia and creates the conditions for a disastrous racial war. This is an urgent matter and, therefore, the United Nations as a body must act now.

162. In conclusion, I wish above all to salute, on behalf of the Government and people of Tanzania, the struggling people of South West Africa, who have been steeled by years of untold suffering, first at the hands of German colonialism, and now under the heirs of the Nazis. I have already explained—and there is ample evidence—that the system in South Africa is clearly Nazi in character; and the European Powers know what Nazism meant. We hope that they will take into consideration the situation prevailing in South Africa now.

163. We know that the people of South West Africa draw inspiration from the fact that millions of their fellow men in the continent who have cast off the cruel chains of racist domination, slavery and colonial exploitation are committed to wage a relentless struggle until all Africa is free. They know, too, that, in this struggle we are in active and practical solidarity with the majority of mankind of all races all over the world. Faithful to the principles of freedom, human brotherhood and progress, and to its obligations to the Organization of African Unity and to the United Nations, Tanzania will continue to follow the path of intensified collaboration with all nations and peoples who, by word and, more so, by deeds, by actions strive to remove this scourge of European racist brutality from South West Africa. The time to act is now.

164. Mr. LOPEZ (Philippines): Mr. President, the President of my country having already extended his congratulations to the Assembly for electing you to preside over its deliberations, it is left to me to express my deep personal satisfaction on your election and to say that so far as the Philippine delegation is concerned, your election was a unanimous one.

165. After twenty years, the question of South West Africa not only remains unresolved but has gone from bad to worse. Year after year, since its very first session, the General Assembly has tried to persuade the Government of South Africa to comply with its obligations under the Mandate and to place the Territory under the United Nations Trusteeship System. South Africa has rebuffed all these moves. In fact,

despite the advisory opinions of the International Court of Justice, South Africa has denied the international status of the Territory and has refused to recognize the right of the United Nations to supervise the administration of the Mandated Territory.

166. This year, the General Assembly considers this question once more, though not in the routine fashion to which we have grown accustomed. The Judgment of the International Court of Justice of 18 July, which brought disappointment and dismay to many of us, has made the question an extremely urgent one calling for immediate consideration and action. As regards that Judgment, my delegation shares the view that it is limited to one point only and that is, that in the opinion of exactly one half of the members of that court qualified to participate in the Judgment, Ethiopia and Liberia could not be considered to have established a legal right or interest in the subject-matter of their claims. It was not a judgement on the substance of the claims as submitted by the two countries. Being thus limited to that narrow point of procedure, the Judgment did not diminish in any way the validity of the advisory opinions of the International Court of Justice of 11 July 1950, 7 June 1955 and 1 June 1956, nor the Court's Judgment of 21 December 1962.

167. In its 1950 advisory opinion the Court declared "that South West Africa is a territory under the international Mandate assumed by the Union of South Africa on December 17th 1920" and "that the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa".[31] The Court also stated that the Union of South Africa continued to have the international obligations set forth in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory. The Court further stated that the supervisory functions were to be exercised by the United Nations, to which the annual reports and the petitions were to be submitted.

168. In its 1956 advisory opinion, the Court itself sought to clarify its 1950 opinion as meaning "that the paramount purpose underlying the taking over by the General Assembly of the United Nations of the supervisory functions in respect of the Mandate for South West Africa formerly exercised by the Council of the League of Nations was to safeguard the sacred trust of civilization through the maintenance of effective international supervision of the administration of the Mandated Territory".[32] In its Judgment of 17 December 1962, the Court said: "The findings of the Court on the obligation of the Union Government to submit to international supervision are thus crystal clear. Indeed, to exclude the obligations connected with the Mandate would be to exclude the very essence of the Mandate."[33]

169. In the face of this series of three advisory opinions and the Judgment of 21 December 1962, the Court's Judgment of 18 July can be regarded only as a fluke, an accident, perhaps as an anomaly. It was not a clear-cut majority decision because one member, in accordance with the rules of the Court, had to vote twice in order to create the statutory majority. Moreover, three Judges, who were known to be sympathetic to the applicants, were unable to participate in the final Judgment: one had died shortly before Judgment was due, another was taken gravely ill, while a third, who had been threatened with disqualification, was too noble and decent to fight the move to disqualify him. Thus, by the accidental circumstances of death and sickness, and a sense of decency on the part of one Judge, which his opponents might have done well to emulate, a decision has been foisted on the world that men of good sense and good will shall rue for a long time to come and none more deeply than the loyal friends of the Court itself.

170. For this is a decision which the technical majority of the Court, knowing full well that it was sure only of this kind of majority, did not have the courage to make upon the substance of the case itself; to have done so would have been to violate too crudely the reason and the conscience of the vast majority of mankind. The alternative, therefore, was to give South Africa the appearance of a victory that would not be quite a victory on the issues, and this could have been done only by ruling upon a fine point of legal procedure. In short, the Court has given the world a decision through the back door because it would have been too embarrassing to give that decision through the front door.

171. The history of the question of South West Africa in the United Nations has been reviewed in detail by the speakers who have preceded me. I shall therefore confine myself to saying that the history of the question is a history not only of the continuous denial and abuse of the rights of the indigenous inhabitants of the Territory, but also of the continuous disregard of United Nations authority by the Government of South Africa.

172. When, on 17 December 1920, the League of Nations placed South West Africa under the Mandate System by transforming it into a Mandated Territory with South Africa as the Mandatory Power, it did so in the expectation that South Africa would promote to the utmost the material and moral well being and the social progress of the inhabitants of South West Africa. What has happened, however, is the reverse. South West Africa is being exploited and its inhabitants deprived of their rights for the benefit of a racist minority in that Territory and in South Africa. And while the Mandate clearly provided for supervisory authority by the League—a prerogative now legally transferred to the United Nations—South Africa has ignored the General Assembly and flouted all the Assembly's resolutions calling upon it to discharge its obligations under the Mandate. In effect, therefore, if South Africa were allowed to have its way, as indeed it has been having its way for the past twenty years, the Mandate for South West Africa would be transformed from a sacred trust of civilization

31/ International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950, p. 144.

32/ Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 28.

33/ South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 334.

into an instrument depriving the indigenous inhabitants of their birthright and condemning them to perpetual exploitation, humiliation and servitude.

173. The United Nations cannot allow this situation to continue. The inalienable right of the people of South West Africa to freedom and independence is enshrined in the Charter and in the Declaration on the Granting of Independence to Colonial Countries and Peoples. The speedy and complete liquidation of colonialism is one of the principal goals of our Organization, and history will record this as one of its major achievements. Decolonization has reached a point where we cannot allow any country—in this case, South Africa—to reverse this historical process. After twenty years of patient but unavailing persuasion, the time has come for the General Assembly to put an end to the régime of oppression and terror in South West Africa and to set the people of that Territory on the road to self-determination and independence.

174. Nor can the United Nations tolerate any longer the practice of apartheid imposed on the inhabitants of South West Africa, a practice which the General Assembly itself has declared to be a crime against humanity.

175. The only course open to the General Assembly is positively and decisively to assert its authority by cutting off South Africa from the source of its alleged rights and powers, which in this case is its Mandate for South West Africa. To that end a number of delegations, including my own, will shortly submit a draft resolution to this Assembly calling for the revocation of the Mandate for South West Africa and the setting up of a United Nations Authority that will administer the Territory pending recognition of its independence. It is our hope that this proposal will receive the support of the overwhelming majority of this Assembly. Such action is just as necessary for the well-being of the native inhabitants of South West Africa as it is for the good of the United Nations.

176. The PRESIDENT: I call on the representative of Ethiopia in exercise of his right of reply.

177. Mr. WODAJO (Ethiopia): The General Assembly has been subjected this afternoon to a veritable display by the representative of South Africa of half-truths and semblances of truth and facts and to an unproductive exercise in evading the real issues.

178. When everything is said and done, what is the message that the representative of the Republic of South Africa wished to put across to the Assembly? The purport of his message was to tell Members of the Assembly the following: you are wrong, and I alone am in the right. All the resolutions that you have repeatedly adopted throughout the years are based on either ignorance or ill will.

179. I submit that that assertion is a calculated affront to the intelligence of representatives at successive sessions of the General Assembly. It shows the utter contempt in which South Africa holds this Assembly.

180. In that connexion, I should like to ask the representative of South Africa the following questions. Why does the Assembly have to pick on South Africa—as the representative of South Africa has suggested it is doing—and not on some other country or countries as the object of its condemnation? Is it because the Assembly needs such a victim for sustenance? Is it because of ignorance or ill will, as he has alleged? The representative of South Africa knows the answers to those questions. His Government has been the object of unconditional, unreserved and universal condemnation because it is pursuing the obnoxious policy of apartheid both in South Africa and in South West Africa against the indigenous inhabitants and against the so-called coloured people and the people of Indian and Pakistani origin. It is because this policy of apartheid has been found to be morally repugnant and oppressive in its effects, because this practice and system of apartheid has been found to be against the prevalent moral standards and norms which characterize and guide relations between States today.

181. The representative of the Republic of South Africa apparently wants the Assembly to throw away the cumulative effects of the evidence that has been compiled against South Africa throughout the last twenty years, both in the Assembly and in the various Committees to which this question has been submitted. He wants the Assembly to throw away this evidence on the erroneous assumption which he advanced, that the Court has said that this evidence should be thrown away. But the point that I would like to put to the representative of South Africa is this: has the Court said that? Definitely, the Court has not said that, despite the transparent effort of the representative of South Africa to put words into the mouth of the Court. That is what I called earlier an exercise of half-truth and misinterpretations.

182. The other day we stated from this rostrum that our disappointment in the Court's ruling lies in what the Court failed to say rather than in what it said. The Court, as we stated in the course of our last intervention, has not absolved apartheid in South Africa and in South West Africa. The Court's decision does not mean a legal victory for South Africa, as we have said. The Court simply declined to give a declaratory Judgment on our submissions. We were disappointed in this ruling because we felt that the Court, after having taken so much time and after entertaining the merits of our submissions for so long a period, has for reasons best known to itself declined to give a judgement on our submissions.

183. Another point which the representative of South Africa underscored in his exercise of misrepresentation was the fact that the Court has reversed the cumulative effects of the advisory opinions, particularly the effect in law of the Court's Judgment of 1962. The Court has not pronounced itself on this aspect. As a matter of fact, the Court has let it be inferred by its conspicuous silence on this score that the law of Mandate as developed by the Court in its successive opinions, and particularly in its last Judgment, remains intact.

184. We believe that the following points from the Court's opinions and Judgment of 1962 remain intact as law:

(1) That the Mandate is in force and in effect, notwithstanding the dissolution of the League of Nations;

(2) That there has never been any cession of territory or transfer of sovereignty to the Republic of South Africa;

(3) That the Republic does not have the competence to alter the status of the Territory without the consent of the United Nations;

(4) That the General Assembly of the United Nations has succeeded to the supervisory functions of the Council of the League of Nations;

(5) That the Republic of South Africa is under the obligation to submit to the compulsory jurisdiction of the International Court of Justice;

(6) That the rule adopted by the General Assembly providing for a two-thirds majority rule in the Assembly voting procedure on the reports on the petition is valid;

(7) That the authorization by the General Assembly of oral hearings on the Petition on South West Africa is valid;

(8) That the administration of this Territory as an integral portion of the Republic under article 2 of the Mandate must at all times remain subject to and be considered with the basic purposes of the Mandate.

185. We believe that the aforementioned points of law remain intact as law and that the latest decision has not, by any stretch of the imagination, reversed the effect of these rulings on law.

186. Finally, I should like to say that the representative of the Republic of South Africa has made too many points for me to answer now. I should like to reserve the right of my delegation to reply in detail to all the points raised by the representative of South Africa.

The meeting rose at 6.20 p.m.

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