

ARTICLE 80

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ARTICLE 80

TEXT OF ARTICLE 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever, of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.
2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

INTRODUCTORY NOTE

1. As explained in the *Repertory* and its *Supplements Nos. 1 and 2*, Article 80 was invoked at early sessions in the United Nations in connexion with the question of South West Africa. Paragraph 1 of that Article was also cited by the International Court of Justice in its advisory opinion of 11 July 1950¹ to support the Court's opinion that the Mandate for South West Africa remained in force and that South Africa continued to have the international obligations it assumed thereunder, with supervisory functions to be exercised by the United Nations.

2. For the purpose of continuity and because of the Court's opinion referred to above, the question of South West Africa, which is the only one dealt with in this study, has again been treated under Article 80 although certain questions arising out of the proceedings are pertinent to Articles 10 and 77 and have been referred to under those Articles. This does not imply any limitations with respect to the Charter authority under which the General Assembly acted in its decisions concerning South West Africa. In particular, material included under Article 73 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) is also relevant to the question.

3. The headings established earlier in the *Repertory* and its *Supplements Nos. 1 and 2* have been retained as far as possible. However, some of them have been amended and new ones have been added to cover developments during the period under review. In particular, the main heading "A. The responsibilities and functions of the United Nations in relation to the administration of South West Africa under its present international status" has been amended to read: "A. The responsibilities and functions of the United Nations in relation to the administration of South West Africa under its status as a Mandated Territory", because the section

deals with actions taken by the General Assembly up to the termination by the Assembly of South Africa's Mandate to administer the Territory. Within the section, the heading "1. The question of the obligation of South Africa to administer the Territory of South West Africa in accordance with the League of Nations Mandate and to submit reports on its administration of the Territory to the United Nations" has been amended by the addition of the words "recognition by the General Assembly of the right of South West Africa to independence and national sovereignty" so as to include material concerning the application to the Territory of the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV).

4. Three new headings have also been added within section A, entitled respectively: "5. The question of the implications of the activities of the mining industry and other international companies having interests in South West Africa and their economic and political influence"; "6. The question of measures to be taken by the United Nations to induce or compel the Government of South Africa to change its policies of administration in the Mandated Territory of South West Africa and to prepare the Territory for independence"; and "7. The question of extending United Nations assistance to and establishing a United Nations presence in, South West Africa."

5. A new main section has also been added, entitled: "C. The question of the termination of the Mandate and measures to be taken by the United Nations to discharge its responsibilities with respect to South West Africa pending the achievement of independence by the Territory."

6. It will be noted that the material included in the study covers decisions reached at the twenty-first session of the General Assembly. The study has been extended to the twenty-first session because the termination of the Mandate at that session completed a definite period in the history of the question of South West Africa in the United Nations.

¹ International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950*, p. 128.

I. GENERAL SURVEY

7. The beginning of the period covered in this *Supplement* approximately coincides with important changes in the General Assembly's approach to the question of South West Africa, culminating in the termination by the General Assembly, at its twenty-first session in 1966, of South Africa's Mandate to administer the Territory.

8. It will be recalled, as explained in the *Repertory* and its *Supplements Nos. 1 and 2*, that since 1953 the General Assembly had been exercising supervisory responsibilities over the administration of South West Africa. The competence of the Assembly to exercise these supervisory responsibilities had been confirmed by the International Court of Justice in its 1950 advisory opinion which the Assembly accepted in resolution 449 a (V). In that opinion the Court had stated, *inter alia*, that South West Africa was a Territory under the international Mandate assumed by the Union of South Africa² on 17 December, 1920, that the Union of South Africa continued to have the international obligations stated 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 supervisory functions to be exercised by the United Nations to which the annual reports and petitions were to be submitted.

9. By resolution 749 A (VIII) of 28 November 1953, the General Assembly established the Committee on South West Africa which was to prepare annually a report on conditions in the Territory and a report on petitions. The Committee was to conduct its work as far as possible within the procedures of the former Mandates System. The Committee was also authorized by the Assembly to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court.

10. The Government of South Africa did not accept the advisory opinion of the Court and did not co-operate with the Committee. It refused to submit reports or transmit petitions to the United Nations on the grounds that, as it had maintained since 1946, its agreement had been with the League of Nations and that, since the demise of the League, it had no further international obligations. It undertook, however, to administer the Territory in the "spirit of the Mandate".

11. During the period covered by this *Supplement*, the Government of South Africa continued to refuse to recognize the right of the United Nations to exercise supervisory responsibilities with respect to South West Africa and refused, as in the past, to submit annual reports, or transmit petitions to the United Nations.

12. At the same time as it carried out its supervisory responsibilities, the General Assembly endeavoured to negotiate with the Government of South Africa an agreement on the Territory's international status. As noted, in paragraph 9 above, the Committee on South West Africa was authorized to negotiate in this respect

with the Government of South Africa, but under resolution 1143 (XII) of 25 October 1957, the Assembly also established a Good Offices Committee to discuss with that Government a basis for an agreement. Subsequently in accordance with resolution 1360 (XIV) of 17 November 1959, negotiations were continued by the Committee on South West Africa at its seventh session in 1960 "with a view to placing the Mandated Territory under the International Trusteeship System". These efforts ended in failure.

13. Under resolution 1060 (XI) of 26 February 1957, the Assembly had also initiated through its Committee on South West Africa, studies of what legal action was open to Members of the United Nations to ensure that South Africa fulfilled the obligations assumed by it under the Mandate. These studies were considered at the fourteenth session and the Assembly, in resolution 1361 (XIV) of 17 November 1959, drew the attention of Member States to the conclusions of the Committee on South West Africa concerning the legal action open to them in that respect.

14. By its fourteenth session in 1959, as the Assembly annually considered conditions in the Mandated Territory, initially through its Committee on South West Africa, it had become increasingly critical of the manner in which South Africa was administering the Territory, and particularly of the application of the policy of *apartheid* and its consequences upon the lives of the people, as well as of what it considered to be actions of South Africa designed to lead to the annexation of South West Africa.

15. At subsequent sessions the General Assembly and its Committees continued in many resolutions to condemn the application in the Territory of the policy of *apartheid* and to call upon South Africa to rescind laws based on that policy.

16. With respect to what it considered to be further attempts of South Africa to annex the Territory, the Assembly at its fifteenth session, by resolution 1596 (XV) of 7 April, 1961, deplored the attempts at assimilation of the Mandated Territory of South West Africa as totally unacceptable, having no moral or legal basis and being repugnant to the letter and spirit of the Mandate. At its eighteenth and twentieth sessions, in resolutions 1899 (XVIII) of 13 November 1963 and 2074 (XX) of 17 December 1965, respectively, the Assembly considered that any attempt to annex a part or the whole of the Territory of South West Africa constituted an act of aggression.

17. In its resolution 1564 (XV) of 18 December 1960, the Assembly also urged the Government of South Africa to cease the arbitrary imprisoning and deporting of Africans. In resolution 1596 (XV) of 7 April 1961, it called upon that Government to desist from terrorization and armed action against the indigenous inhabitants. In resolution 1805 (XVII) of 14 December 1962, it urged the Government of South Africa to refrain from the forcible removal of indigenous inhabitants from their homes, and from using the Territory of South West Africa as a base for arms and armed forces. In resolution 2074 (XX) of 17 December 1965, it called upon

² On 31 May 1961 the Union of South Africa became the Republic of South Africa.

the Government to remove immediately all bases and other military installations from the Territory. In the latter resolution, the Assembly also condemned South Africa for circumventing the political and economic rights of the indigenous people through a large-scale settlement of foreign immigrants.

18. At its fifteenth session in 1960, the Assembly was informed that Ethiopia and Liberia had instituted contentious proceedings against the South African Government in the International Court of Justice. The two Governments charged that South Africa had violated the Covenant of the League of Nations and the Mandate by the manner in which it had administered the Territory and had violated the Mandate and the League of Nations rules respectively by having failed to render annual reports on its administration of the Territory and to transmit petitions from inhabitants of the Territory to the United Nations. The two Governments, *inter alia*, sought a judgement of the Court to require South Africa to cease the alleged violations and to carry out its obligations under the Mandate. The action of Ethiopia and Liberia was commended by the General Assembly at its fifteenth session in resolution 1565 (XV) of 18 December 1960.

19. During the period covered by this *Supplement* and until the twentieth session of the General Assembly in 1965, there were proposals by various representatives that in view of the refusal of the Government of South Africa to recognize and accept the supervisory authority of the United Nations over its administration of the Territory and to change the policies being applied there, the Assembly should terminate the Mandate. The view prevailed, however, during those sessions that the Assembly should not take any action which might prejudice or prejudge the findings of the International Court on the case brought before it by Ethiopia and Liberia and should await the Court's judgement before considering or taking such a step.

20. From the fifteenth session on, however, the Assembly took a number of measures which represented a departure from its previous approach to the question. By resolution 1568 (XV) of 18 December 1960, it invited the Committee on South West Africa, in addition to its normal tasks, to go to the Territory immediately to investigate the situation there and to ascertain and make proposals to the Assembly on (a) the conditions for restoring a climate of peace and security, and (b) the steps which would enable the indigenous inhabitants of South West Africa to achieve a wide measure of internal self-government designed to lead them to complete independence as soon as possible.

21. Subsequently, the South African Government having refused to co-operate with the Committee, the Assembly adopted resolution 1596 (XV) of 7 April 1961 whereby, *inter alia*, it requested the Committee "immediately to proceed to discharge the special and urgent tasks entrusted to it in resolution 1568 (XV) as fully and expeditiously as possible with the co-operation of the Government of South Africa if such co-operation is available, and without it if necessary".

22. Further, by its resolution 1593 (XV) of 16 March 1961, the Assembly appealed to those Members of the United Nations which had particularly close and continuous relations with the Government of South Africa to bring, as a matter of urgency, all their influence

to bear on that Government with a view to ensuring that it should adjust its conduct to its obligations under the Charter and should give effect to the resolutions adopted by the Assembly.

23. Also, at its fifteenth session, the Assembly, by resolution 1566 (XV) of 18 December 1960, invited the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Children's Fund (UNICEF) to undertake urgent programmes to assist the indigenous population of South West Africa, in their respective fields, and requested the Government of South Africa to seek such assistance and to extend its co-operation to the specialized agencies and UNICEF.

24. The Committee on South West Africa reported to the Assembly, at its sixteenth session, that, because of the refusal of South Africa to issue visas either for South Africa or South West Africa and because of the threat of the use of force by the South African authorities if the Committee entered the Territory, it had been unable to visit South West Africa. Instead, the Committee visited Ghana, Tanganyika and the United Arab Republic and interviewed refugees from South West Africa in those countries. The Committee included in its report recommendations on the matters requested by the Assembly.

25. At the same session, by its resolution 1702 (XVI) of 19 December 1961 the Assembly decided to establish a Special Committee for South West Africa whose task it would be to achieve, in consultation with the Mandatory Power a visit to the Territory before 1 May 1962 and other specific objectives designed to effect a change of administrative policies and to prepare the Territory for full independence. The Assembly also requested the Special Committee to discharge the tasks assigned to the Committee on South West Africa by resolution 749 (VIII). At the same time, by its resolution 1704 (XVI) of 19 December 1961, the Assembly dissolved the Committee on South West Africa.

26. Also at the sixteenth session, the Assembly established, by resolution 1705 (XVI) of 19 December 1961, a special educational and training programme for South West Africa to be administered by the Secretary-General and financed by the United Nations. Individual Member States were also requested to grant scholarships to South West Africans. Since 1962, the Secretary-General has reported annually to the General Assembly on the progress of these programmes.

27. The Special Committee for South West Africa reported to the General Assembly, at its seventeenth session, that it had authorized its Chairman and Vice-Chairman to accept an invitation from the Government of the Republic of South Africa to visit South West Africa. The invitation had been extended by that Government for the purpose of conducting discussions aimed at finding a way out of the current impasse without requiring the Republic to compromise its juridical position or to discuss the tasks relating to the administration of the Territory assigned to the Special Committee under resolution 1702 (XVI).

28. The Special Committee for South West Africa included in its own report to the General Assembly

at its seventeenth session the report of the Chairman and Vice-Chairman on their visit to South Africa and South West Africa whose conclusions and recommendations it endorsed. The Special Committee also transmitted a copy of its report to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples which had been established by the Assembly at its sixteenth session by resolution 1654 (XVI) of 27 November 1961 and which, at its first session in 1962, had also considered conditions in South West Africa.

29. At its seventeenth session, the Assembly by resolution 1806 (XVII) of 14 December 1962, decided to dissolve the Special Committee for South West Africa, and by resolution 1805 (XVII) of the same date requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to discharge, *mutatis mutandis*, the tasks assigned by resolution 1702 (XVI) to the former Special Committee for South West Africa. By resolution 1805 (XVII) the Assembly also requested the Secretary-General to appoint a United Nations Technical Assistance Resident Representative for South West Africa and to take all necessary steps to establish an effective United Nations presence in South West Africa.

30. The Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) of 14 December 1960, *inter alia*, recognized that all peoples had the right to self-determination and declared that immediate steps should be taken "in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations".

31. The applicability of the Declaration to South West Africa was reflected in resolutions adopted by the General Assembly from its fifteenth session on, as well as by the decision of the Assembly to transfer the tasks of the Special Committee for South West Africa to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

32. At its eighteenth session, in resolution 1899 (XVIII) of 13 November 1963, the Assembly urged all States to refrain from supplying arms and petroleum or petroleum products to South Africa and requested the Special Committee, *inter alia*, to consider the implications of the activities of the mining industry and the other international companies having interests in South West Africa, in order to assess their economic and political influence and their mode of operation. The Secretary-General was also requested by the Assembly

to continue his efforts to achieve the appointment of a United Nations Technical Assistance Resident Representative for South West Africa and to establish an effective United Nations presence in South West Africa.

33. The Assembly did not consider the question of South West Africa during its nineteenth session in 1964 owing to the special circumstances prevailing at that session.

34. At its twentieth session the Assembly, in resolution 2074 (XX) of 17 December 1965, among other things, endorsed the conclusions and recommendations of the Special Committee regarding the activities of the mining industry and other international companies and condemned the policies of financial interests operating in South West Africa which "mercilessly exploit human and material resources and impede the progress of the Territory and the right of the people to freedom and independence". The Assembly also requested all States to take immediate action to carry out the arms and petroleum embargo requested in resolution 1899 (XVIII).

35. In resolutions 1596 (XV), 1702 (XVI) and 1899 (XVIII), the General Assembly called the attention of the Security Council to the situation in the Territory. In resolution 1979 (XVIII), it requested the Council to consider the critical situation prevailing in South West Africa and, in resolution 2074 (XX), to keep watch over it. The Assembly variously described the situation as constituting "a serious threat", "which, if allowed to continue, would... endanger... international peace and security" and "critical".³

36. On 18 July 1966, the International Court of Justice rendered its final judgement in the case brought by Ethiopia and Liberia against South Africa. By the President's casting vote, the Court decided to reject the claims made by the two states on the grounds that they could not be considered to have established any legal right or interest appertaining to them in the subject-matter of the claims.

37. Following the decision of the Court, the General Assembly at its twenty-first session, by resolution 2145 (XXI) of 27 October 1966, terminated the Mandate, and placed South West Africa under the direct responsibility of the United Nations. The Assembly reaffirmed that South West Africa was a territory having international status and that it should maintain that status until independence. The Assembly also established an *Ad Hoc* Committee for South West Africa to recommend practical means by which South West Africa should be administered so as to enable the people of the Territory to exercise the right of self-determination and to achieve independence.

³ See paras. 222-239 below.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The responsibilities and functions of the United Nations in relation to the administration of South West Africa under its status as a Mandated Territory

1. THE QUESTION OF THE OBLIGATION OF SOUTH AFRICA TO ADMINISTER THE TERRITORY OF SOUTH WEST AFRICA IN ACCORDANCE WITH THE LEAGUE OF NATIONS MANDATE AND TO SUBMIT REPORTS ON ITS ADMINISTRATION OF THE TERRITORY TO THE UNITED NATIONS: RECOGNITION BY THE GENERAL ASSEMBLY OF THE RIGHT OF SOUTH WEST AFRICA TO INDEPENDENCE AND NATIONAL SOVEREIGNTY

38. As noted in the General Survey, the General Assembly had, by its fourteenth session in 1959, become increasingly critical of the manner in which the Government of South Africa was administering the Mandated Territory of South West Africa and particularly of the application in the Territory of the policy of *apartheid*.

39. Throughout the period under review, the General Assembly and its committees continued to denounce, in varying language, the policy of *apartheid*, and to call upon the Government of South Africa to rescind laws based on *apartheid*.

40. Thus, at its fourteenth session, the Assembly, in the fourth and sixth preambular paragraphs of resolution 1360 (XIV) of 17 November 1960, noted with grave concern that the administration of the Territory in recent years had been conducted increasingly in a manner contrary to the Mandate, the Charter of the United Nations, the Universal Declaration of Human Rights, the advisory opinion of the International Court of Justice and the resolutions of the General Assembly; it noted further the conclusion of the Committee on South West Africa that it was essential to the welfare and security of the peoples of South West Africa that the administration of the Territory be altered without undue delay.

41. At its fifteenth session, the Assembly, in operative paragraphs 1 to 3 of resolution 1568 (XV) of 18 December 1960, *inter alia*, regretted that the Government of South Africa had so far failed to respond to the repeated appeals of the General Assembly asking it to revise a policy which was infringing the fundamental rights and freedoms of the indigenous inhabitants of South West Africa and was imposing on them disabilities of various kinds, hindering their political, economic and social advancement. The Assembly deplored and disapproved the policy practised by the Government of South Africa contrary to its obligations under the international Mandate of 17 December 1920 for South West Africa and deprecated the application in the Territory of South West Africa, of the policy of *apartheid* and called upon the Government of South Africa to revoke or rescind immediately all laws and regulations based on that policy.

42. At the same session, the Assembly, in the fifth preambular paragraph of resolution 1596 (XV) of 7 April 1961, noted with grave concern the continuing deterioration in the situation in South West Africa resulting from the continued application, in violation

of the letter and spirit of the Mandate, of tyrannical policies and practices, such as *apartheid*, by the administration of South Africa in South West Africa.

43. Along the same lines, at its sixteenth session in the sixth preambular paragraph of resolution 1702 (XVI) of 19 December 1961, the Assembly noted with increased disquiet the progressive deterioration of the situation in South West Africa as a result of the ruthless intensification of the policy of *apartheid*.

44. At its eighteenth session, the Assembly in the ninth and tenth preambular paragraphs of resolution 1899 (XVIII) of 13 November 1963, again noted with deep concern "the continuing deterioration of the situation in South West Africa resulting from the intensification of the policies of *apartheid* which has been unanimously censured and categorically condemned by the General Assembly in resolutions 1761 (XVII) of 6 November 1962 and 1881 (XVIII) of 11 October 1963".⁴ The Assembly also observed with profound regret that the Government of South Africa had persistently and deliberately failed to fulfil its international obligations in the administration of the Mandated Territory of South West Africa.

45. At its twentieth session, by operative paragraph 4 of resolution 2074 (XX) of 17 December 1965, the Assembly condemned the policies of *apartheid* and racial discrimination practised by the Government of South Africa in South West Africa which constituted a crime against humanity.

46. In this connexion it may be noted that the policy of *apartheid* and its application in South West Africa was condemned at all sessions and by all representatives—except those of South Africa—who participated in the debates on the question of South West Africa. The application of *apartheid* in the Mandated Territory was also one of the principal charges brought against the Government of South Africa in the International Court of Justice in 1960 by the Governments of Ethiopia and Liberia as being in violation of the League Covenant and the Mandate.⁵

47. In the resolutions adopted after the fourteenth session, the Assembly was also highly critical of other actions of the South African administration in South West Africa and, as noted below, called upon the Government of South Africa to refrain from such acts.

48. By resolution 1564 (XV) of 19 December 1960, the Assembly having noted, on the basis of a report of the Committee on South West Africa,⁶ that the leaders of the South West Africa Peoples Organisation and other Africans in the Territory of South West Africa were being subjected to arbitrary imprisonment and deportation, expressed its deep concern regarding this disturbing development. It urged the Government of South Africa to instruct the competent authorities in

⁴ Resolutions adopted on the reports of the Special Political Committee regarding the policies of *apartheid* of the Government of the Republic of South Africa.

⁵ See para. 147 below.

⁶ G A (XV), Suppl. No. 12.

the Mandated Territory of South West Africa to cease the arbitrary imprisoning and deporting of Africans, including the leaders and members of the South West Africa Peoples Organisation, and to ensure the free exercise of political rights and freedom of expression for all sectors of the population.

49. At the same session, by resolution 1596 (XV) of 7 April 1961, operative paragraph 8, the Assembly took note with grave concern of reports of the terrorization of, and armed action against, the indigenous inhabitants and called upon the Government of South Africa to desist from such acts.

50. By the sixth preambular paragraph of resolution 1702 (XVI) of 19 December 1961, the Assembly noted the rapid expansion of South Africa's military forces and the fact that Europeans, both soldiers and civilians, were being armed and militarily reinforced for the purpose of oppressing the indigenous people.

51. At its seventeenth session, the Assembly, in resolution 1805 (XVII) of 14 December 1962, operative paragraph 7, urged the Government of South Africa to refrain from employing direct or indirect action involving the forcible removal of indigenous inhabitants from their homes or their confinement in any particular location and from using South West Africa as a base for the accumulation, for internal or external purposes, of arms or armed forces.

52. At its twentieth session, by operative paragraph 7 of resolution 2074 (XX) of 17 December 1965, the Assembly 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; and by operative paragraph 9 of the same resolution, it condemned the policy of the Government of South Africa "to circumvent the political and economic rights of the indigenous people of the Territory through a large-scale settlement of foreign immigrants in the Territory".

53. In resolutions adopted from the fifteenth session on, the Assembly recognized and supported the right of South West Africa to independence and national sovereignty in accordance with the principles contained in the Declaration on the Granting of Independence to Colonial Countries and Peoples set out in resolution 1514 (XV) of 14 December 1960.

54. Thus, at its fifteenth session the Assembly, in the seventh and eighth preambular paragraphs of resolution 1568 (XV) of 18 December 1960, considered that most of the Mandated Territories which were placed under the International Trusteeship System had acceded or would soon accede to national independence, and recognized that the Territory of South West Africa had an inalienable right to independence and to the exercise of full national sovereignty.

55. At the same session, in the first preambular paragraph of resolution 1596 (XV) of 7 April 1961, the Assembly made reference to the provisions of the 1960 Declaration, and in operative paragraph 1 of the resolution recognized and supported the passionate yearning of the people of South West Africa for freedom and the exercise of national independence and sovereignty.

56. By operative paragraph 1 of resolution 1702 (XVI) of 19 December 1961, the Assembly solemnly proclaimed the inalienable right of the people of South West Africa to independence and national sovereignty. In operative paragraph 1 of resolution 1805 (XVII) of 14 December 1962, the Assembly reaffirmed this solemn proclamation.

57. In resolution 1899 (XVIII) of 13 November 1963, the Assembly, in the fourth preambular paragraph, again made reference to the principles contained in the 1960 Declaration and by operative paragraph 2 of the resolution again solemnly reaffirmed the inalienable right of the people of South West Africa to self-determination and independence.

58. In resolution 1979 (XVIII) of 17 December 1963, the Assembly, in the second preambular paragraph, *inter alia*, referred to the 1960 Declaration, and in operative paragraph 1 condemned the Government of South Africa for its refusal to co-operate with the United Nations in the implementation of the Declaration and for its non-compliance with the General Assembly resolutions with regard to South West Africa.

59. By operative paragraph 3 of resolution 2074 (XX) of 17 December 1965, the Assembly again re-affirmed the inalienable right of the people of South West Africa to freedom and independence and by operative paragraph 10 again condemned the Government of South Africa for its refusal to co-operate with the United Nations in implementing the Declaration on the Granting of Independence to Colonial Countries and Peoples.

60. In connexion with the provisions referred to in paragraph 55 a suggested amendment⁷ submitted in the Fourth Committee that operative paragraph 1 of the draft resolution, which subsequently became General Assembly resolution 1596 (XV), should speak only of "self-determination" was rejected by the sponsors. It was stated that it had been made clear from the statements of petitioners that the people of South West Africa yearned for freedom and independence, and the paragraph in question merely recognized the fact. Moreover, the whole concept of the future of dependent peoples had changed during the last fifteen years and the present state of world thinking on the matter was reflected in the Declaration on the Granting of Independence to Colonial Countries and Peoples. Operative paragraph 5 of Assembly resolution 1514 (XV) of 14 December 1960, made no distinction of the kind suggested but called for steps towards "complete independence and freedom" for all peoples of all Territories which had not yet attained independence.⁸ The amendment was not pressed.

61. The situation in the Territory was described by the Assembly at its fifteenth session in the sixth preambular paragraph of resolution 1568 (XV) of 18 December 1960 as constituting a serious threat to international peace and security. By the sixth preambular paragraph of resolution 1596 (XV) the Assembly reiterated its concern that the situation constituted a serious threat to international peace and security and by operative para-

⁷ Amendment submitted by the United States. See G A (XV), 4th Com., 1110th mtg., para. 32.

⁸ G A (XV), 4th Com., 1113th mtg.: India para. 1.

graph 7 decided to call the attention of the Security Council to the situation which, if allowed to continue, would in the Assembly's view endanger international peace and security.

62. At its sixteenth, eighteenth and twentieth sessions by operative paragraph 5 of resolution 1702 (XVI), operative paragraph 6 of resolution 1899 (XVIII), operative paragraph 2 of resolution 1979 (XVIII) and operative paragraph 13 of resolution 2074 (XX), the Assembly, in effect, again called the attention of the Security Council to the situation in the Territory.⁹

63. With regard to its administration of the Territory, the Government of South Africa did not submit annual reports. Nor did it defend its basic policy of *apartheid* until the twenty-first session when the Assembly, by resolution 2145 (XXI) of 27 October 1966, terminated the Mandate. It continued to maintain that the Mandate had lapsed with the demise of the League of Nations and that it had no international responsibilities with regard to the administration of the Territory. Consequently, it did not recognize the right of the Assembly to exercise supervisory responsibilities with respect to its administration of South West Africa, and on those grounds refused to submit annual reports. In that connexion, the Committee on South West Africa, at its sixth session in 1959, requested the Government of South Africa to render an annual report. That request was refused on the grounds that the attitude of the South African Government had remained unchanged.¹⁰

64. The Government of South Africa in 1960 and 1961, however, transmitted to the Secretary-General certain official documents relating to South West Africa "on the clear understanding that it is being done on a voluntary basis without in any way implying recognition of the United Nations authority or an obligation on the part of the Union Government to provide such information".¹¹ These documents were transmitted following a statement made by the Minister for External Affairs at the fourteenth session of the Assembly in which he indicated, in effect, that if an arrangement were to be arrived at with the United Nations his Government would be prepared to make available all official reports issued by the South West Africa Administration. However, it would not be prepared to supply information in the sense of submitting reports as in the days of the League of Nations, to make a representative available in order to supply supplementary information or to be questioned on information already available since that would be in conflict with the juridical position taken by the Government of South Africa.¹²

65. Following the institution of contentious proceedings by Ethiopia and Liberia in the International Court of Justice, the representative of South Africa during the first part of the fifteenth session of the General Assembly, further claimed in the Fourth Committee, that a perusal of the text of the application to the Court

showed that if the Committee were to discuss the question of South West Africa, the discussion would traverse the whole sphere covered by the application submitted to the Court by the Governments of Ethiopia and Liberia. He therefore proposed that, since the substance of the contentious proceedings was *sub judice*, the issue should not be discussed in the Committee.¹³

Decision

This proposal was put to the vote by roll-call and rejected by 67 votes to 1, with 11 abstentions.¹⁴

66. The representative of South Africa then stated that his delegation could not be party to a discussion on matters which were the subject of juridical action in the International Court and consequently would not participate in the discussion.

67. Subsequently, the representative of South Africa declined invitations from the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to attend the meetings at which the question of South West Africa was considered because "apart from South Africa's attitude on the constitutional position, it considered that it was incumbent not only on the parties to the proceedings before the International Court of Justice but also upon the United Nations to comply with the *sub judice* principle".¹⁵

68. However, information was given by the representative of South Africa in the Fourth Committee, at the seventeenth, eighteenth and twentieth sessions of the Assembly on the establishment, proposals and implementation of certain of the recommendations of the Commission of Enquiry into South West African Affairs, 1962-1963 (Odendaal Commission). At the eighteenth session the representative of South Africa stated in this regard, that South Africa's position with respect to the advisory powers claimed by the United Nations remained unchanged and that the extent of the participation of the South African delegation in the debate would be governed by the *sub judice* rule. At the twentieth session, the representative of South Africa stated that, as the proceedings of the International Court of Justice had not yet ended, the South African delegation, in accordance with past practice, would not make any statement on aspects before the International Court of Justice, except in so far as those matters had already been submitted to the Court and had become public property.¹⁶

69. The Government of South Africa was also concerned to prove unsubstantiated certain of the particular charges brought against it and to demonstrate that the situation in the Territory did not constitute a threat to international peace and security.

⁹ G A (XV), 4th Com., 1049th mtg., paras. 40-51. See also *ibid.*, 1051st mtg. para. 7 and 1057th mtg., para. 15.

¹⁰ G A (XV), 4th Com., 1049th mtg., para. 57.

¹¹ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, chap. IV, paras. 31 and 32; G A (XIX), Annexes, No. 8 (Part I), A/5800/Rev.1, chap. IV, para. 77.

¹² G A (XVII), 4th Com., 1369th mtg., paras. 14 and 15; G A (XVIII), 4th Com., 1457th mtg., paras. 25-27; G A (XX), 4th Com., 1568th mtg., para. 42.

⁹ See paras. 222-239 below.

¹⁰ G A (XIV), Suppl. No. 12, annex 1.

¹¹ G A (XV), Suppl. No. 12, paras. 96-98; G A (XVI), Suppl. No. 12, para. 12.

¹² G A (XIV), 4th Com. 900th mtg., para. 16.

70. At the sixteenth session of the Assembly, after objecting, in the Fourth Committee, to discussion of the question of South West Africa on the grounds that it was *sub judice*, the representative of South Africa "categorically" denied charges appearing in the report of the Committee on South West Africa concerning the implementation of General Assembly resolutions 1568 (XV) and 1596 (XV),¹⁷ which he characterized as "blatantly false" and which, he stated, appeared in the Committee's report in the summary of the situation in South West Africa as presented by refugees, petitioners and other sources. He further stated that the accusations made by the Committee and by the General Assembly in resolution 1596 (XV), under which the Committee held its mandate, of an explosive situation in South West Africa, of a threat to international peace and security and of the terrorization of, and armed action against the indigenous population were preposterous and went far beyond the scope of the case pending before the International Court of Justice.

71. In the circumstances, he said, it was the intention of the Government of South Africa to invite three past Presidents of the General Assembly, in their personal capacity, to visit South West Africa to see for themselves whether there was any truth in the allegations relating to military terrorization, the existence of an explosive situation and planned extermination. They would be invited to report their views to the Government of South Africa which undertook to publish them in full.¹⁸

72. In this connexion, the Committee on South West Africa, had in its report stated its conviction, based upon the testimony of political refugees and other petitioners who appeared before it in Africa, that the continuing application of the *apartheid* policy in South West Africa and the continued defiance by the Government of South Africa of the authority of the United Nations over the Mandated Territory had created such deep-seated resentment among all Africans and such a tense situation that only intervention by the United Nations could prevent armed racial conflict in Africa. The Committee drew attention to the fact that the Mandatory Power had encouraged the arming of the European population of the Territory and had established military fortifications and large defence forces within the Mandated Territory. At the same time, the Mandatory Power, the Committee stated, had revised the integrated military programme of the Territory and South Africa to provide, among other things, for a Citizen Force of wartime strength and a speed-up in the production of arms and munitions.¹⁹

73. In reply to the statement of the representative of South Africa, it was noted that, while the representative of South Africa had questioned the truth of certain statements, he had not commented on more fundamental ones, for example, the results of the policy of *apartheid* in various fields. Politically, the indigenous inhabitants were deprived of basic rights and could not participate in managing their own affairs. Economically,

they had no part in the use of their country's mining, agricultural or maritime resources and their interests were entirely subordinated to those of the European colonists. Africans were confined to reserves; and in education they were not permitted to acquire more than elementary instruction and were prohibited from going abroad to complete their studies.

74. With regard to the denial by the representative of South Africa that the situation in the Territory was explosive, it was pointed out that the Committee had gone to Africa and found that all Africans were aware of the abnormal situation in South West Africa where the welfare and interests of the majority of the non-European population were subordinated to those of the white colonists, in flagrant violation of the Mandate. There was no doubt that the application of the policy of *apartheid* constituted a flagrant abuse of the sacred mission which South Africa had agreed to fulfil.²⁰

75. Subsequently, three draft resolutions were submitted relating to the intention of the Government of South Africa.

76. By the first draft resolution, in its revised text and as subsequently orally revised,²¹ the Assembly would (1) consider that no Member of the United Nations should agree to participate in studies or investigations on South West Africa decided upon unilaterally by the Government of South Africa until that Government had agreed to co-operate with any organ or committee which the General Assembly established for this purpose; (2) further urge any person connected with or delegated to the United Nations to refrain from participating in any study or investigation on South West Africa decided upon unilaterally by the Government of South Africa until that Government had complied with the conditions stated in the preceding paragraph; (3) solemnly remind the Government of South Africa that any initiative or attempt on its part, on any pretext whatsoever, to disregard the United Nations would be considered null and void by the United Nations; which, however, was prepared to act on any move made by that Government in full compliance with the United Nations resolutions on the Territory of South West Africa, which had so far been completely disregarded by the Government of South Africa.

77. Under the terms of the second draft resolution²² the General Assembly, *inter alia*, would decide that a study be undertaken of the question of the future of South West Africa by a Special Commission of five members to be appointed by the President of the General Assembly and would take note of the proposal of the Minister for Foreign Affairs of South Africa to set up an independent committee of three members to inquire and report on conditions in South West Africa. The General Assembly would also recommend that the Special Commission should take into account the recommendations of the Committee on South West Africa, the report of the independent committee of three and

¹⁷ G A (XVI), Suppl. No. 12 A.

¹⁸ G A (XVI), 4th Com., 1218th mtg., paras. 20, 21 and 32-34.

¹⁹ G A (XVI), Suppl. No. 12 A, para. 161.

²⁰ G A (XVI), 4th Com., 1218th mtg.: Philippines, para. 47.

²¹ A/C.4/L.711 and Corr. 1 and A/C.4/L.711/Rev. 1, submitted by Cuba, Guinea, Iraq, Mali, Morocco and Tunisia (see G A (XVI), Annexes, a.i. 47, A/5044, paras. 9 and 30).

²² A/C.4/L.712, submitted by the United Kingdom (see G A (XVI), Annexes, a.i. 47, A/5044, para. 20).

the judgment of the International Court of Justice when given.

78. This draft resolution was withdrawn, however, in favour of the third draft resolution. In the finally revised text of that draft²³ the General Assembly would, in effect, consider that any investigating body set up as a result of the suggestions of the Minister for Foreign Affairs of South Africa should be established subject to the following conditions: (a) that its members should be appointed by the President of the General Assembly in consultation with the Government of the Republic of South Africa; (b) that its terms of reference should enable it to make a thorough study of conditions in the Territory; (c) that it should be permitted to hear evidence from any inhabitants of South West Africa who wished to be heard; and (d) that it should report to the General Assembly and the Mandatory Power. The Assembly would also recommend that the Special Committee (for South West Africa) in addition to the other tasks assigned to it, also undertake a study of the ways and means to enable the Mandated Territory to assume full responsibilities of sovereignty and independence within the shortest possible time, taking into account the report of the investigating body and the judgement of the International Court of Justice when given.

79. The sponsor, *inter alia*, stated that his delegation was less concerned about the actual motives of the South African proposal than about the possibilities of deriving some advantage from it for the United Nations and for the people of the Territory. In the present case, the United Nations was not establishing an investigating body in deference to the wishes of South Africa. All it was doing was to act upon a suggestion of the Mandatory Power and to make it subject to conditions laid down by the United Nations. If the Mandatory Power refused to accept those conditions, the United Nations would have nothing more to do with an investigation which that Power was free to arrange on its own. If South Africa should go back on its word, the United Nations certainly could not be blamed. An on-the-spot investigation, if undertaken, could only serve to strengthen the position of the United Nations and help the International Court of Justice. The additional information gained thereby would not become useless because, up to the present, the United Nations had never had the benefit of first-hand knowledge gathered on the spot.

80. Opponents of the draft resolution saw no reason why the United Nations should be associated with the South Africa proposal. The draft resolution was not based on the premise that South Africa had clearly defined obligations towards the United Nations. In accepting the draft, the United Nations would be taking a decision similar to that taken in 1957 when it set up the Good Offices Committee through which the Government of South Africa had attempted to convince the United Nations of the need to partition the Territory. The South African Government had given no indication as to whether it would co-operate with the investigating body on the terms set forth in the draft resolution, and there was no point in establishing a new investigatory

body which would not be allowed to enter the Territory. In addition, the study proposed had already been carried out by the Committee on South West Africa.²⁴

Decision

This revised draft resolution was rejected by a roll-call vote of 41 to 26, with 26 abstentions.²⁵

81. Following the rejection of this draft resolution, the first draft resolution was withdrawn.

82. The rejected draft resolution referred to above was considered concurrently with a draft resolution subsequently adopted as resolution 1702 (XVI) whereby the Assembly established the Special Committee for South West Africa and requested it, in consultation with the Mandatory Power, to visit the Territory and carry out a number of objectives designed to effect a change in the administrative policies and prepare the Territory for independence.

83. The South African Government invited the Chairman and Vice-Chairman to visit the Territory for the purpose of "conducting discussions aimed at finding a way out of the present impasse" and on the understanding that the objectives relating to the administration would not be discussed.²⁶

84. At the seventeenth session the representative of South Africa further stated²⁷ in the Fourth Committee that in extending the invitation the South African Government had had in mind some of the more serious charges that had been levelled against it such as that international peace was being endangered, that a policy of genocide was being practised, that there was police terrorization and that the Territory was being militarized. He also made reference to a communiqué issued on 26 May 1962 in the names of the South African Prime Minister and Minister of Foreign Affairs of South Africa and the Chairman and Vice-Chairman of the Special Committee for South West Africa. This communiqué, he stated, refuted the three major allegations made against South Africa, although the Chairman had subsequently repudiated the communiqué.

85. In reply to the representative of South Africa, it was pointed out that the Special Committee for South West Africa had not acknowledged the validity of the alleged joint communiqué²⁸ and that, in any case, the main question was not the contents of the communiqué

²⁴ G A (XVI), 4th Com., 1244th mtg.: Yugoslavia, paras. 27-29; 1246th mtg.: Morocco, paras. 34-38; 1247th mtg.: United Arab Republic, pars. 9-14.

²⁵ G A (XVI), 4th Com., 1247th mtg.: para. 71.

²⁶ See paras. 204-212 below.

²⁷ G A (XVII), 4th Com., 1369th mtg., para. 18.

²⁸ The Chairman of the Special Committee for South West Africa in the letter transmitting the report of the Chairman and Vice-Chairman on their visit to South Africa and South West Africa to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples said the report made no mention of the alleged joint communiqué because, as explained by the Chairman of the Special Committee, the alleged communiqué was not an official act of the Committee or its Chairman and no one had been authorized by the Committee or the Assembly to enter or join in such a communiqué. The Committee therefore did not consider or recognize the communiqué as being anything official or of any binding effect whatsoever (G A (XVII), Suppl. No. 12, para. 19).

²³ A/C.4/L.713/Rev.3 submitted by Sweden (see G A (XVI), Annexes, a.i. 47, A/5044, para. 28).

but the established facts regarding conditions in the Territory and its administration which had been set out in United Nations reports since 1946 and the denial by the South African Government of South West Africa's right to self-determination and independence. The situation in South West Africa was a real threat to peace which had its roots in the policy followed by South Africa. The representative of South Africa in his statement had merely tried to divert the Committee's attention from the real problem.²⁹

86. At the twentieth session of the General Assembly, the Permanent Representative of South Africa stated in a letter dated 21 December 1965, addressed to the President of the General Assembly,³⁰ that resolution 2074 (XX) contained a number of groundless charges against his Government which had been included despite refutations made by his delegation in the Fourth Committee. In particular, his delegation registered regret at the "baseless assertions" made in operative paragraph 7 relating to the withdrawal of alleged bases and military installations in South West Africa. He referred, in this connexion, to the testimony of a military expert before the International Court of Justice that the Territory was "less militarized and more under-armed" than any territory he had seen in the world.

87. Earlier in the Fourth Committee, the representative of South Africa had, *inter alia*, refuted the charge reflected in operative paragraph 9 of resolution 2074 (XX)³¹ which had been derived, he stated, from allegations made by petitioners who had appeared before the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples that white immigrants were being settled in South West Africa at such a rate as to outnumber the non-whites there.³²

88. After the International Court of Justice had rendered its final judgement on the contentious proceedings brought by Ethiopia and Liberia against South Africa,³³ the representative of South Africa, in the plenary meetings of the General Assembly at its twenty-first session, contended that, in the light of new evidence, the 1950 advisory opinion of the Court, although not overruled, could not stand. He stated that, since the Court in 1966 had given no decision on the matter, it was therefore left an open question. He further stated that South Africa had always contended that the Mandate was no longer legally in force, and had never promised or agreed to United Nations supervision. Furthermore, even if it were accepted that the Mandate was still in existence, the General Assembly did not have the right to exercise supervisory responsibilities. Lastly, he asserted that South Africa's right to administer the Territory was not in any case derived from the Mandate, but from military conquest.³⁴

²⁹ For texts of relevant statements, see G A (XVII), 4th Com., 1369th mtg.: Somalia, para. 33; Yugoslavia, para. 47; 1370th mtg.: Brazil, para. 4; Cameroon, para. 18; Mali, para. 22; Togo, para. 3; Uganda, para. 5.

³⁰ G A (XX), Annexes, a.i. 69 and 70, A/6219.

³¹ See para. 52 above.

³² G A (XX), 4th Com., 1581st mtg., para. 42.

³³ See para. 153 below.

³⁴ G A (XXI), Plen., 1417th mtg., paras. 14-31; 1431st mtg., paras. 264-268; see also A/6480 (mimeographed).

89. The representative of South Africa further stated, in effect, that apart from legal considerations, the voting procedure of the General Assembly was entirely different from that of the League Council which was based on the rule of unanimity.³⁵ This circumstance had made possible the adoption of resolutions inspired by a particular political ideology which was especially dangerous to the well-being of the peoples of South West Africa: the idea that independence should be granted to dependent territories on the basis of a uniform prescription, namely, majority rule in a single political unit. The Government of South Africa was convinced that the application of this idea to South West Africa would be fatal to the well-being of the peoples concerned. Many had not been concerned about the well-being of the peoples of South West Africa or the merits of South Africa's administration, but their actions had in many instances been directed against South Africa itself. These considerations lay at the root of the difficulties which had made it impossible for Governments of South Africa, as a matter of policy, to submit to supervision by the United Nations.

90. However, when it came to voluntarily making information available, the position was much more fluid. The Government of South Africa had nothing to hide and in its relations with the United Nations had made a number of special efforts to find effective means of providing information and of achieving better understanding, on a purely voluntary basis, and without submission to supervisory jurisdiction.³⁶

91. In their general statements³⁷ at the twenty-first session of the Assembly, many representatives, while expressing regret and disappointment that the International Court of Justice had failed to pronounce itself on the substantive issues of the case brought before it by Ethiopia and Liberia against South Africa, nevertheless noted, as had the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in its report to the General Assembly at its twenty-first session,³⁸ that the 1966 judgement did not invalidate the earlier substantive advisory opinions of the Court which had left no room for any doubt regarding the obligations of South Africa under the Mandate and the supervisory powers of the United Nations with respect to the administration of the Territory. It was pointed out that the International Court of Justice in 1962 had clearly stated that its unanimous holding in 1950 continued to reflect its

³⁵ See paras. 127-128 below.

³⁶ G A (XXI), Plen., 1439th mtg., paras. 196-199.

³⁷ See, for example, G A (XXI), Plen., 1414th mtg.: Guinea, paras. 111-112; Iraq, paras. 24-26; Liberia, paras. 69-76; 1417th mtg.: Ethiopia, paras. 182-185; Philippines, para. 166; United Republic of Tanzania, para. 155; 1419th mtg.: Japan, paras. 157-161; Serra Leone, paras. 103-113; Turkey, paras. 222-227; 1425th mtg.: Greece, paras. 109-115; Upper Volta, para. 50; 1427th mtg.: Central African Republic, para. 51; Somalia, paras. 13 and 14; 1429th mtg.: China, para. 70; 1431st mtg.: Congo (Brazzaville), para. 13; Italy, paras. 190 and 191; Jamaica, paras. 57-59; Syrian Arab Republic, para. 114; Tunisia, paras. 23-39; Venezuela, para. 135; 1433rd mtg.: Argentina, para. 105; Ecuador, paras. 16 and 17; Liberia, paras. 122 *et seq.*; 1439th mtg.: Israel, para. 91; New Zealand, paras. 107 and 108.

³⁸ G A (XXI), Annexes, a.i. 23/Addendum, A/6300/Rev.1, chap. IV, para. 380; annex, para. 29.

opinion and had also confirmed the obligation of South Africa to submit to international supervision. Reference was also made to the finding of the International Court that the Mandate still existed and that if the obligations had lapsed, then South Africa's authority would also have lapsed.³⁹

92. It was also stressed,⁴⁰ in effect, that the Government of South Africa had no right of sovereignty over South West Africa and that any rights and responsibilities it possessed were derived from the Mandate and were administrative in nature.

93. The Government of South Africa had to choose; either the Mandate existed, along with South Africa's international accountability thereunder, or the two did not exist, individually or collectively; if both the Mandate and the international accountability thereunder did not exist, then South Africa's right to administer the Territory was based only on "military occupation". It had to be either of these postulates, not both.

94. As to the claim that South Africa derived its right to administer the Territory from military conquest, it was stated that this assertion was to ignore the history of the establishment of the Mandates. Such a thesis proved to be unacceptable in the new era which had dawned at the close of the First World War; it would have been rejected by the League as being in total conflict with the principles of the Mandates System, and had become no more tenable with the passage of time.⁴¹ Such a contention could not be justified either in fact or in law. Any attempt by South Africa to assert such a right could not fail to have the gravest consequences for peace.⁴²

95. With regard to the charge that South Africa was violating its sacred trust by applying the policy of *apartheid* which was alleged to be inhuman, unjust and oppressive towards the indigenous inhabitants and which allegedly denied them any progress towards self-determination, which was, in effect, the fundamental question, the representative of South Africa stated⁴³ that the population of South West Africa was not homogeneous and that the only realistic method of promoting the well-being and progress of the different ethnic groups and their advancement towards self-determination was that of separate and parallel development. This policy aimed at the realization of self-determination, not in a unitary system, but on the basis of political and territorial separation between the groups. Provision was made, as far as practicable, for a separate area for the exclusive use of each group. Within its homeland, the interests of each group were protected, with special emphasis on economic and educational development, and it was encouraged and assisted in progress towards maturity and self-determination. Since 1920, much had been achieved in promoting the material and moral well-being and the social progress of the

inhabitants of South West Africa, and particularly of the indigenous people.

96. These developments provided a sound basis for progress in the political sphere. Gradually, the traditional systems could be adapted to conform with modern ideas. The Odendaal Commission had made proposals providing for a large measure of self-government to be granted to each group, which had been accepted in principle by the Government of South Africa. This was a positive step in the direction of self-determination for these peoples.

97. There was no substance to the reasons advanced for demanding immediate independence for South West Africa by way of a rule of thumb application of the 1960 Declaration. The Government of South Africa would welcome the attainment of independence but must be ever mindful of whether the different groups had, in fact, reached a stage where they could stand by themselves. The Government of South Africa could not terminate its guardianship and leave the peoples with the cold comfort of political independence. It would be an abandonment of the sacred trust.

98. Upon eventual emancipation, all measures of control would disappear and each group would be able to decide its own destiny.

99. The representative of South Africa further stated that independence for South West Africa, under an imposed system which treated South West Africa as a political unit, on a basis of majority rule, would mean that one or two groups would by sheer force of numbers dominate the smaller groups, including the most highly developed ones and the least developed; the economy would almost certainly collapse and group antagonisms would come to the fore with the danger of warfare between the indigenous groups.

100. The probable consequences of chaos and collapse were plainly foreseeable to all in South West Africa as well as in South Africa, and the expected reaction to outside attempts to impose a dangerous and unwanted system would be one of firm and determined resistance.

101. All other representatives who spoke on the matter in the General Assembly at its twenty-first session agreed that the Government of South Africa had failed to discharge the obligations it had accepted under the Mandate, in effect, to accept the supervisory authority of the international community now represented by the United Nations over its administration, to submit reports and what was more important, "to promote to the utmost the material and moral well-being and the social progress of the inhabitants" of South West Africa as required by article 2 of the Mandate. Further, South Africa had ignored repeated condemnations by the General Assembly of the *apartheid* system and had continued to apply and to extend the system in violation of its obligations under the Mandate and the Charter.

102. Among the many statements again denouncing South Africa's administrative policies and the policy of *apartheid*, it was stated that it was a melancholy comment on South Africa's achievements in South West Africa that, in more than forty years of its trust, not one of the native inhabitants had ever been qualified in law, medicine or engineering, or even in dentistry or

³⁹ For Court's ruling, see paras. 151 and 152 below.

⁴⁰ See, for example, G A (XXI), Plen., 1414th mtg.: Pakistan, paras. 88-90 and 109; 1417th mtg.: Ethiopia, para. 184; 1439th mtg.: Liberia, paras. 251-253; 1448th mtg.: Poland, para. 79, Uruguay, paras. 87, 145 and 146.

⁴¹ G A (XXI), Plen., 1439th mtg.: New Zealand, para. 110.

⁴² *Ibid.*, 1433rd mtg.: Liberia, para. 215. See also, *ibid.*, 1439th mtg.: Liberia, paras. 254 and 266-273.

⁴³ *Ibid.*, 1417th mtg., paras. 32 *et seq.*

registered nursing. None might join a labour or trade union or have the right of collective bargaining; none could be employed in a skilled occupation; none could move from place to place without official permission; none could reside in an area designated as white and none had a voice in the Government or in the administration of local affairs.⁴⁴ The Government of South Africa had deprived the people of South West Africa of fundamental rights and freedoms, had introduced the system of *apartheid* and had subjected the indigenous population to South Africa's tradition of racial discrimination. The policy of the Republic of South Africa in South West Africa was a crime against humanity.⁴⁵ The policy and practice of *apartheid* was incompatible with the sacred trust confided to the Mandatory Power and the concept of the dignity and worth of the human person.⁴⁶ The Government of South Africa without shame had fostered the abominable practice of *apartheid*, which had been condemned by world public opinion.⁴⁷ In answer to the South African claim that there was no repression in the Territory, it was pointed out that there existed a crushing weight of documents and evidence that spoke a different language from that of South Africa. And even if this were not so, the mere fact that in the Territory of South West Africa the policy of *apartheid* ruled or even might be applied—a policy condemned over and over again by the United Nations—would be sufficient justification for refusing the South African claim.⁴⁸ *Apartheid* was completely against the inherent dignity of man. Such a policy carried within it the seeds of conflict which endangered the whole concept of multi-racialism throughout the African continent.⁴⁹ The Mandatory Power had not fulfilled its obligations; indeed, it had even gone so far as to impose on the Territory the abhorrent system of racial segregation known as *apartheid*.⁵⁰ By extending to that Territory the policy of *apartheid* the Pretoria Government had manifestly failed in the fundamental obligation contained in article 2 of the Mandate.⁵¹ The Government of South Africa had established a rigid system of racial domination and denied political and economic rights to the majority of the people of South West Africa in two-thirds of the Territory and had denied the rights to all but white South Africans to live, move and work in 87 per cent of their own country without specific, individual permission from the Government.⁵² Government policies based on racial superiority or *apartheid*, were incompatible with the civilized way of life championed by the community of nations.⁵³ In South West Africa was found a continued, conscious suppression of human rights as part of government policy. South Africa had betrayed the sacred trust of civilization with regard to South West Africa.⁵⁴

⁴⁴ G A (XXI), Plen., 1419th mtg.: Ceylon, para. 47.

⁴⁵ *Ibid.*, 1425th mtg.: USSR, para. 129.

⁴⁶ *Ibid.*, 1429th mtg.: China, para. 73.

⁴⁷ *Ibid.*, 1431st mtg.: Syrian Arab Republic, para. 111.

⁴⁸ *Ibid.*, 1433rd mtg.: Ecuador, para. 21.

⁴⁹ *Ibid.*, Canada, para. 38.

⁵⁰ *Ibid.*, 1439th mtg.: United States, para. 73.

⁵¹ *Ibid.*, France, para. 146.

⁵² *Ibid.*, 1448th mtg.: United Kingdom, para. 55.

⁵³ *Ibid.*, Uruguay, para. 70.

⁵⁴ *Ibid.*, 1451st mtg.: Sweden, paras. 36 and 40.

103. It was concluded by one representative that it must be obvious to all Members of the General Assembly, including South Africa itself, that the abhorrent racial policy and practices pursued by South Africa, universally condemned, were totally incompatible with civilized standards of government action. The terms in which Members of the Assembly had expressed their revulsion towards *apartheid* showed how gravely this policy violated the conscience of mankind. There was not, and could not be, any plausible or legal doubt that such a policy was incompatible with the obligation of the Mandatory Power to promote the welfare and social progress of the inhabitants. There was no Member of the Assembly, other than South Africa itself, which was prepared to stand before the forum of the world and seriously contend that there was any reasonable doubt whether the policy of *apartheid* was repugnant to the Mandate.⁵⁵

104. Representatives noted also that South Africa had further failed to promote in South West Africa the principles contained in the Declaration on the Granting of Independence to Colonial Countries and Peoples. In that connexion, it was pointed out that the principle of self-determination and the achievement of independence had inherently constituted one of the basic principles of the Mandates System. The principle had been widely accepted when the Charter was drafted and had been ultimately codified in the 1960 Declaration.

105. Among statements denouncing the Government of South Africa for not having prepared the Territory for independence it was observed that it was very difficult to accept the doubtful argument that special circumstances relating to South West Africa could be invoked, as in some way justifying the denial of independence to the Territory. It must therefore be concluded that there had been in the past and still was in the mind of the Mandatory Power a definite political will to keep the population of the Territory from the ranks of the free and sovereign nations.⁵⁶

106. Representatives also noted as had the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in its report to the General Assembly at its twenty-first session,⁵⁷ that South Africa had consistently attempted to annex South West Africa and that currently it was preparing to partition the Territory into separate racial and ethnic areas on the basis of the recommendations of the Odendaal Commission, the full implementation of which would destroy the territorial integrity of South West Africa.⁵⁸

Decisions

By the second preambular paragraph of resolution 2145 (XXI)—the resolution by which it terminated the Mandate—the General Assembly recalled the advisory opinion of the International Court of Justice of

⁵⁵ *Ibid.*, 1433rd mtg.: Liberia, para. 211.

⁵⁶ *Ibid.*, 1431st mtg.: Italy, para. 181.

⁵⁷ G A (XXI), Annexes, a.i. 23/Addendum, A/6300/Rev.1, chap. IV.

⁵⁸ See also paras. 312-315 below.

11 July 1950,⁵⁹ accepted by the General Assembly in its resolution 449 A (V) of 13 December 1950, and the advisory opinions of 7 June 1955⁶⁰ and 1 June 1956⁶¹ as well as the judgment of 21 December 1962,⁶² which had established the fact that South Africa continued to have obligations under the Mandate which was entrusted to it on 17 December 1920 and that the United Nations as the successor to the League of Nations had supervisory powers in respect of South West Africa. By operative paragraph 3 of the same resolution, the Assembly declared that South Africa had failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa and had, in fact, disavowed the Mandate.⁶³

2. THE QUESTION OF THE RIGHT OF PETITION BY THE PEOPLE OF SOUTH WEST AFRICA

107. In the course of its seventh session and for all of its eighth session, the Committee on South West Africa decided to suspend the application of rule XXVI of its alternate rules of procedure relating to petitions and to accept petitions sent from within the Territory immediately as validly received. In this connexion, it may be recalled that under the rules of procedure of the Committee, which were based on those of the Mandates Commission, such petitions were required to be sent through the Government of South Africa, but due to the lack of co-operation on the part of the Government of South Africa in transmitting petitions, the Committee had applied, at earlier sessions, alternate rule XXVI whereby the petitions were returned to the petitioners for resubmission through the South African Government with the proviso that if after a period of two months they had not been transmitted by that Government, they would be accepted as validly received.

108. The decisions to suspend the application of alternate rule XXVI were taken by the Committee without prejudice to the obligation of the Mandatory Power to transmit to the United Nations any petitions which it received from sources within South West Africa.

109. The Committee took those decisions because petitioners, in attempting to resubmit their petitions through the South West African Administration, had received letters to the effect that the Administration was in agreement with the views of the Government of South Africa which could not recognize any right of petition to the United Nations on the part of the inhabitants of South West Africa, nor any obligation on the

part of the Government of South Africa to transmit petitions to the Organization.

110. In that connexion, the Committee at its seventh session recalled that, at its sixth session, it had recorded its opinion that the Government of South Africa by refusing to transmit a petition was acting contrary to the obligations it had assumed under Article 2 (2) and (5) of the Charter. It had cited this as one example of the manner in which South Africa was failing to discharge its obligations as a Member State.

111. The Committee noted that there were also other developments which appeared to be prejudicial to the free exercise of the right of petition. The Committee associated the loss of employment, deportation and house-arrest of one petitioner and the removal of two other petitioners from their respective reserves with the fact that they had petitioned the United Nations.⁶⁴

112. In its report covering its eighth session, submitted to the General Assembly at its sixteenth session, the Committee again stated that it had been informed by petitioners of the deportation of a petitioner, the confinement of a second petitioner and the questioning of a third petitioner by the Security Police, after they had petitioned the United Nations.⁶⁵

113. The Special Committee for South West Africa, having noted no change in the attitude of the Government of South Africa, also decided at its twenty-fourth meeting on 24 August 1962, to regard all petitions as validly received.⁶⁶

114. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples did not adopt any special rules with respect to petitions concerning South West Africa, and written petitions were, in effect, immediately accepted as validly received.

115. The Committee on South West Africa, the Special Committee for South West Africa and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as the Fourth Committee, all granted hearings to petitioners from South West Africa.

116. In this connexion it will be recalled, as explained in *Supplement No. 2 Repertory*,⁶⁷ that in its advisory opinion of 1 June 1956⁶⁸ the International Court of Justice was of the opinion that the grant of oral hearings to petitioners by the Committee on South West Africa would be consistent with the advisory opinion of the Court of 11 July 1950,⁶⁹ and that by resolution 1047 (XI) of 23 January 1957, the General Assembly had accepted and endorsed that opinion and had authorized the Committee on South West Africa to grant hearings to

⁵⁹ International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950*, p. 128.

⁶⁰ South West Africa — Voting procedure, Advisory Opinion: ICJ, *Reports 1955*, p. 67.

⁶¹ Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion: ICJ, *Reports 1956*, p. 23.

⁶² South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment: ICJ, *Reports 1962*, p. 319.

⁶³ For full text of the G A resolution 2145 (XXI), see para. 352 below.

⁶⁴ G A (XV), Suppl. No. 12, paras. 47-55.

⁶⁵ G A (XVI), Suppl. No. 12, paras. 18-92.

⁶⁶ G A (XVII), Suppl. No. 12, para. 42.

⁶⁷ See vol. III, under Article 80, paras. 38-58.

⁶⁸ Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion: ICJ, *Reports 1956*, p. 23.

⁶⁹ International status of South West Africa, Advisory Opinion, ICJ, *Reports 1950*, p. 128.

petitioners. It will also be recalled that the Fourth Committee itself had already decided at the fourth session of the Assembly to grant a hearing to a petitioner.⁷⁰

117. During the period under review, representatives of South Africa again objected in the Fourth Committee to the hearing of petitioners on the grounds that the United Nations Charter contained provision for the acceptance and examination of petitions only in the case of Trust Territories, and South West Africa was not a Trust Territory, and that if the United Nations had inherited any rights in that respect from the League of Nations those rights could obviously not be broader in scope than those possessed by the League of Nations whose Permanent Mandates Commission clearly had no authority to grant hearings. There was, therefore, no foundation for the theory that the Fourth Committee had the right to hear petitioners on the subject of South West Africa.

118. Further, although the General Assembly in authorizing the Committee on South West Africa to hear petitioners had based its action on the authority of the International Court, the Court had simply handed down an opinion, an opinion which the Government of South Africa did not accept.

119. After the Governments of Ethiopia and Liberia had brought contentious proceedings against South Africa in 1960 in the International Court, it was also claimed by representatives of South Africa that the hearings would violate the *subjudice* principle.⁷¹

120. From its fourteenth session in 1959 to its twenty-first session in 1966, the General Assembly adopted ten resolutions concerning petitions and communications relating to South West Africa. Six of the resolutions—1356 (XIV) of 17 November 1959, 1563 (XV) of 18 December 1960, 1804 (XVII) of 14 December 1962, 1900 (XVIII) of 13 November 1963, 2075 (XX) of 17 December 1965 and 2146 (XXI) of 27 October 1966—were in general terms and adopted on the basis of draft resolutions proposed by the Committee on South West Africa, the Special Committee for South West Africa or the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. In these resolutions the General Assembly having noted that the matters raised by the petitioners had been considered by the relevant Committee, drew the attention of the petitioners to the report and observations of the Committee concerned regarding conditions in the Territory and to the action that had been taken thereon.

121. Four of the resolutions related to specific matters raised by petitioners. By resolution 1357 (XIV) of 17 November 1959, concerning the Hoachanas Native Reserve, which in its draft form had been recommended by the Committee on South West Africa, the Assembly, *inter alia*, urged the Government of South

Africa to desist from continuing to carry out the removal of residents of the Reserve, to investigate the claims of the Rooinasie Namas to the original area of Hoachanas, and to inform the United Nations on the measures taken.

122. Under resolution 1358 (XIV) of 17 November 1959, which had also been submitted as a draft by the Committee on South West Africa, the Assembly, *inter alia*, expressed the opinion that the withholding or withdrawal from a qualified South West African student of a passport for the purpose of studying abroad was not only a direct interference in the educational and general advancement of an individual but a hindrance to the educational development of the Territory. The Assembly considered the withdrawal of the passport as an act of administration contrary to the Mandate for South West Africa and expressed the hope that the Government of South Africa would reconsider its decision.

123. Resolution 1567 (XV) of 18 December 1960 concerned disturbances which had taken place in the Windhoek Native Location on 10-11 November 1959, resulting in the death of eleven Africans and injury to others. These disturbances were brought to the attention of the Fourth Committee at the fourteenth session by petitioners during the oral hearings.⁷² The Fourth Committee referred the statements of the petitioners to the Committee on South West Africa which accordingly met, from 16 to 21 December 1959, when it heard further oral statements and considered a number of petitions relating to the incident.

124. The Committee continued to keep the situation under consideration during its seventh session in 1960. In view of the seriousness of the situation it devoted a major part of the political section of its report to the General Assembly at its fifteenth session to the disturbances in Windhoek and recommended a draft resolution to the General Assembly on which resolution 1567 (XV) was based.⁷³

125. By resolution 1567 (XV), the Assembly (1) expressed deep regret at the action taken by the police and soldiers in the Windhoek Native Location on the night of 10 to 11 December 1959 against residents of the Location, resulting in the death of eleven Africans and many other casualties; (2) deplored the fact reported by petitioners that the Mandatory Power had employed such means as deportations, dismissals from employment, threats of such action and other methods of intimidation to secure the removal of residents of the Windhoek Location to Katutura despite the continued opposition of the residents to their removal; (3) noted with deep concern that the situation remained critical; (4) urged the Mandatory Power to refrain from the use of direct or indirect force to secure the removal of Location residents; (5) requested the Mandatory Power to take steps to prosecute and punish the civilian and military officers responsible for the death of eleven Africans and many other casualties in the Windhoek Native Location and to provide adequate compensation to the families of the victims; and (6) drew the attention of the Mandatory Power to the recommendations of

⁷⁰ *Repertory*, vol. IV, under Article 80, para. 30. See also Suppl. No. 1, vol. II, under Article 80, paras. 40-42.

⁷¹ G A (XIV), 4th Com., 884th mtg., paras. 2-12; G A (XV), 4th Com., 1004th mtg., para. 2; 1049th mtg., paras. 39-51; 1051st mtg., para. 2; 1098th mtg., para. 8; G A (XVI), 4th Com., 1158th mtg., para. 3; G A (XVII), 4th Com., 1330th mtg., para. 5; G A (XVIII), 4th Com., 1434th mtg., para. 2; G A (XX), 4th Com., 1518th mtg., para. 11.

⁷² GA (XIV), 4th Com., 1001st mtg., paras. 69-73.

⁷³ GA (XV), Suppl. No. 12, paras. 138-229.

the Committee on South West Africa concerning the measures which should be taken to alleviate the tension and unrest in the Windhoek area, and in particular to the recommendation that housing developments in urban areas of the Territory should be carried out in accordance with the freely expressed wishes of the people concerned.

126. By resolution 1703 (XVI) of 19 December 1961, also proposed by the Committee on South West Africa, the Assembly urgently called upon the Government of South Africa and the Administration of South West Africa immediately to desist from further acts of force in the Mandated Territory designed either to suppress African political movements or to enforce *apartheid* measures imposed by law and administrative rulings; to refrain from vexatious prosecutions of Africans on political grounds, and to ensure the free exercise of political rights and freedom of expression to all sections of the population. The Assembly also drew the attention of the petitioners concerned to the report of the Committee on South West Africa on conditions in the Territory and to the special report of the Committee on the implementation of General Assembly resolutions 1568 (XV) of 18 December 1960 and 1596 (XV) of 7 April 1961 submitted to the Assembly at its sixteenth session, as well as to the action taken on the reports by the Assembly.

3. THE QUESTION OF THE VOTING PROCEDURE IN THE GENERAL ASSEMBLY ON QUESTIONS RELATING TO REPORTS AND PETITIONS CONCERNING SOUTH WEST AFRICA

127. By resolution 934 (X), the General Assembly having noted that, in its advisory opinion⁷⁴ of 7 June 1955, the International Court of Justice was unanimously of the opinion that the rule⁷⁵ that decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa should be regarded as important questions within the meaning of Article 18 (2) of the Charter was a correct interpretation of the advisory opinion⁷⁶ of the Court of 11 July 1950, accepted and endorsed the advisory opinion of 7 June 1955.

128. In that connexion it may be noted that all decisions on the question of South West Africa taken during the period under review were adopted by a two-thirds majority of the Members present and voting as required under Article 18 (2).⁷⁷

129. Reference to the advisory opinion of the International Court was made at the twenty-first session of the General Assembly by the representative of South Africa⁷⁸ in explaining why his Government could not accept the supervisory authority of the United Nations over its administration of South West Africa.

⁷⁴ South West Africa—Voting Procedure, Advisory Opinion: ICJ, *Reports 1955*, p. 67.

⁷⁵ Special rule F adopted under G. A. resolution 844 (IX). See also *Rules of Procedure of the General Assembly* (United Nations publication, Sales No.: 68.I.), annex III, special rule F.

⁷⁶ International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950*, p. 128.

⁷⁷ See also this *Supplement* under Article 18, paras. 36-38.

⁷⁸ See para. 89-above.

4. THE QUESTION OF THE OBLIGATION OF SOUTH AFRICA TO ACCEPT THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

130. As referred to in the *Repertory*,⁷⁹ the International Court of Justice in its advisory opinion of 11 July 1950 referred to article 7 of the Mandate⁸⁰ concerning the submission of disputes to the International Court of Justice. The Court stated that:

“Having regard to Article 37 of the Statute of the International Court of Justice, and Article 80, paragraph 1, of the Charter, the Court is of opinion that this clause in the Mandate is still in force and that, therefore, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court according to those provisions.”⁸¹

This opinion of the Court was accepted by the General Assembly in resolutions 449 A (V) and 749 A (VIII).

131. As explained in *Repertory Supplement No. 2*⁸² the General Assembly by resolution 1060 (XI), of 26 February 1957 requested the Committee on South West Africa, to study what legal action was open to the organs of the United Nations, or to the Members of the United Nations, or to the former Members of the League of Nations, acting either individually or jointly, to ensure that the Union of South Africa fulfilled the obligations assumed by it under the Mandate, pending the placing of the Territory of South West Africa under the International Trusteeship System.

132. The Committee had accordingly submitted a special report⁸³ on this question to the General Assembly at its twelfth session. In the report, the Committee, among other things, concluded that since Article 34 of the Statute of the International Court of Justice provided that only States might be parties in cases before the Court, organs of the United Nations could not be parties to, nor could they institute, proceedings of a contentious character in which binding judgements could be rendered.⁸⁴

133. Opinion was divided in the Committee on whether Members of the United Nations could bring a contentious case in relation to the Mandate against the Government of South Africa, but the Committee stated that there appeared to be little doubt that the right to invoke article 7 of the Mandate was enjoyed by those former Members of the League of Nations which were Members at the time of the dissolution of the League and were now Members of the United Nations, or were otherwise parties to the Statute of the Court.

134. For the article to apply, there had to be a dispute between the Mandatory Power and such for-

⁷⁹ See vol. IV, under Article 80, para. 33.

⁸⁰ The relevant clause of article 7 of the Mandate states: “The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiations shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations”.

⁸¹ International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950*, p. 138.

⁸² See vol. III, under Article 80, paras. 61-75.

⁸³ G A (XII), Suppl. No. 12 A.

⁸⁴ *Ibid.*, paras. 17 and 18.

mer Members of the League which could not be settled by negotiation and which related to the interpretation or application of the Mandate. The Committee considered that the dispute could be of any nature since article 7 did not contain any restrictive words in this connexion, but the dispute must in every case relate to the interpretation or application of the Mandate or to the effect of the Mandate as a whole.

135. The Committee further noted that in the event of a dispute concerning the Court's jurisdiction over any contentious case brought before it, the Court had under Article 36 (6) of its Statute the power to settle the issue by its own decision. There was nothing in article 7 of the Mandate or the Statute of the Court which would prevent former Members of the League from acting jointly as well as individually.⁸⁵

136. The General Assembly at its twelfth session, by resolution 1142 B (XII) of 25 October 1957 requested the Committee to consider further the question of securing from the International Court of Justice advisory opinions with regard to the administration of the Territory, and to make recommendations concerning acts of the Administration which might usefully be referred to the Court as to their compatibility or otherwise with Article 22 of the Covenant of the League of Nations, the Mandate for South West Africa and the Charter of the United Nations. The Committee accordingly submitted a report⁸⁶ in which it drew up a list of acts of the Administration which, in its opinion, were technically susceptible of forming the subject of requests for advisory opinions from the International Court of Justice. They fell into two categories, relating respectively to the international status of the Territory and to the moral and material well-being and social progress of the inhabitants.

137. At its thirteenth session the General Assembly, after examining the report, decided by resolution 1247 (XIII) of 30 October 1958 to resume further consideration of the question of legal action at its fourteenth session.

138. Subsequently, at its sixth session the Committee on South West Africa decided to establish a sub-committee to make "further studies on legal action to ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of the Territory of South West Africa". The Committee took note of the report which the Sub-Committee had submitted to it,⁸⁷ and decided to bring it to the attention of the General Assembly. This report included, *inter alia*, a review of the two earlier reports of the Committee and examples of the questions which might be submitted to the International Court. It also contained relevant background material.

139. The General Assembly at its fourteenth session thus had three studies before it concerning the question of legal action to be taken to ensure that the Government of South Africa fulfilled the obligations assumed by it under the Mandate.

140. Following the general debate in the Fourth Committee a draft resolution⁸⁸ was submitted whereby the General Assembly would draw the attention of Member States to the conclusions of the special report of the Committee on South West Africa⁸⁹ on the legal action open to Member States to refer any dispute with the Union of South Africa concerning the interpretation or application of the Mandate for South West Africa to the International Court of Justice for adjudication in accordance with article 7 of the Mandate, read in conjunction with Article 37 of the Statute of the International Court of Justice.

141. An amendment⁹⁰ to the draft resolution was submitted whereby, instead of drawing the attention of Member States to the conclusions of the Committee on South West Africa, the General Assembly would request the Committee to study further the question of legal action, paying particular attention to the types and possibilities of action that might be taken by the United Nations, as well as to the nature and forms of any proceedings that might be instituted before the International Court. The Assembly would also place the question of legal action as a separate item on the provisional agenda of its fifteenth session. The amendment was, however, withdrawn by its sponsors, in deference, they explained, to the supporters and sponsors of the original draft resolution, among whom were African and Asian delegations which felt very close to the problem.⁹¹

Decision

The draft resolution was adopted⁹² in the Fourth Committee by a roll-call vote of 52 to 4 with 17 abstentions, and subsequently by the General Assembly as its resolution 1361 (XIV) of 17 November 1959.

142. In its report to the General Assembly at its fifteenth session⁹³ the Committee on South West Africa drew the attention of the Assembly to a resolution adopted by the Second Conference of Independent African States, held at Addis Ababa in June 1960. This resolution, after recalling General Assembly resolution 1361 (XIV), concluded that "the international obligations of the Union of South Africa concerning the Territory of South West Africa should be submitted to the International Court of Justice for adjudication in a contentious proceeding" and noted that "the Governments of Ethiopia and Liberia have signified their intention to institute such a proceeding". The Committee commended to the General Assembly this intention on the part of the Governments of Ethiopia and Liberia as one of the practical approaches for the implementation of resolution 1361 (XIV).

143. At the first part of the fifteenth session of the General Assembly, the representative of Liberia inform-

⁸⁸ A/C.4/L.596 and Add.1, submitted by Ethiopia, Ghana, Guinea, Haiti, Jordan, Liberia, Libya, Morocco, Pakistan, Philippines, Saudi Arabia, Sudan, Tunisia and United Arab Republic. Adopted without change as G A resolution 1361 (XIV).

⁸⁹ G A (XII), Suppl. No. 12 A.

⁹⁰ A/C.4/L.600, submitted by Colombia and Iran (see G A (XIV), Annexes, a.i. 38, A/4272, para. 35).

⁹¹ G A (XIV), 4th Com., 932nd mtg.: Iran, para. 5.

⁹² G A (XIV), 4th Com., 932nd mtg., para. 13.

⁹³ G A (XV), Suppl. No. 12, paras. 26 and 27.

⁸⁵ *Ibid.*, paras. 32-36.

⁸⁶ G A (XIII), Suppl. No. 12, pp. 6-8.

⁸⁷ A/AC.73/2 (mimeographed).

ed the Fourth Committee that the Governments of Ethiopia and Liberia had instituted contentious proceedings relating to the obligations assumed by the Government of South Africa under the Mandate against that Government in the International Court of Justice.⁹⁴

144. Asked in the Fourth Committee by various representatives whether the Government of South Africa would accept and abide by the ruling of the International Court when given, the representatives of South Africa declined to reply on the grounds that the matter was *sub judice*.⁹⁵ In a statement made in the South African House of Assembly on 21 January 1963 however, the Prime Minister, while indicating that the Government of South Africa would reply in the International Court to the allegations made by the Governments of Ethiopia and Liberia, added that this "should, however, not be construed as implying a change in the attitude which it has consistently held in regard to the South West Africa issue, namely that the International Court has no jurisdiction".⁹⁶

145. Following upon the debate at the first part of the fifteenth session, a draft resolution⁹⁷ was submitted in the Fourth Committee, whereby in the revised text the General Assembly would (1) note with approval the observations of the Committee on South West Africa concerning the administration of the Territory as set out in that Committee's report⁹⁸ and find that "the Government of the Union of South Africa had failed and refused to carry out its obligations under the Mandate"; (2) conclude that the dispute which had arisen between Ethiopia, Liberia and other Member States on the one hand, and the Union of South Africa on the other, relating to the interpretation and application of the Mandate had not been and could not be settled by negotiation; (3) note that Ethiopia and Liberia on 4 November 1960 had filed concurrent Applications in the International Court of Justice instituting contentious proceedings against the Union of South Africa; and (4) commend the two Governments upon their initiative in submitting such dispute to the International Court for adjudication and declaration in a contentious proceeding in accordance with article 7 of the Mandate.

Decision

The revised draft resolution was adopted by a roll-call vote of 73 votes to none, with 5 abstention.⁹⁹ The resolution was subsequently adopted by the General Assembly as its resolution 1565 (XV) of 18 December 1960.

146. Both Ethiopia and Liberia were Members of the League of Nations and, in their concurrent Applica-

tions in the International Court of Justice instituting contentious proceedings against South Africa under the Mandate for South West Africa, they asked the Court to adjudge and declare that the Territory of South West Africa remained under the Mandate and that South Africa remained subject to the international obligations set forth in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa; that the General Assembly was legally qualified to exercise the supervisory functions previously exercised by the League of Nations; and that South Africa was under an obligation to submit to the supervision and control of the General Assembly with regard to the exercise of the Mandate.

147. With regard to the administration of the Territory itself, the two Governments charged that South Africa had violated the League Covenant and the Mandate by having substantially modified the terms of the Mandate without the consent of the United Nations; by practising *apartheid* in its administration of the Territory; by having adopted and applied legislation, regulations, proclamations and administrative decrees which by their terms and in their application were arbitrary, unreasonable, unjust and detrimental to human dignity and which suppressed the rights and liberties of the inhabitants of the Territory essential to their orderly evolution towards self-government; by exercising powers of administration and legislation over the Territory inconsistent with its international status; and by establishing military bases in the Territory.

148. The two Governments further charged, with regard to South Africa's obligations vis-a-vis the United Nations, that South Africa had violated the Mandate and the League of Nations rules, respectively, by having failed to render annual reports on its administration of the Territory and transmit petitions from inhabitants of the Territory to the United Nations.

149. The two States sought a judgement of the International Court to require South Africa to cease the alleged violations and to carry out its obligations under the Mandate.

150. In November 1961, South Africa filed four preliminary objections contesting the jurisdiction of the International Court to hear the dispute brought by Ethiopia and Liberia. In a preliminary judgement of 21 December 1962, the Court dismissed all four objections and concluded that article 7 of the Mandate was a treaty or convention still in force within the meaning of Article 37 of the Statute of the Court and that the dispute was one which was envisaged in the said article 7 and could not be settled by negotiation. Consequently, the Court was competent to hear the dispute on its merits. For these reasons the Court, by 8 votes to 7, found that it had jurisdiction to adjudicate upon the merits of the dispute.¹⁰⁰

151. In dismissing the preliminary objections the Court confirmed its advisory opinion of 1950 that the Mandate was still in force and that the Government of South Africa was still under the obligation to accept international supervision over its administration of the

⁹⁴ G A (XV), 4th Com., 1037th mtg., para. 44.

⁹⁵ G A (XV), 4th Com., 1051st mtg., para. 2; 1103rd mtg., para. 1 and G A (XVI), 1158th mtg., para. 3.

⁹⁶ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, p. 78, para. 9.

⁹⁷ G A (XV), Annexes, a.i. 43, A/C.4/L.652. The revised text (A/C.4/L.652/Rev.1 and Add.1 and 2), submitted by Cameroon, Central African Republic, Congo (Brazzaville), Chad, Dahomey, Guinea, Ghana, Iraq, Ivory Coast, Libya, Morocco, Niger, Nigeria, Somalia, Senegal, Sudan, Togo, Tunisia, United Arab Republic and Upper Volta was adopted without change as G A resolution 1565 (XV).

⁹⁸ G A (XV), Suppl. No. 12 (A/4464).

⁹⁹ G A (XV), 4th Com., 1076th mtg., para. 48.

¹⁰⁰ South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment: ICJ, Reports 1962, p. 347.

Territory.¹⁰¹ It referred in this connexion to its 1950 finding that:

“The authority which the Union Government exercises over the Territory is based on the Mandate. If the Mandate lapsed, as the Union Government contends, the latter’s authority would equally have lapsed. To retain the rights derived from the Mandate and to deny the obligations thereunder could not be justified.¹⁰²

The Court also referred to the finding regarding South Africa’s obligation to submit to international supervision that:

“The obligation incumbent upon a Mandatory State to accept international supervision and to submit reports is an important part of the Mandates System. When the authors of the Covenant created this system, they considered that the effective performance of the sacred trust of civilization by the mandatory Powers required that the administration of mandated territories should be subject to international supervision. . . . It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist. . . .”¹⁰³

152. The Court stated that its findings on the obligation of the Union Government to submit to international supervision were thus crystal clear. Indeed, to exclude the obligations connected with the Mandate would be to exclude the very essence of the Mandate.¹⁰⁴

153. In its final judgement rendered on 18 July 1966, the Court found that Ethiopia and Liberia could not be considered to have established any legal right or interest appertaining to them in the subject-matter of the claims and that accordingly, the Court must decline to give effect to them. For these reasons, the Court by the President’s casting vote—the votes being equally divided—decided to reject the claims of Ethiopia and Liberia.¹⁰⁵

5. THE QUESTION OF THE IMPLICATIONS OF THE ACTIVITIES OF THE MINING INDUSTRY AND OF THE OTHER INTERNATIONAL COMPANIES HAVING INTERESTS IN SOUTH WEST AFRICA AND THEIR ECONOMIC AND POLITICAL INFLUENCE

154. During the eighteenth session a number of representatives in the Fourth Committee expressed¹⁰⁶ concern about the influence the international mining and industrial concerns exerted over the policies applied

by South Africa in South West Africa, and support was given to a suggestion made by petitioners¹⁰⁷ that a study should be made of the matter.

155. Following the general debate a draft resolution¹⁰⁸ was submitted whereby, in operative paragraph 8 (b) and (c), the General Assembly would request the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to consider, in co-operation with the Secretary-General and the agencies of the United Nations, the implications of the activities of the mining industry and the other international companies having interests in South West Africa, in order to assess their economic and political influence and their mode of operation, and to report to the Assembly.

156. An amendment was submitted¹⁰⁹ to replace the above-mentioned provisions by a paragraph whereby the Assembly would request the Secretary-General to prepare a study of the mining industry and other international investments in the Territory of South West Africa and their effect on the welfare of the people of South West Africa.

157. In explanation of the amendment, the sponsor said that his delegation was not opposed to the type of investigation envisaged but believed that the Committee lacked the facilities to conduct such an investigation. It was the kind of task that could best be undertaken by the Secretary-General. The implications of the activities of certain companies should not be drawn until the facts were available.¹¹⁰

Decision

The amendment was rejected by 69 votes to 16 with 16 abstentions. The original provision was not voted upon separately but the draft resolution as a whole was adopted by 82 votes to 6, with 16 abstentions¹¹¹ and subsequently adopted by the General Assembly as its resolution 1899 (XVIII) of 13 November 1963.

158. In accordance with operative paragraph 8 of resolution 1899 (XVIII), the Special Committee submitted to the Assembly, at its nineteenth session, a report on the implications of the activities of the mining industry and other international companies having interests in South West Africa.¹¹²

159. In its report, the Special Committee stated that, in reply to letters addressed to them by the United Nations Secretariat, the International Bank for Reconstruction and Development (IBRD), the International

¹⁰¹ *Ibid.*, pp. 332-334.

¹⁰² International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950*, p. 133.

¹⁰³ *Ibid.*, p. 136.

¹⁰⁴ South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment: ICJ, *Report 1962*, p. 334.

¹⁰⁵ South West Africa, Second Phase, Judgment, ICJ, *Reports 1966*, p. 51.

¹⁰⁶ G A (XVIII), 4th Com., 1458th mtg.: Poland, para. 60; 1459th mtg.: Ceylon, para. 30; Romania, para. 4; 1460th mtg.: Ivory Coast, para. 47; Mongolia, para. 62; Tanganyika, para. 71; 1461st mtg.: Cameroon, para. 31; 1463rd mtg.: Bulgaria, para. 11; 1464th mtg.: Cuba, para. 24; Ukrainian SSR, para. 4.

¹⁰⁷ A/C.4/613 (mimeographed).

¹⁰⁸ A/C.4/L.777 and Add. 1-3, submitted by Algeria, Burma, Burundi, Cambodia, Cameroon, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ghana, Guinea, India, Indonesia, Iraq, Ivory Coast, Jamaica, Jordan, Kuwait, Libya, Madagascar, Malaysia, Mali, Mauritania, Mongolia, Morocco, Nepal, Niger, Nigeria, Philippines, Somalia, Sudan, Syria, Tanganyika, Togo, Uganda, United Arab Republic and Yemen (see G A (XVIII), Annexes, a.i. 55, A/5605 and Add.1, paras. 10 and 12).

¹⁰⁹ A/C.4/L.779, submitted by the United States (see G A (XVIII), Annexes, a.i. 55, A/5605 and Add.1, para. 11).

¹¹⁰ G A (XVIII), 4th Com., 1471st mtg., para. 25.

¹¹¹ *Ibid.*, 1473rd mtg., para. 90.

¹¹² G A (XIX), Annexes, No. 15, A/5840.

Monetary Fund (IMF), the International Labour Office and the United Nations Educational, Scientific and Cultural Organization (UNESCO) had informed the Secretariat that they were not in a position to supply information concerning the implications of the activities of the mining industry and the other international companies having interests in South West Africa.

160. The Special Committee included in its report the report of its Sub-Committee I which had initially carried out the study of the question. The report of Sub-Committee I contained detailed factual information and recommendations drawn by the Sub-Committee for consideration by the Special Committee.

161. Following the debate in the Special Committee on the Sub-Committee's conclusions and recommendations, a revised text of its recommendations and conclusions was submitted by Ethiopia and the United Republic of Tanzania respectively.¹¹³ Both the revised conclusions and recommendations were similar in substance to those proposed by the Sub-Committee.

162. By the revised text of the conclusions¹¹⁴ the Special Committee would state, among other things, that the desire of the Government of South Africa to annex South West Africa was directly connected with the activities of international companies which were interested in keeping the Territory as a field for the investment of their capital, a source of raw material and cheap labour. The Special Committee would also conclude that the fact that the greater part of the Territory's economic production was in the hands of foreign enterprises had serious implications not only for the Territory's economy but also in the political and social fields. It would be pointed out that, with only minor exceptions, the companies which controlled the mining and fishing industries were either totally or largely subsidiaries of wealthier corporations whose main interests and activities were elsewhere. In the final analysis it would be shown that the overwhelming majority of the mining companies belonged to a complex of foreign capital which operated in many areas of Southern Africa, Northern and Southern Rhodesia, the Congo (Leopoldville) and Angola, and in reality was directed by a number of monopolistic combines controlled by financial interests in the United Kingdom, the United States of America and the Republic of South Africa. As a result, an overwhelming proportion of the profits obtained in the Territory went to those countries and also to other countries which invested their capital in South West Africa.

163. The study of the implications of the activities of the mining industry and of other international companies which had invested capital in South West Africa indicated that, together with the Government of South Africa which was carrying out its reactionary policy towards South West Africa, the foreign companies having considerable capital investments in the Republic of South Africa and in South West Africa also bore the responsibility for the sufferings of the people of the Territory.

164. The Special Committee would conclude that the activities of the international companies in South West Africa constituted one of the main obstacles to the country's development towards independence. There was an urgent need to grant and ensure the independence of the Territory; only then would the people have the right to dispose of and develop its resources in the interests of the whole Territory and all its people.

165. According to the revised text of the recommendations,¹¹⁵ the Special Committee would recommend that the General Assembly:

“(a) Strongly condemn the Government of South Africa for its policy of granting concessions and facilities to international companies for exploiting the natural and human resources of South West Africa, to the detriment of the African population of the Territory, and for its own participation in such exploitation.

“(b) Strongly condemn the activities and operating methods of the international companies in South West Africa which exploit the natural resources and the African population of the Territory for the sole benefit of these companies and thus constitute obstacles to the progress of the country towards independence, and its political, economic and social progress.

“(c) Draw the attention of the Government of South Africa to the fact that its support of, and active participation in, the international companies' activities, in disregard of the interests of the population of South West Africa run counter to the provisions of the Mandate and the United Nations resolutions with regard to South West Africa and are a violation of Article 73 of the Charter, which affirms the principle that the interests of the inhabitants of Non-Self-Governing Territories are paramount.

“(d) Call upon the Government of South Africa to take appropriate and urgent steps to put an end to the activities of the international companies in South West Africa, which are detrimental to the interests of the African population of the Territory and to take urgent steps to safeguard the sovereignty of the people of South West Africa over the natural resources of their country.

“(e) Once again call upon the Government of South Africa to put an end without delay to the policies of *apartheid* in South West Africa which create conditions favouring the exploitation of the resources of the country by the international companies for the exclusive benefit of foreign monopolies, and which hamper the emancipation movement of the people of the Territory.

“(f) Once again call upon Member States of the United Nations to comply with the provisions of the United Nations resolutions on South West Africa.

“(g) Appeal to all States, whose nationals have public or private interests in the international companies in South West Africa, especially the United Kingdom and the United States of America, who are the major partners of South Africa, to cease to give

¹¹³ *Ibid.*, paras. 110 and 11.

¹¹⁴ G A (XIX), Annexes, No. 15, A/5840, p. 22, paras. 155-177.

¹¹⁵ *Ibid.*, p. 24, para. 178.

any support to the Government of South Africa and to observe the provisions of General Assembly resolutions 1761 (XVII) of 6 November 1962 and 1899 (XVIII) of 13 November 1963.

“(h) Further appeal to all States, whose nationals have public or private interests in the international companies in South West Africa, especially in the United Kingdom and the United States of America, to exert their influence to put an end to the activities of the international companies, which are detrimental to the interests of the population of South West Africa.

“(i) Request the application of more decisive political and economic sanctions against the Republic of South Africa.

“(j) Take all possible measures towards the attainment of independence by South West Africa at the earliest date.

“(k) Request the Secretary-General to take the necessary measures, through appropriate channels, to ensure that the international companies having interests in South West Africa are informed of the contents of the report.”

166. During the consideration of the report of the Sub-Committee by the Special Committee, the representative of the United States expressed the view¹¹⁶ that the conclusions and recommendations constituted a largely unfounded series of condemnations and gratuitous calls for action which at times became undisguised propaganda attacks on the United States and the United Kingdom. The economic and political influence of the international companies had not been assessed or analysed. Among other things, the contribution of the companies to territorial revenue and their expenditures in wages and purchases set forth in the factual analysis had been omitted. There was nothing in the Sub-Committee's report to support its contention that the activities of the mining companies were an obstacle in the way of the Territory to independence or ran counter to the provisions of the Mandate. Finally, the representative of the United States did not understand the Sub-Committee's recommendation calling upon the United States to put an end to its support of South Africa, since it had not given such support.

167. In the opinion¹¹⁷ of the representative of the United Kingdom the conclusions and recommendations gave undue prominence to a well-known minority view based on ideological considerations. The United Kingdom fully agreed with the African countries with regard to the whole problem presented by *apartheid* and racial discrimination in South Africa, but it did not like to see legitimate concern for the welfare of the people of South West Africa used as a means of advancing certain political and economic theories. The United Kingdom had not supported the Republic of South Africa in the United Nations for a number of years. Moreover, the United Kingdom had no direct control over the various privately owned interests operating in the Territory.

168. Other representatives considered that, while the information contained in the factual analysis showed

that a wholly unsatisfactory situation existed in the Territory, some of the conclusions and recommendations of the Sub-Committee did not flow from the material before it and, in particular, unfounded allegations were directed against certain Members of the United Nations.¹¹⁸

169. The majority of the members of the Committee, however, felt that the unfavourable judgement concerning foreign companies operating in the Territory was only too well-founded.

170. It was stated that the monopolies bore the most direct responsibility for the privation and suffering of the African people of South West Africa.¹¹⁹ The foreign companies had not made a substantial contribution to the local economy and their profits were not creating benefits for the majority of the people. The resources of South West Africa were being exploited for the exclusive benefit of the “white” population.¹²⁰ The Government of South Africa was deriving great benefits from the operations of the companies and was therefore tempted to ignore the wishes of the international community.¹²¹ While developing countries were eager for foreign investment to promote their economic development, foreign investment in South West Africa was bringing no benefits to its inhabitants who were the victims of shameful exploitation.¹²²

Decisions

The conclusions contained in the report of the Sub-Committee, as revised, were adopted by the Special Committee by 15 votes to 5, with 4 abstentions.

The revised recommendations were adopted by the Special Committee by a roll-call vote of 16 to 6, with 2 abstentions.

171. The report¹²³ of the Special Committee on the implications of the activities of the mining industry and other international companies having interests in South West Africa was considered by the General Assembly at its twentieth session.

172. Following the hearing of petitioners and the general debate on the question of South West Africa, a draft resolution was submitted¹²⁴ whereby, as orally revised during the discussion the General Assembly, in operative paragraphs 2 and 8 would “endorse the conclusions and recommendations of the Special Committee contained in its report on the implications of the activities of the mining industry and of the other inter-

¹¹⁸ *Ibid.*, Australia, paras. 72 and 73; Chile, para. 116; Denmark, para. 29; Uruguay, para. 39 and Venezuela, para. 18.

¹¹⁹ *Ibid.*, USSR, para. 50.

¹²⁰ *Ibid.*, Ethiopia, para. 33; Sierra Leone, para. 35; and United Republic of Tanzania, paras. 55 and 56.

¹²¹ *Ibid.*, Iraq, para. 64.

¹²² *Ibid.*, India, par. 82.

¹²³ G A (XIX), Annexes, No. 15, A/5840.

¹²⁴ G A (XX), Annexes, a.i. 69 and 70, A/C.4/L.812/Rev. 1 and Add. 1-3 submitted by Afghanistan, Algeria, Burma, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Ghana, Guinea, India, Iraq, Ivory Coast, Kenya, Libya, Madagascar, Mali, Mauritania, Morocco, Nepal, Niger, Nigeria, Pakistan, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Togo, Uganda, United Arab Republic, United Republic of Tanzania, Yemen, Yugoslavia and Zambia.

¹¹⁶ G A (XIX), Annexes, No. 15, A/5840, pp. 7 and 8, paras. 6-14.

¹¹⁷ *Ibid.*, paras. 86-88.

national companies having financial interests in South West Africa" and "condemn the policies of financial interests operating in South West Africa, which mercilessly exploit human and material resources and impede the progress of the Territory and the right of the people to freedom and independence".

173. During the discussion of the draft resolution as orally revised, objections¹²⁵ were raised to operative paragraphs 2 and 8. It was considered that the Special Committee in its conclusions and recommendations had gone beyond its mandate. The language in the conclusions and recommendations of the Special Committee was not that of serious economic analysis and the conclusions were clearly prompted by certain political views. The evils afflicting Southern Africa derived from the policies of certain Governments and administrations and not from the activities of private companies.

Decisions

Operative paragraph 2 was adopted by a roll-call vote of 63 to 10, with 24 abstentions.

Operative paragraph 8 was adopted by a roll-call vote of 64 to 10, with 25 abstentions.

The draft resolution, as a whole, was adopted¹²⁶ by 83 votes to 2, with 15 abstentions. The draft resolution was subsequently adopted by the General Assembly as its resolution 2074 (XX) of 17 December 1965.

6. THE QUESTION OF MEASURES TO BE TAKEN BY THE UNITED NATIONS TO INDUCE OR COMPEL THE GOVERNMENT OF SOUTH AFRICA TO CHANGE ITS POLICIES OF ADMINISTRATION IN THE MANDATED TERRITORY OF SOUTH WEST AFRICA AND TO PREPARE THE TERRITORY FOR INDEPENDENCE

(a) *Appeal to Member States to influence the Government of South Africa; appeal to Member States to support the indigenous people in their struggle for freedom and independence*

174. In connexion with its adoption of resolution 1568 (XV) of 18 December 1960, inviting the Committee on South West Africa to proceed to the Territory, and the refusal by the Government of South Africa to co-operate with the Committee, the General Assembly at its resumed fifteenth session adopted resolution 1593 (XV) of 16 March 1961. Under that resolution, the Assembly in the preambular paragraphs noted with concern that the conduct of the Government of South Africa, in ignoring past resolutions of the Assembly and in refusing to implement resolution 1568 (XV), constituted a challenge to the authority of the United Nations. The Assembly also noted that the attempts at the assimilation of the Mandated Territory of South West Africa, culminating in the so-called referendum of 5 October 1960, were totally unacceptable as having no moral or legal basis and being repugnant to the letter and spirit of the Mandate.¹²⁷ In the operative paragraph

of the resolution the Assembly appealed to those Members of the United Nations which had particularly close and continuous relations with the Government of South Africa to bring, as a matter of urgency, all their influence to bear on that Government with a view to ensuring that it should adjust its conduct to its obligations under the Charter of the United Nations and should give effect to the resolutions adopted by the General Assembly.

175. In submitting¹²⁸ the resolution in its draft form in the Fourth Committee, one of the sponsors noted that it had originally been submitted at the first part of the fifteenth session and later withdrawn when it had been criticized as being too mild and not sufficiently specific. The present time was particularly opportune for the adoption of such a resolution, however, inasmuch as the Commonwealth Prime Ministers were meeting in London. He thought that everyone would realize that it was, in effect, an appeal to the United Kingdom Government.

Decision

The draft resolution was adopted in the Fourth Committee by a roll-call vote of 68 votes to none, with 12 abstentions.

176. By operative paragraph 12 of resolution 2074 (XX) of 17 December 1965, the Assembly appealed to all States to give the indigenous people of South West Africa all necessary moral and material support in their legitimate struggle for freedom and independence.

(b) *Special directives given the Committee on South West Africa; establishment of the Special Committee for South West Africa; transfer of the tasks of the Special Committee for South West Africa to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*

177. As mentioned in the General Survey, the terms of reference of the Committee on South West Africa were laid down in resolution 749 A (VIII) of 28 November 1953. In brief, the Committee was to examine reports and petitions, as far as possible within the procedure of the former Mandates System, and to transmit a report to the General Assembly concerning conditions in the Territory, taking into account, as far as possible, the scope of the reports of the Permanent Mandates Commission. The Committee was also authorized to continue negotiations with South Africa in order to implement fully the 1950 advisory opinion of the International Court of Justice.

178. The Committee adopted rules of procedure based on those of the Mandates Commission, and also an alternate set of rules under which it could operate in the event the Government of South Africa failed to submit an annual report or transmit petitions. In the absence of the co-operation of the Government of South Africa, the Committee carried out its work on the basis of the alternate rules, but at its last two ses-

¹²⁵ G A (XX), 4th Com., 1582nd mtg.: Australia, para. 70; Canada, para. 65; Colombia, para. 61; Greece, para. 68; Ireland, paras. 37 and 38; Mexico, para. 69; United Kingdom, paras. 48-54; United States, para. 40; and others.

¹²⁶ *Ibid.*, p. 425.

¹²⁷ See also paras. 304-307 below.

¹²⁸ G A (XV), 4th Com., 1101st and 1102nd mtgs. The draft resolution was submitted by Mexico and Venezuela.

sions suspended the alternate rules as far as they applied to petitions received from within the Territory.¹²⁹

179. In accordance with its terms of reference, the Committee on South West Africa submitted reports to the General Assembly at its fourteenth and fifteenth sessions.¹³⁰

180. During the fifteenth session a draft resolution was submitted in the Fourth Committee whereby in operative paragraph 4 of the text as finally revised¹³¹ the General Assembly would invite the Committee on South West Africa in addition to its normal tasks, to go to South West Africa immediately to investigate the situation prevailing in the Territory and to ascertain and make proposals to the General Assembly on (a) the conditions for restoring a climate of peace and security and (b) the steps which would enable the indigenous inhabitants of South West Africa to achieve a wide measure of internal self-government designed to lead them to complete independence as soon as possible. By operative paragraph 5, the Assembly would urge the Government of the Union of South Africa to facilitate the mission of the Committee and, by operative paragraph 6, request the Committee to make a preliminary report on the implementation of this resolution to the General Assembly at its resumed fifteenth session.

181. During the consideration of the revised draft resolution objections were raised to the new directives to be given the Committee. It was argued that to invite the Committee to go to the Territory went far beyond its terms of reference which did not authorize such a visit. The International Court of Justice in its advisory opinion of 11 July 1950¹³² had unanimously concluded that South West Africa was a Territory under the international Mandate assumed by the Union of South Africa. The decisions taken by the General Assembly should, therefore, be strictly in conformity with that Mandate. Furthermore, the Court had indicated that the degree of supervision to be exercised by the General Assembly should not exceed that which had applied under the Mandates System and should conform as far as possible with the procedure followed in that respect by the Council of the League of Nations. As long as the United Nations was acting within the framework of the Mandate and as long as the Court had not handed down an opinion on the dispute referred to it by Ethiopia and Liberia within the framework of that same Mandate, the Committee could not go to the Territory. Furthermore, the Committee's presence in the Territory was not likely to restore order and security there; on the contrary, it might well serve to increase the existing tension. The Union Government,

moreover, would not, in fact, agree to have the Committee on South West Africa in the Territory and this would be the surest way of impairing the authority of the United Nations.¹³³

182. In reply it was stated¹³⁴ that the General Assembly exercised supervisory functions in respect of South West Africa recognized by the International Court of Justice. The Assembly had established the original terms of reference of the Committee and could amend them as it saw fit. In addition, the Council of the League of Nations had investigated the possibility of sending fact-finding committees to mandated territories. There was no formal prohibition of missions in the Mandate and anything not formally prohibited by law was permissible. As far as postponing action until the Court had rendered its opinion was concerned, the Court had already given a verdict against South Africa. South Africa had not changed its attitude and it was therefore necessary for the United Nations to take direct action. The measures proposed would not increase tension; on the contrary, a United Nations mission would testify to a desire for clarification and for a just solution of the problem.

Decision

The invitation to the Committee to go to South West Africa was adopted by the Fourth Committee by a roll-call vote of 64 to none, with 16 abstentions.¹³⁵ The draft resolution as a whole was adopted by the Fourth Committee by a roll-call vote of 65 to none, with 15 abstentions, and was subsequently adopted by the General Assembly as its resolution 1568 (XV) of 18 December 1960.

183. In its preliminary report¹³⁶ submitted to the General Assembly at its resumed fifteenth session, the Committee on South West Africa reported that, by letter of 16 January 1961, the Chairman had informed the Minister for External Affairs of the Union of South Africa that the Committee had directed him, as Chairman, to ascertain from the Union Government whether it would be convenient for a visit to take place in February and, if not, would appreciate suggestions for an alternative date. The Committee regretted that as of the date of the submission of the preliminary report on 2 March 1961 no direct reply had been received from the Government of South Africa.

184. The position of the Government of South Africa with regard to the Committee's visit to South West Africa had, however, been made clear in the reply of the Minister for External Affairs, contained in a letter dated 3 February 1961, addressed to the Secretary-General (which had been made available to the Committee on 6 February 1961), namely, that "it would not be possible for the Union Government to accede to the request contained in paragraph 5 of resolution 1568 (XV)".¹³⁷

¹²⁹ See paras. 107-112 above.

¹³⁰ G A (XIV), Suppl. No. 12; G A (XV), Suppl. No. 12.

¹³¹ Adopted without change as G A resolution 1568 (XV). For the text of the original draft resolution (A/C.4/L.653) and the first revised draft resolution (A/C.4/L.653/Rev.1 and Rev.2/Corr.1 and Rev.1/Add.1), see G A (XV), Annexes, a.i. 43; and for the second revised draft resolution (A/C.4/L. 653/Rev.2) and further oral revisions, see *ibid.*, A/4643 and Add.1, paras. 37-43. The second revised draft resolution was submitted by Chad, Gabon, Ghana, Guinea, Libya, Morocco, Nigeria, Sudan, Togo, Tunisia and United Arab Republic.

¹³² International status of South West Africa, Advisory Opinion: ICJ, *Reports* 1950, p. 128.

¹³³ G A (XV), 4th Com., 1073rd mtg.: Ireland, paras. 20 and 21.

¹³⁴ *Ibid.*, 1073rd mtg.: Guinea, para. 27; 1074th mtg.: Ceylon, para. 34; Ivory Coast, para. 25; Tunisia, paras. 15 *et seq.*; Venezuela, para. 26; 1075th mtg.: Nigeria, paras. 39 and 40; 1076th mtg.: India, paras. 4-6.

¹³⁵ *Ibid.*, 1076th mtg., para. 70.

¹³⁶ G A (XV), Annexes, a.i. 43, A/4705.

¹³⁷ *Ibid.*, para. 6.

185. The Committee profoundly regretted these new developments as further evidence of the continued refusal of the Union Government to co-operate with the Committee in the implementation of the resolutions of the General Assembly.

186. The Fourth Committee considered the preliminary report of the Committee on South West Africa at the resumed fifteenth session of the General Assembly.

187. During consideration of the preliminary report a draft resolution¹³⁸ was submitted whereby, in operative paragraph 5, the Assembly would request the Committee to proceed to discharge the special and urgent tasks entrusted to it in resolution 1568 (XV) as fully and expeditiously as possible with the co-operation of the Government of the Union of South Africa, if such co-operation were available, and without it, if necessary. By operative paragraph 6, the Assembly would request States Members of the United Nations to extend to the Committee on South West Africa such assistance as it might require in the discharge of these tasks.

188. In reply to questions on how the Committee on South West Africa could discharge its duties without the co-operation of the Government of South Africa, and whether the use of force was implied, it was stated that resolution 1568 (XV) had instructed the Committee on South West Africa to go to the Territory and it was clearly imperative, in view of the whole situation, that the task should be carried out. If it proved impossible for the Committee to perform its tasks with the co-operation of the Government of South Africa, then it was incumbent on the Committee to carry out those tasks in any manner it could. The use of force, however, was clearly not implied, for it would naturally be contrary to the Charter to call for force in such a resolution. There might, however, be other ways of pursuing the matter within the framework of the Charter without the co-operation of the Government of South Africa and that should be left to the Committee. There was certainly no indication that co-operation would be forthcoming from the Government of South Africa.¹³⁹

Decision

Operative paragraph 5 was adopted by a roll-call vote of 65 to none, with 16 abstentions.¹⁴⁰ The draft resolution as a whole was adopted by a roll-call vote of 76 votes to none, with 6 abstentions, and was subsequently adopted by the Assembly as its resolution 1596 (XV) of 7 April 1961.

189. In its report concerning the implementation of General Assembly resolutions 1568 (XV) and 1596 (XV)¹⁴¹ considered by the General Assembly at its sixteenth session, the Committee on South West Africa stated that it had been unable to enter the Territory

because of the refusal of the Government of South Africa to issue visas for South West Africa and the threat of the use of force by the South African authorities if the Committee entered the Territory without its co-operation. At the same time, the Government of South Africa had refused even to allow the Committee to go to South Africa to explore with the South African Government ways and means of implementing General Assembly resolutions.

190. The Committee added that after having been refused entry into South West Africa, by a decision taken in Accra on 29 June 1961, it affirmed its determination to go to South West Africa even without the co-operation of the Government of South Africa.

191. The Committee accepted invitations from Ghana, Tanganyika and the United Arab Republic to interview refugees from South West Africa in their countries. It also requested entry into Bechuanaland from the United Kingdom authorities and into Angola from the Portuguese authorities in the belief that it might be able to obtain useful information in the two territories which bordered on South West Africa. Visas into Angola were refused. Visas into Bechuanaland were at first granted. Subsequently, the United Kingdom by letters of 4 and 7 July 1961 sought confirmation that "the Committee or any part of it do not intend to enter South West Africa without the permission of the South African Government". The Committee in reply, by letter of 8 July 1961, informed the United Kingdom that it "cannot concur with any interpretation or understanding which does not correspond to its terms of reference under General Assembly resolution 1596 (XV)". The United Kingdom thereupon withdrew the facilities previously afforded, the Committee declared, on the grounds as stated in a letter of 9 July 1961, "that entrance into South West Africa from Bechuanaland without the permission of the administering Power would, irrespective of the terms of resolution 1596 (XV), be an illegal act".

192. In a letter of 7 July 1961, received by the Committee in Salisbury on 8 July, the South African Minister for Foreign Affairs advised the Secretary-General that "if members of the Committee and/or other members of its party should attempt illegally to cross the South West Africa border" his Government would "however reluctantly, be obliged to prevent such an attempt". The Minister stated that an attempt by the Committee to enter the Territory after visas had been refused "would involve the United Nations in an act of aggression". At the same time, the Committee reported that it had learned of other statements of the Minister of Foreign Affairs that its members would be arrested and deported if they entered South West Africa and that South African police and helicopters were patrolling the South West Africa-Bechuanaland border to prevent the Committee from entering.

193. The Committee accordingly considered that it had been confronted with a situation of force directed against an organ of the United Nations by the Government of South Africa that necessitated the intervention of the competent organs of the United Nations in order to enable the Committee to discharge its task.

194. Because of the withdrawal of visas, the Committee did not proceed to Bechuanaland but left Salis-

¹³⁸ G A (XV), Annexes a.i. 43, A/C.4/L. 675 and Add.1 and Rev.1, submitted by Afghanistan, Bolivia, Central African Republic, Chad, Congo (Brazzaville), Cuba, Ghana, Guinea, India, Indonesia, Iraq, Libya, Mali, Morocco, Niger, Nigeria, Senegal, Somalia, Sudan, Togo, Tunisia, United Arab Republic, Venezuela, Yugoslavia.

¹³⁹ G A (XV), 4th Com., 1113th mtg.: India, para. 3.

¹⁴⁰ G A (XV), 4th Com., 1115th mtg., para. 63.

¹⁴¹ G A (XVI), Suppl. No. 12 A.

bury for Dar es Salaam arriving there on 12 July 1961.¹⁴²

195. In addition to interviewing refugees from South West Africa in Ghana, Tanganyika and the United Arab Republic, the Committee also heard petitioners in New York before leaving for Africa.¹⁴³

196. As well as its report on the implementation of General Assembly resolutions 1568 (XV) and 1596 (XV), the Committee on South West Africa also submitted to the General Assembly at its sixteenth session a regular report concerning conditions in the Territory and its examination of petitions.¹⁴⁴

197. During consideration of the Committee's reports in the Fourth Committee, the representative of South Africa said that the Committee's statement that it had been confronted with a situation of force directed against an organ of the United Nations by the South African Government constituted a blatant attempt to represent as an aggressive act a measure taken by the South African Government to prevent illegal entry into the Territory.

198. He further categorically denied that the members would be "arrested" if they tried to cross the border; what had actually been stated was that if they crossed the border illegally they would be "detained" and sent back to Bechuanaland. All countries regarded entry contrary to their laws and regulations to be illegal. South West Africa remained under the full control of the Government of South Africa as it had been during the existence of the Mandate. He reminded the Committee that, in the words of the original Mandate, South West Africa was to be administered "as an integral portion of South Africa".

199. The proposed visit to the Territory by the Committee on South West Africa would have been in conflict with the procedure which had obtained during the existence of the Mandate. Furthermore, it did not fall within the scope of the advisory opinion given by the International Court of Justice in 1950.¹⁴⁵

200. The representative of the United Kingdom stated that visas and facilities for the Committee's visit to Bechuanaland had been provided willingly on the assumption that the Committee wished to visit the Territory for the purposes which it had stated. It was only when confirmation had not been forthcoming that the Committee did not intend to cross the border without the permission of the Government of South Africa that his Government had decided that the grant of visas must be suspended. The offer of visas had never been "withdrawn" and it had been made clear to the Committee that they were still welcome to visit Bechuanaland at any time for the purposes they themselves had set out in the Chairman's telegram of 22 June 1961 to the Permanent Representative of the United Kingdom.¹⁴⁶

201. In its report on the implementation of resolutions 1568 (XV) and 1596 (XV), the Committee on South West Africa came to the conclusion that, in view of the unfitness of the Government of South Africa further to administer the Territory, the best interest of all concerned and of international peace and security demanded, as a matter of great urgency, that the General Assembly should undertake a study of the ways and means by which to terminate South African administration over the Mandated Territory of South West Africa and to have that administration assumed directly or indirectly by the United Nations so as to ensure the institution of the rule of law, and such democratic processes, reforms and programmes of assistance as would enable the Mandated Territory to assume the full responsibilities of sovereignty and independence within the shortest possible time. Such a study should contain all the consequences of the termination of the South African administration, including all measures necessary to put into effect in the Territory the transfer of Government power to the indigenous people of the Territory who constituted the great majority of the population.

202. The Committee stated that it was convinced that, short of compulsive measures within the purview of the Charter, the problem of South West Africa could not be solved in present circumstances in a manner that would protect the lives of the indigenous inhabitants of the Territory and ensure the maintenance of international peace and security in Africa.

203. The Committee also made a number of recommendations in accordance with its findings and conclusions.¹⁴⁷

204. Following the general debate on the question of South West Africa and consideration of the Committee's reports, a draft resolution¹⁴⁸ was submitted in the Fourth Committee whereby, in operative paragraph 2, the General Assembly would decide to establish a Special Committee for South West Africa consisting of representatives of seven Member States nominated by the President of the General Assembly, whose task would be to achieve, in consultation with the Mandatory Power, the following objectives:

(a) A visit to the Territory of South West Africa before 1 May 1962;

(b) The evacuation from the Territory of all military forces of the Republic of South Africa;

(c) The release of all political prisoners without distinction as to party or race;

(d) The repeal of all laws or regulations confining the indigenous inhabitants in reserves and denying them freedom of movement, expression and association, and of all other laws and regulations which established and maintained the intolerable system of *apartheid*;

¹⁴⁷ G A (XVI), Suppl. No. 12 A, p. 22.

¹⁴⁸ A/C.4/L.714/Rev.1-4, submitted by Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cuba, Dahomey, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Libya, Madagascar, Mali, Mauritania, Morocco, Nepal, Niger, Nigeria, Pakistan, Philippines, Senegal, Sierra Leone, Somalia, Sudan, Syria, Tunisia, Togo, United Arab Republic, Upper Volta and Yugoslavia (see G A (XVI), Annexes, a.i. 47, A/5044, paras. 10-18 and 46).

¹⁴² G A (XVI), Suppl. No. 12 A, paras. 15-73.

¹⁴³ *Ibid.*, para. 74.

¹⁴⁴ G A (XVI), Suppl. No. 12.

¹⁴⁵ G A (XVI), 4th Com., 1218th mtg., paras. 9 and 10, and 1226th mtg., paras. 5 and 6.

¹⁴⁶ G A (XVI), 4th Com., 1224th mtg., paras. 20 and 23.

(e) Preparations for general elections to the Legislative Assembly, based on universal adult suffrage, to be held as soon as possible under the supervision and control of the United Nations;

(f) Advice and assistance to the Government resulting from the general election, with a view to preparing the Territory for full independence;

(g) Co-ordination of the economic and social assistance with which the specialized agencies would provide the people in order to promote their moral and material welfare;

(h) The return to the Territory of indigenous inhabitants without the risk of imprisonment, detention or punishment of any kind because of their political activities in or outside the Territory.

205. By operative paragraph 3 of the draft resolution the Special Committee for South West Africa would also in effect be requested to discharge the tasks relating to reports and petitions which were assigned to the Committee on South West Africa by the General Assembly in resolution 749 (VIII). By operative paragraph 7, the Special Committee would be requested to keep the Security Council, the Secretary-General and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples informed of its activities and of any difficulties it might encounter. By operative paragraph 8, the Special Committee would be requested to study any measures likely to facilitate the execution of the other recommendations of the Committee on South West Africa, and to report to the General Assembly at its seventeenth session.

206. In submitting the draft resolution, the sponsors stated that they were once again requesting the Government of South Africa to adopt a friendly attitude towards the Organizations and to co-operate with it. The essential purpose of the draft resolution was to promote South West Africa's accession to independence. The sponsors had been guided by the recommendations of the Committee on South West Africa and the draft resolution laid down a programme that took both legal and political considerations into account. The sponsors wished to give the South African Government one last opportunity of co-operating with the United Nations and that was the purpose of operative paragraph 2.¹⁴⁹

Decision

The above-mentioned provisions were not voted upon separately but the draft resolution as a whole was adopted in the Fourth Committee by a roll-call vote of 86 to 1, with 4 abstentions,¹⁵⁰ and subsequently adopted by the General Assembly as its resolution 1702 (XVI) of 19 December 1961.

At the same time the General Assembly by resolution 1704 (XVI) of 19 December 1961, dissolved the Committee on South West Africa.

207. In pursuance of resolution 1702 (XVI) the President of the General Assembly appointed seven members to serve on the Special Committee for South

West Africa: Brazil, Burma, Mexico, Norway, the Philippines, Somalia and Togo.

208. In its report to the General Assembly at its seventeenth session,¹⁵¹ the Special Committee for South West Africa informed the Assembly that it had sought, as a first practical step in implementing General Assembly resolution 1702 (XVI), to try to establish, with the co-operation of the Mandatory Power, a United Nations presence in the Territory. To that end the Government of South Africa had been approached by the Chairman with a view to arranging for a visit of the Special Committee to South West Africa.

209. In response, the Government of South Africa, after having reiterated its position that it had never recognized United Nations jurisdiction over the administration of the Territory and that it could not be a party to any proposal or action which would imply departure from its juridical position, stated its willingness, if that was the desire of the Special Committee, to establish contact with the Special Committee "for the purpose of conducting discussions aimed at finding a way out of the present impasse without requiring the Republic to compromise its juridical position or to discuss subparagraphs (b) to (h) of paragraph 2 of resolution 1702 (XVI)". The Government of South Africa would co-operate with the Special Committee and would extend to the Chairman (Philippines) and the Vice-Chairman (Mexico) an invitation to visit South Africa with the assurance that the Government would then be prepared, without prejudice to its previously stated position, to enter into a review of the matter at issue between the United Nations and the South African Government. If it should appear advisable, as a result of these discussions, a visit by the Chairman and Vice-Chairman to South West Africa would be arranged. The Government of South Africa explained that it would not be possible to invite the whole Committee, as that could be open to an interpretation prejudicial to South Africa's position in the case pending before the International Court.

210. The Special Committee authorized the Chairman and Vice-Chairman to accept the invitation and they subsequently visited South Africa and South West Africa from 5 to 28 May 1962. On 23 July 1962 they returned to Headquarters and reported to the Special Committee for South West Africa.

211. In their report, the Chairman and Vice-Chairman, *inter alia*, stated that although it had been made clear in the original invitation issued by the Government of South Africa that formal discussion of operative paragraph 2 (b) to (h) of General Assembly resolution 1702 (XVI) was excluded, it was their intention, nevertheless, to find out the attitude of the South African authorities towards the various objectives assigned to the Special Committee and to ascertain to what extent the General Assembly resolution could be implemented.

212. From these conversations and from what they had seen and heard during their visit to South West Africa, the Chairman and Vice-Chairman, *inter alia*, concluded that short of the use of force or other com-

¹⁴⁹ G A (XVI), 4th Com., 1238th mtg.: India, para. 3; 1239th mtg.: Cambodia, para. 11; Tunisia, para. 2; 1241st mtg.: Guinea, para. 12.

¹⁵⁰ *Ibid.*, 1247th mtg., para. 70.

¹⁵¹ G A (XVII), Suppl. No. 12.

pulsive measures within the purview of the Charter, there seemed to be no way of implementing General Assembly resolution 1702 (XVI).

213. The Special Committee fully endorsed the conclusions and recommendations of the Chairman and Vice-Chairman and included their report in its own report to the General Assembly at its seventeenth session.¹⁵²

214. In accordance with the request contained in resolution 1702 (XVI), operative paragraph 7, the Special Committee for South West Africa transmitted a copy of its report to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, which at its first session in 1962, also considered conditions in South West Africa and submitted a report containing conclusions and recommendations on the Territory to the Assembly at its seventeenth session.¹⁵³

215. At its seventeenth session the Assembly, by operative paragraph 3 of resolution 1805 (XVII) of 14 December 1962, the draft form of which was adopted in the Fourth Committee by a roll-call vote of 96 to none, with 1 abstention, *inter alia*, requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to discharge, *mutatis mutandis*, the tasks assigned to the Special Committee for South West Africa by resolution 1702 (XVI), taking into consideration the special responsibilities of the United Nations concerning the Territory of South West Africa, and to submit to the General Assembly, at its seventeenth or eighteenth sessions, a report on the implementation of the resolution.

216. By operative paragraph 4 of resolution 1805 (XVII), the Assembly further requested all Member States to extend to the Special Committee such assistance as it might require in the discharge of its tasks.

217. By resolution 1806 (XVII) of 14 December 1962, which was adopted without objection in the Fourth Committee, the General Assembly decided to dissolve the Special Committee for South West Africa.

218. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *inter alia*, included in its report to the General Assembly at its eighteenth session (a) information on South West Africa, (b) a report on its examination of petitions, and (c) the text of a resolution it had adopted on the question of South West Africa.¹⁵⁴

219. By operative paragraph 8 (a) of resolution 1899 (XVIII) of 13 November 1963, the General Assembly requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue its efforts with a view to

discharging the tasks assigned to it by resolution 1805 (XVII).

220. The Special Committee subsequently included in its reports to the General Assembly at its nineteenth, twentieth and twenty-first sessions information on the Territory, reports on its examination of petitions and the texts of resolutions it had adopted with respect to South West Africa.¹⁵⁵

221. It may be noted that the general terms of reference 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, as contained in resolution 1654 (XVI) of 21 November 1961, were to examine the application of the Declaration, to make suggestions and recommendations on the progress and extent of the implementation of the Declaration; and, as contained in resolution 1810 (XVII) of 17 December 1962, to continue to seek the most suitable ways and means for the speedy and total application of the Declaration to all territories which have not yet attained independence and to propose specific measures for the complete application of the Declaration.¹⁵⁶ The Special Committee follows the rules of procedure of the General Assembly and no special rules were adopted — as they had been for the Committee on South West Africa — to deal specifically with the question of South West Africa. From a working point of view, in the absence of an annual report from the Government of South Africa, the Special Committee in its examination of conditions in the Territory, continued to rely on detailed factual information prepared by the Secretariat, based primarily on official publications, supplemented by information appearing in the press. It also accepted all petitions immediately as validly received, as had the Committee on South West Africa at its last two sessions when it suspended its alternate rules of procedure relating to petitions.

(c) *Situation in South West Africa and referral to the Security Council*

222. During the period under review, and particularly from the fifteenth session on, many statements were made by individual representatives in the Fourth Committee and other committees of the Assembly dealing with the question of South West Africa to the effect that since the Government of South Africa clearly would not change its administrative policies and prepare the Territory for independence as urged by the Assembly, but, on the contrary, continued to reinforce its policies, particularly that of *apartheid*, and because of the situation arising therefrom, the United Nations should use, or consider the use of, compulsory measures to effect the desired changes. As already noted, observations in this sense were made by, among others, the Committee on South West Africa and the Special Committee for South West Africa.¹⁵⁷

¹⁵² G A (XVII), Suppl. No. 12.

¹⁵³ G A (XVII), Annexes, a.i. 25/Addendum, A/5238, chap. IX, pp. 144-162.

¹⁵⁴ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, chap. IV, pp. 76-101.

¹⁵⁵ G A (XIX), Annexes, No. 8 (Part I), A/5800/Rev.1, chap. IV, pp. 108-134; G A (XX), Annexes, a.i. 23/Addendum, A/6000/Rev.1, chap. IV, pp. 117-148; G A (XXI), Annexes, a.i. 23/Addendum, A/3600/Rev. 1, chap. IV, pp. 260-297.

¹⁵⁶ See this *Supplement* under Article 73.

¹⁵⁷ See paras. 202 and 212 above.

223. While the General Assembly did not recommend to the Security Council that such measures should be used, it variously described the situation in the Territory as constituting “a serious threat”, “which, if allowed to continue, would . . . endanger . . . international peace and security” and “critical”. At its fifteenth, sixteenth and eighteenth sessions it called the attention of the Security Council to the situation. Also, at its eighteenth session, the Assembly requested the Security Council to consider the situation and at its twentieth session requested it to keep watch over the situation as described below.

224. In the sixth preambular paragraph of resolution 1568 (XV) the Assembly considered with concern that the present situation in South West Africa constituted a serious threat to international peace and security, and by operative paragraph 4 it invited the Committee on South West Africa to go to South West Africa immediately to investigate the situation prevailing in the Territory and to make proposals to the General Assembly on the conditions for “restoring a climate of peace and security”.

225. The Committee on South West Africa having reported, in effect, that the Government of South Africa had refused to co-operate with or to facilitate its mission, the Assembly at the resumed fifteenth session adopted resolution 1596 (XV) whereby the Committee was instructed to go to the Territory with or without the co-operation of the Government of South Africa. By the sixth preambular paragraph of the resolution the Assembly again reiterated its concern that the situation constituted a serious threat to international peace and security, and by operative paragraph 7 the Assembly decided to call the attention of the Security Council to the situation with respect to South West Africa which, if allowed to continue, would in the Assembly’s view endanger international peace and security.

226. During consideration of the resolution in its draft form, an amendment was proposed in the Fourth Committee whereby the Assembly rather than stating in the sixth preambular paragraph that the situation in the Territory “constitutes a serious threat to international peace and security” and in operative paragraph 7 that the situation if allowed to continue would “endanger international peace and security” should state in both instances that the situation “if allowed to continue is likely to endanger international peace and security”. In explanation of this amendment it was pointed out, in effect, that the suggested wording was that used in Chapter VI of the Charter, rather than that of Chapter VII.¹⁵⁸

227. This amendment was not, however, accepted. One of the sponsors of the draft resolution stated that any reduction in the force of the operative paragraph would be inappropriate in view of recent happenings.¹⁵⁹ The amendment was not pressed.

228. At its sixteenth session under operative paragraph 2 of resolution 1702 (XVI) of 19 December 1961, the Assembly established the Special Committee for South West Africa, and through operative paragraph 5

decided to call the attention of the Security Council to the resolution, in the light of operative paragraph 7 of resolution 1596 (XV).

229. At the seventeenth session, in the seventh preambular paragraph of resolution 1805 (XVII) — the resolution by which it transferred the tasks of the Special Committee for South West Africa to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples — the Assembly expressed its deep concern that the continuance of the critical situation in South West Africa “constitutes a serious threat to international peace and security”.

230. During consideration of the resolution in its draft form, an amendment was proposed in the Fourth Committee whereby the words “constitutes a serious threat to international peace and security” would be amended to read “may lead to a serious threat to international peace and security”.

Decision

The amendment was rejected by the Fourth Committee by 57 votes to 24, with 14 abstentions.¹⁶⁰

231. At the eighteenth session, in the thirteenth preambular paragraph of resolution 1899 (XVIII), the Assembly expressed deep concern at the present critical situation in South West Africa, the continuation of which constituted a serious threat to international peace and security, and by operative paragraph 6 decided to draw the attention of the Security Council to the present situation in the Territory, the continuation of which constituted a serious threat to international peace and security.

232. During consideration of the resolution in its draft form, an amendment was proposed in the Fourth Committee whereby the situation in the Territory would have been described as one “constituting a dangerous source of friction” rather than a “threat to international peace and security”. In explanation of the amendment the sponsor stated that the wording “serious threat to international peace and security” implied a need for action by the Security Council and his delegation did not think that a situation calling for such action existed.¹⁶¹

Decision

The amendment was rejected by the Fourth Committee by 67 votes to 20, with 15 abstentions.¹⁶¹

233. At the same session, however, the sponsors of the draft resolution which was subsequently adopted as resolution 1979 (XVIII) of 17 December 1963, agreed to amend the last preambular paragraph of the draft, in which the situation was originally described as a “threat to international peace and security”, to read “seriously disturbing international peace and security”. This amendment was proposed following a statement by the United States representative that his delegation

¹⁶⁰ G A (XVII), 4th Com., 1389th mtg., para. 62: amendment proposed by the United States.

¹⁶¹ G A (XVIII), 4th Com., 1473rd mtg., para. 86: amendment proposed by the United States.

¹⁵⁸ G A (XV), 4th Com., 1110th mtg.: United States, para. 31.

¹⁵⁹ G A (XV), 4th Com., 1113th mtg.: India, para. 1.

would support the draft resolution if such an amendment were made.¹⁶²

234. By operative paragraph 2 of the same resolution the Assembly requested the Security Council to consider the critical situation prevailing in South West Africa.

235. In elaboration of his view, the representative of the United States further stated that his delegation would support the resolution in its draft form on the understanding that the Security Council would be requested to consider the matter only after the International Court of Justice had rendered its decision on the contentious proceedings brought before it by Ethiopia and Liberia and in the light of the subsequent reaction of the Government of South Africa.

236. He was assured by one of the sponsors of the resolution that they did not regard the resolution as requesting a Security Council meeting at any particular time.¹⁶³

237. At the twentieth session, the ninth preambular paragraph of resolution 2074 (XX) of 17 December 1965, the Assembly noted with deep concern the serious threat to international peace and security in that part of Africa, which had been further aggravated by the racist rebellion in Southern Rhodesia, and by operative paragraph 13 requested the Security Council to keep watch over the critical situation prevailing in South West Africa in the light of the ninth preambular paragraph.

238. Although no amendments were submitted, several representatives expressed objections or reservations in the Fourth Committee to the adoption of the ninth preambular paragraph. It was argued, in effect, that the Assembly should not characterize a situation as a "threat to international peace and security" since that was a finding to be made by the Security Council in accordance with Article 39 of the Charter, rather than by the General Assembly. Where there was a need to draw the Security Council's attention to the existence of dangerous international situations, the Assembly should describe the situation in conformity with Article 11 (3) of the Charter as "likely to endanger international peace and security".¹⁶⁴ It was also stated that the reference to Southern Rhodesia was ill-conceived since there was no true parallel between that Territory and South Africa, or South West Africa.¹⁶⁵ Furthermore, the situation was not of the kind covered by Chapter VII of the Charter.¹⁶⁶

Decision

The ninth preambular paragraph was adopted by the Fourth Committee by a roll-call vote of 77 votes to 9, with 11 abstentions.¹⁶⁷

239. At the twenty-first session, after the Court's final judgement was rendered and during consideration

of the question of South West Africa in the plenary meetings of the Assembly, a number of representatives again proposed that the measures referred to in Chapter VII should be used to enforce the eventual decisions of the Assembly regarding the Territory. In the first draft resolution providing for the termination of the Mandate and the establishment of a United Nations Administering Authority, a provision was included whereby the Assembly would request "the Security Council to take the necessary effective measures to enable the Administering Authority to discharge its functions in accordance with the... resolution". In an amendment to the draft resolution, however, subsequently adopted by the Assembly in its resolution 2145 (XXI), this provision was replaced by a paragraph reading: "Calls the attention of the Security Council to the present resolution".¹⁶⁸

240. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, in the resolutions it adopted concerning South West Africa at its sessions in 1963, 1964, 1965 and 1966 also drew the attention of the Security Council to the situation in the Territory.¹⁶⁹

(d) *Call by the General Assembly for an embargo on the supply of arms, military equipment, petroleum and petroleum products to South Africa*

241. By operative paragraph 8 of resolution 1805 (XVII) of 14 December 1962, the General Assembly urged all Member States to take into consideration the anxieties expressed by a large number of Member States concerning the supply of arms to South Africa.

242. At the eighteenth session of the Assembly there were again many expressions of concern in the Fourth Committee regarding the military preparations of South Africa and the supply of arms and strategic materials furnished to South Africa, particularly by the United Kingdom and the United States, and proposals were made to the effect that the General Assembly, or the Security Council, should seek ways and means of imposing an effective embargo or, if necessary, a blockade upon shipments of arms, military equipment and petroleum to South Africa.

243. In this connexion the representative of the United Kingdom referred to the adoption by the Security Council of the resolution of 7 August 1963 calling for an arms embargo and said that his Government, as stated in its reply on this matter, did not supply any arms to South Africa which were likely to be used for internal repression.¹⁷⁰

244. The representative of the United States said that contracts for the delivery of arms and military

¹⁶² G A (XVIII), 4th Com., 1515th mtg., para. 43: amendment proposed by Sweden.

¹⁶³ *Ibid.*, Congo (Leopoldville), para. 51.

¹⁶⁴ For texts of relevant statement, see G A (XX), 4th Com., 1582nd mtg: Brazil, para. 30; Ireland, para. 35; Italy, para. 45; Norway, para. 43; Sweden, para. 25.

¹⁶⁵ *Ibid.*, United Kingdom, para. 53.

¹⁶⁶ *Ibid.*, United States, para. 40.

¹⁶⁷ *Ibid.*, para. 63.

¹⁶⁸ See paras. 346 and 349 below.

¹⁶⁹ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, chap. IV, p. 100, para. 213; G A (XIX), Annexes, No. 8 (Part I), A/5800/Rev.1, chap. IV, p. 133, para. 232; G A (XX), Annexes, a.i. 23/Addendum, A/6000/Rev.1, chap. IV, p. 148, para. 285; G A (XXI), Annexes, a.i. 23/Addendum, A/6300/Rev.1, chap. IV., p. 289, para. 306.

¹⁷⁰ G A (XVIII), 4th Com., 1473rd mtg., para. 68; S C resolution 181 (1963). See also S C resolutions 182 (1963) and 191 (1964) and S C 18th yr., Suppl. for Oct.-Dec., S/5438: United Kingdom reply concerning S C resolution 181 (1963).

equipment to South Africa up to the end of 1963 bore mainly on a limited supply of strategic equipment which, consequently, would not be used to oppress Africans. These contracts would be honoured. He also stated that his country had accepted the measure requested by the Security Council resolution not as a punitive measure, but because the United States had become convinced that the supply of arms to South Africa would hasten the deterioration of the situation.¹⁷¹

245. Following the general debate, a draft resolution was submitted¹⁷² whereby, in operative paragraph 7, the Assembly would urge all States which had not yet done so to take, separately or collectively, the following measures with reference to the question of South West Africa:

(a) Refrain forthwith from supplying in any manner or form any arms or military equipment to South Africa;

(b) Refrain also from supplying in any manner or form any petroleum or petroleum products to South Africa;

(c) Refrain from any action which might hamper the implementation of this resolution and of previous General Assembly resolutions on South West Africa.

246. During the general debate and during consideration of the draft resolution, several representatives expressed reservations¹⁷³ concerning the proposed embargo on petroleum and petroleum products. It was argued that such action fell within the purview of the Security Council which alone had the responsibility for imposing sanctions. Moreover, the Security Council included representatives of African States and of South Africa's main trading partners and constructive progress in the matter could be achieved only as a result of a dialogue between those parties. Furthermore, the steps taken to exert pressure on the Government of South Africa should not be more extensive or more disruptive to the economies of other States than was necessary to bring about the desired effect. Sanctions if not properly applied could damage the authority and prestige of the United Nations. It was also felt that such actions might prejudice the case before the International Court of Justice.

247. One representative indicated that his Government would support an effective embargo of shipments of petroleum to South Africa but that it was for the great Powers which were South Africa's trading partners to consider the effectiveness of the steps proposed. The problem could be solved only if all exporting countries agreed, without exception, to act in concert. Moreover, it was essential that the Security Council should ensure the necessary enforcement of any measures that might be decided upon.¹⁷⁴ Another representative also stated that the measure would be effective only if applied by all the important oil producing and transport-

ing countries. His own country's interests would be prejudiced if other countries were only encouraged to send more oil to South Africa.¹⁷⁵

248. Two amendments were submitted.¹⁷⁶ By the first, the words "in accordance with Security Council resolution of 7 August 1963 (S/5386)" would be added to operative paragraph 7 (a); and by the second, operative paragraph 7 (b) would be deleted. The sponsor stated that the addition to paragraph 7 (a) would add force to the provision while at the same time emphasizing the functions of the Security Council in respect of sanctions. His delegation could not accept operative paragraph 7 (b) because it did not consider that the situation justified such a step.

249. The sponsors of the draft resolution were opposed to these amendments. It was explained that the text of the draft resolution was the result of negotiation and compromise and should not be further weakened. Operative paragraph 7 (b) was the one important new element in the draft resolution and involved a definite sanction against South Africa. If implemented, it might prove decisive. It was difficult to see how South Africa could be brought to reason except by the imposition of sanctions.¹⁷⁷

Decisions

The amendment to operative paragraph 7 (a) was rejected by 58 votes to 22, with 20 abstentions.

The amendment to delete operative paragraph 7 (b) was rejected by a roll-call vote of 67 to 22, with 14 abstentions.

The Committee adopted operative paragraph 7 (a) and (b) by a roll-call vote of 72 to 14, with 18 abstentions.

The draft resolution as a whole was adopted by a roll-call vote of 82 to 6, with 16 abstentions,¹⁷⁸ and was subsequently adopted by the General Assembly as its resolution 1899 (XVIII) of 13 November 1963.

250. At the twentieth session of the Assembly, following the general debate on the question of South West Africa in the Fourth Committee, a draft resolution was submitted¹⁷⁹ whereby, as orally revised during the discussion, the Assembly would, in operative paragraph 11, request all States to take immediate action to carry out operative paragraph 7 of resolution 1899 (XVIII).

251. During consideration of the draft resolution, objections were made with respect to operative paragraph 11 similar to those put forward at the eighteenth session with respect to operative paragraph 7 of resolution 1899 (XVIII). It was noted that the Security Council had already called upon all States to refrain from supplying arms to South Africa, but operative paragraph 7 (b) of resolution 1899 (XVIII) advocated collective measures which were within the competence of the Security Council. Moreover, it would be inad-

¹⁷¹ G A (XVIII), 4th Com., 1456th mtg., para. 95 and 1471 meeting, para. 24.

¹⁷² A/C.4/L.777 and Add.1-3 (see foot-note 108 above).

¹⁷³ For text of relevant statements, see G A (XVIII), 4th Com., 1462nd mtg.: Ecuador, para. 52; 1471st mtg.: Denmark, para. 31; 1473rd mtg.: Australia, para. 46; Canada, paras. 63 and 64; Chile, para. 17; Greece, para. 72; Japan, para. 74; New Zealand, para. 10; Norway, para. 14; Spain, para. 81; Sweden, para. 40; United Kingdom, para. 70.

¹⁷⁴ G A (XVIII), 4th Com., 1472nd mtg.: Iran, para. 18.

¹⁷⁵ *Ibid.*, 1473rd mtg.: Venezuela, para. 79.

¹⁷⁶ A/C.4/L.779, submitted by the United States (see foot-note 109 above).

¹⁷⁷ G A (XVIII), 4th Com., 1471st mtg.: Cameroon, para. 51.

¹⁷⁸ *Ibid.*, 1473rd mtg., para. 89.

¹⁷⁹ A/C.4/L.812/Rev.1 and Add.1-3 (see foot-note 124 above).

visible to urge an embargo which could not be expected to be implemented effectively.¹⁸⁰

Decision

Operative paragraph 11 was adopted by the Fourth Committee by a roll-call vote of 76 votes to 5, with 18 abstentions. The draft resolution as a whole was adopted by a roll-call vote of 83 votes to 2, with 15 abstentions¹⁸¹ and was subsequently adopted by the General Assembly as its resolution 2074 (XX) of 17 December 1965.

252. In reports submitted at the nineteenth, twentieth and twenty-first sessions, the Secretary-General communicated to the Assembly the replies received from forty-nine States concerning, *inter alia*, the implementation of operative paragraph 7 of resolution 1899 (XVIII) and operative paragraph 11 of resolution 2074 (XX).¹⁸² These States were as follows: Algeria, Argentina, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, Greece, Guinea, Hungary, India, Indonesia, Iraq, Israel, Jamaica, Jordan, Kuwait, Liberia, Madagascar, Mali, Malta, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Rwanda, Sierra Leone, Spain, Sweden, Syria, Togo, Tunisia, Turkey, Ukrainian SSR, USSR, United Arab Republic, United Kingdom, and the United States of America.

253. All of these States indicated that they did not supply South Africa with arms or military equipment; or they referred to the measures they had taken to prohibit such a supply. One State, the Netherlands, indicated that the measures it had taken to prevent the export to South Africa of specific means for the manufacture and maintenance of arms and ammunition covered those for the use of force in the application of the policy of *apartheid*. In the case of one State, Spain, the reply indicated that the military and civil authorities, which exercised control over arms regarded as non-commercial and not usable for purposes of sport, had refrained from authorizing any sale or consignment to South Africa; no governmental control was exercised over the export of other types of arms, namely, those which were intended solely for purposes of sport, were unrifled or of a very small calibre.

254. Replies from all States except Canada, Denmark, the Netherlands, Norway, Sweden, the United Kingdom and the United States also indicated that they did not supply or had prohibited the supply of petroleum and petroleum products to South Africa. However, Sweden stated that it did not export any petroleum to South Africa and had since 1953 exported only a negligible amount of petroleum products, valued at less than \$4,000, to South Africa.

255. Many of the replies referred to other sanctions imposed by the States concerned against South Africa

and affirmed compliance not only with resolutions 1899 (XVIII) and 2074 (XX), but also with other resolutions concerning South West Africa.

7. THE QUESTION OF EXTENDING UNITED NATIONS ASSISTANCE TO, AND ESTABLISHING A UNITED NATIONS PRESENCE IN, SOUTH WEST AFRICA

(a) *Efforts to extend assistance by the specialized agencies and the United Nations Children's Fund and to establish a United Nations presence in South West Africa*

256. By resolution 1566 (XV) of 18 December 1960, which was adopted unanimously, the General Assembly (1) considered that the economic, social, educational and health conditions prevailing in the Mandated Territory of South West Africa, especially as they concerned the indigenous inhabitants, were unsatisfactory, and that the need for urgent co-operative action for the improvement of present conditions in those fields was imperative; (2) endorsed the considered view of the Committee on South West Africa that assistance should be sought, and that it should be provided by the United Nations, the specialized agencies and UNICEF,¹⁸³ (3) invited FAO, UNESCO and UNICEF to undertake urgent programmes to assist the indigenous population of the Territory of South West Africa in their respective fields; (4) requested the Government of the Union of South Africa to seek such assistance and to extend its co-operation to the above-mentioned specialized agencies and UNICEF in implementing such urgent programmes to improve the economic, social, educational and health conditions of the indigenous population in South West Africa, and to facilitate their work in the Territory in every possible way and (5) requested the above-mentioned specialized agencies and UNICEF to report to the Committee on South West Africa and to the General Assembly at their respective sessions during 1961 on the action taken.

257. The Secretary-General, reporting¹⁸⁴ to the General Assembly at its sixteenth session on the action taken with regard to the implementation of General Assembly resolution 1566 (XV), noted that the Government of South Africa had informed him in respect of UNESCO, and had informed the Director of FAO and the Director of the WHO Regional Office in Africa, to the effect that it had always regarded the promotion of the economic, social, educational and health conditions of the population of the South West Africa as its sole responsibility and had not found it necessary to request the help of international agencies in the execution of that policy. The Executive Director of UNICEF had informed the Secretary-General that normally a request for the co-operation of UNICEF would come through the Government of South Africa and that thus far no such request had been received.

258. In its annual report to the General Assembly at its sixteenth session, the Committee on South West Africa noted that, in effect, the South African Government had replied in a negative manner to offers by the

¹⁸⁰ G A (XX), 4th Com., 1581st mtg.: Japan, para. 36; 1582nd mtg.: Denmark, para. 42; Sweden, para. 25; United States, para. 40.

¹⁸¹ *Ibid.*, 1582nd mtg., p. 425.

¹⁸² G A (XIX), Annexes, No. 15, A/5690 and Add. 1-3; G A (XX), Annexes, a.i. 69, A/6035 and Add.1-4. See also the following mimeographed documents: A/6250, A/6287, A/6332 and Add.1, A/6334 and A/6336.

¹⁸³ G A (XV), Suppl. No. 12, p. 56.

¹⁸⁴ G A (XVI), Annexes, a.i. 47, A/4956 and Add.1, pp. 1-3.

agencies to provide assistance. The Committee hoped the agencies would, despite the lack of co-operation, further explore the possibility of providing such assistance. The Committee also recommended that the United Nations High Commissioner for Refugees should provide direct assistance to refugees from South West Africa pending their eventual return to South West Africa.¹⁸⁵

259. In its special report to the General Assembly concerning the implementation of General Assembly resolutions 1568 (XV) and 1596 (XV), the Committee on South West Africa further recommended, in reference to paragraph 4 (a) of resolution 1568 (XV) — by which the Assembly had invited the Committee to go to South West Africa and make proposals on the conditions for restoring a climate of peace and security — the immediate institution of a United Nations presence in South West Africa.¹⁸⁶

260. At its sixteenth session, the General Assembly, by resolution 1702 (XVI) of 19 December 1961, decided to establish the Special Committee for South West Africa which was given the task, in consultation with the Mandatory Power, of visiting South West Africa before 1 May 1962. Among the other tasks assigned to the Special Committee for South West Africa was that of achieving, in consultation with the Mandatory Power, the co-ordination of the economic and social assistance with which the specialized agencies would provide the people in order to promote their moral and material welfare. By resolution 1704 (XVI), the Assembly dissolved the Committee on South West Africa.

261. In the report on their visit to South West Africa and South Africa, the Chairman and Vice-Chairman of the Special Committee stated that the Prime Minister of South Africa had acknowledged that changing conditions required a more rapid advance in economic and social development of the non-European population and had stated that a detailed five-year plan was already being worked out.¹⁸⁷

262. The Chairman and Vice-Chairman further said that the Prime Minister of South Africa had refused to entertain any idea of having specialized agencies operate within South West Africa, claiming that South Africa itself had adequate means to develop the Territory without outside assistance. The Prime Minister had indicated, however, that if the idea of associating one or two experts in the five-year plan should be favourably received the South African Government would be prepared to explore the possibilities of inviting one or two experts working in particular fields with WHO and/or FAO who would be consulted on matters in regard to which they were particularly qualified.

263. On the question of accepting funds from the United Nations and specialized agencies, the Prime Minister stated that the needs of other States were so great and could so strain United Nations resources that South Africa felt it to be its duty to provide funds and technical services for South West Africa from its own and South West African resources. However,

should loan funds from the International Development Agency (IDA) be available to the South African Government for special projects in South West Africa, these could be utilized.¹⁸⁸

264. A statement in the same sense was also made in the Fourth Committee by the representative of South Africa at the seventeenth session of the Assembly.¹⁸⁹

265. By operative paragraph 5 of resolution 1805 (XVII) of 14 December 1962, which was adopted in draft form in the Fourth Committee by a roll-call vote of 96 to none, with 1 abstention,¹⁹⁰ the Assembly requested the Secretary-General to appoint a United Nations Technical Assistance Resident Representative for South West Africa to achieve the objectives outlined in General Assembly resolution 1566 (XV) of 18 December 1960, and resolution 1702 (XVI) relating to the co-ordination of the economic and social assistance which the specialized agencies would provide, in consultation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. It further requested him, by operative paragraph 6 of the same resolution, to take all necessary steps to establish an effective United Nations presence in South West Africa.

266. In reply to a letter of 23 March 1963 from the Secretary-General relating to the appointment of a United Nations Technical Assistance Resident Representative and the establishment of an effective United Nations presence in South West Africa, the Minister for Foreign Affairs of South Africa stated in effect, by letter of 2 April 1963, that the South African Government would not be able to agree to the appointment of a Resident Representative and, *inter alia*, that until the findings and recommendations of the Commission of Enquiry into South West African Affairs (Odendaal Commission) had been received and studied, the Government could not consider whether any outside expert advice would still be necessary. The Secretary-General was also reminded of the case that was before the International Court of Justice.¹⁹¹ In pursuance of operative paragraph 5 of resolution 1805 (XVII) these letters were transmitted to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at its session in 1963.

267. At its eighteenth session, the General Assembly, in the seventh preambular paragraph of resolution 1899 (XVIII), expressed deep regret that the Government of South Africa had taken no steps to implement the resolutions of the General Assembly on South West Africa and, in particular, had refused to allow a United Nations Technical Assistance Resident Representative to be stationed in the Territory. By operative paragraph 5 of the same resolution the Assembly requested the Secretary-General, in effect, to continue his efforts to achieve the appointment of a United Nations Technical Assistance Resident Representative for South West

¹⁸⁵ *Ibid.*, Suppl. No. 12, paras. 16 and 17.

¹⁸⁶ *Ibid.*, Suppl. No. 12 A, para. 164 (2).

¹⁸⁷ Commission of Enquiry into South West African Affairs (Odendaal Commission), established in 1962.

¹⁸⁸ G A (XVII), Suppl. No. 12, p. 6, para. 38.

¹⁸⁹ G A (XVII), 4th Com., 1381st mtg., paras. 14 and 15.

¹⁹⁰ G A (XVII), 4th Com., 1389th mtg., para. 63.

¹⁹¹ A/AC.109/37 (mimeographed).

Africa and to establish an effective United Nations presence in South West Africa, and invited the Government of South Africa to inform the Secretary-General of its decision by 30 November 1963. The Secretary-General was requested to report to the General Assembly immediately after he received the reply of the Government of South Africa.

268. In accordance with the request of the General Assembly the Secretary-General reported¹⁹² to it on receipt of South Africa's reply. By letter of 29 November 1963, the South African Government, informed the Secretary-General that as previously stated the Government of South Africa could not consider whether outside expert advice would be necessary until it had received and carefully considered the findings of the Odendaal Commission.

269. In resolution 1979 (XVIII) of 17 December 1963, the Assembly, in the third, fourth and fifth preambular paragraphs, recalling resolution 1899 (XVIII) and the report of the Secretary-General, and considering that the reply of the Government of South Africa demonstrated that South Africa persisted in its refusal to co-operate with the United Nations in regard to South West Africa, in operative paragraph 1 condemned the Government of the Republic of South Africa for its non-compliance with the General Assembly resolutions with regard to South West Africa.

270. The Secretary-General submitted a further report¹⁹³ to the General Assembly at its nineteenth session on the continuation of his efforts to achieve the objectives stated in operative paragraphs 5 and 6 of General Assembly resolution 1805 (XVII). After the Odendaal Commission's report had been received and studied by the South African Government, the Secretary-General, by letter of 30 June 1964, again approached the South African Government with a view to receiving information concerning its decision in the matter. By letter of 5 November 1964, the Government of South Africa, among other things, replied that it had come to the conclusion with regard to "outside expert advice" that it would be neither necessary nor indeed desirable to make use of any services which might be offered in this regard by the United Nations. On the one hand, South Africa considered itself capable of fully implementing all the proposals of the Odendaal Commission which were acceptable, and could leave such outside help as the United Nations might make available to other areas in Africa more in need of it. On the other hand, the Government of South Africa had had no option but to take into account the attitude which the United Nations had in recent years persistently adopted with respect to its administration of South West Africa and with respect to South Africa's attempts to seek an understanding with the United Nations, as exemplified in the invitation extended to the Chairman and Vice-Chairman of the Special Committee for South West Africa to visit the Territory.

271. As far as the possibility of co-operation with experts from FAO and WHO was concerned, such co-operation, it stated, had been rendered impracticable

by the decision of FAO to deprive South Africa of certain rights of membership (which had led to South Africa's withdrawal from the Organization) and by proposals of the World Health Assembly aimed at securing the exclusion of South Africa from membership of WHO.

272. With respect to the establishment of a United Nations presence in South West Africa, the South African Government felt that no comment was called for, except to recall once again that the whole issue of alleged United Nations jurisdiction in South West Africa had long been a subject of unresolved controversy and was, *inter alia*, at present in dispute at the International Court of Justice.

(b) *Establishment by The United Nations of special educational and training programmes for South West Africa*

273. By resolution 1705 (XVI), of 19 December 1961, the General Assembly endorsed recommendations of the Committee on South West Africa¹⁹⁴ concerning the establishment of special educational and training programmes for South West Africans and decided to establish a special training programme for South West Africans, including technical education, education for leadership and teacher training. The Assembly requested the Secretary-General, in establishing the programme, to make use as fully as possible of the existing United Nations programmes of technical co-operation and, particularly, to make available to those indigenous inhabitants of the Territory who were and who might be temporarily residing in various countries and territories outside South West Africa the benefits of such programmes, with the consent and the co-operation of the host Governments. It invited the specialized agencies to co-operate in the establishment and implementation of the programme.

274. It also invited Member States to make available, directly or through voluntary agencies, for the use of South West Africans all-expense scholarships both for the completion of secondary education and for various forms of higher education, and requested Member States to inform the Secretary-General of any scholarships offered and of awards made and utilized.

275. The Assembly requested the Secretary-General to establish appropriate machinery for dealing with applications from South West Africans for education and training outside the Territory.

276. It also requested Member States to facilitate the travel of South West Africans seeking to avail themselves of such educational opportunities.

277. Finally, the Assembly requested the Secretary-General to consult with the United Nations Special Committee for South West Africa concerning the imple-

¹⁹² G A (XVIII), Annexes, a.i. 55, A/5634, pp. 12 and 13.

¹⁹³ G A (XIX), Annexes, No. 15, A/5781.

¹⁹⁴ The recommendations of the Committee on South West Africa were made in reference to resolution 1568 (XV) of 18 December 1960, operative para. 4 (b), inviting the Committee to make proposals on the steps which would enable the indigenous inhabitants of South West Africa to achieve a wide measure of internal self-government designed to lead them to complete independence as soon as possible. See GA (XVI), Suppl. No. 12 A, p. 22.

mentation of the resolution, and to report thereon to the General Assembly at its regular session.

278. In accordance with that resolution, the Secretary-General established a special training programme and individual Member States made offers of scholarships available for South West Africans. During the first year, the Secretary-General provided information to the Special Committee for South West Africa on the implementation of the resolution and subsequently reported annually on the programmes to the General Assembly at its seventeenth, eighteenth, nineteenth, twentieth and twenty-first sessions.¹⁹⁵

279. By resolutions 1901 (XVIII) of 13 November 1963, and 2076 (XX) of 17 December 1965, the Assembly, *inter alia*, expressed appreciation to those Member States which had made scholarships available and invited these States and those which might subsequently offer scholarships to consider providing for secondary, vocational and technical training. The Assembly further invited Member States to give sympathetic consideration to requests of the Secretary-General for placement in their secondary, vocational or technical schools of candidates who had been awarded scholarships under the Special Training Programme. The Assembly also again requested Member States, and in particular the Republic of South Africa, to facilitate in every possible way the travel of South West Africans seeking to avail themselves of educational opportunities under the Programme. The Assembly also requested the Secretary-General to consult with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples concerning the implementation of the Programme and to report thereon to the Assembly.

280. In connexion with the latter request, the Secretary-General submitted to the Special Committee at its 1964 session an interim report on the progress of the educational and training programmes for South West Africans.¹⁹⁶ Additionally, in resolution 2076 (XX), the Assembly called upon the Government of South Africa to co-operate with the Secretary-General in implementing the resolution and requested the Secretary-General to disseminate in South West Africa and elsewhere information concerning the scholarship programme.

281. At its twenty-first session, after the termination of the Mandate, the Assembly adopted resolution 2236 (XXI), of 20 December 1966, which was in similar terms to resolutions 1901 (XVIII) and 2076 (XX), except that the provisions specifically calling upon the Government of South Africa to co-operate with the Secretary-General and to facilitate the travel of South West Africans seeking to avail themselves of educational opportunities were omitted. The Assembly further requested all Governments concerned to co-operate with the Secretary-General in the implementation of the resolution and requested the Secretary-General

to continue to take the necessary measures with a view to making the benefits of the Programme available to as many South West Africans as possible.

282. At the same session, by resolution 2235 (XXI) of 20 December 1966, the Assembly requested the Secretary-General to study, in consultation with the United Nations High Commissioner for Refugees, the Director-General of UNESCO, and the heads of other appropriate agencies and organs, as well as the Administrative Secretary-General of the Organization of African Unity, the question of a consolidation and an integration of the special educational and training programme for South West Africa, the special training programme for Territories under Portuguese administration and the educational and training programme for South Africans, and to report the results to the General Assembly at its twenty-second session. The Assembly also authorized the Secretary-General to establish, if he deemed it desirable, a committee selected from among host countries of refugees and from among States which had contributed to the United Nations educational and training programmes, to advise him on means to develop and expand those programmes.

283. According to the report of the Secretary-General to the General Assembly at its twenty-first session,¹⁹⁷ as of September 1966, eight South West Africans were enrolled in educational institutions under the United Nations Programme. Of these, two were in secondary schools in Nigeria, one was a nursing student in Uganda, one was studying law in London, two were attending college in the United States of America and two were students at the Free University of Berlin.

284. As of the same date, twenty-seven Member States had made scholarships available to South West Africans out of which ninety-seven awards had been made. These Member States were: Bulgaria (10 awards), Burma, Byelorussian SSR, China, Czechoslovakia, Denmark (1 award), Ghana (1 award), India, Israel, Italy (1 award), Kenya, Kuwait, Libya, Nigeria (3 awards), Norway, Pakistan, Poland (17 awards), Sierra Leone, Sudan, Sweden (7 awards), Tunisia, Union of Soviet Socialist Republics (12 awards), United Arab Republic, United Kingdom of Great Britain and Northern Ireland (1 award), United Republic of Tanzania, United States of America (43 awards) and Yugoslavia (1 award). The Federal Republic of Germany also made scholarships available for the use of South West Africans.

B. The question of the consent of the United Nations to the modification of the international status of South West Africa

285. As recorded in the *Repertory*, the International Court of Justice in its 1950 Advisory Opinion stated: "that the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa, and that the competence to determine and modify the international status of the Territory rests with the Union of

¹⁹⁵ G A (XVII), Annexes, a.i. 57, A/5234 and Add.1; G A (XVII), Annexes, a.i. 55, A/5526 and Add.1; G A (XX), Annexes, a.i. 69 and 70, A/5782 and Add.1 (report to nineteenth session) and A/6080 and Add.1 and 2; G A (XXI), Annexes, a.i. 66, A/6463.

¹⁹⁶ A/AC.109/L.118 (mimeographed).

¹⁹⁷ G A (XXI), Annexes, a.i. 66, A/6463.

South Africa acting with the consent of the United Nations.”¹⁹⁸

286. It may also be noted that in adopting the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) which from the fifteenth session on was specifically made applicable to South West Africa¹⁹⁹ the Assembly, in the eleventh preambular paragraph expressed the conviction that all peoples had an inalienable right to the integrity of their national territory; and in operative paragraph 6 declared that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country was incompatible with the Purposes and Principles of the Charter of the United Nations.

287. The efforts of the General Assembly to negotiate with South Africa an agreement on the international status of South West Africa and the rejection by the Assembly of proposals to incorporate South West Africa, or parts thereof, into South Africa were also referred to in *Repertory Supplement No. 2*.²⁰⁰

288. As far as negotiations were concerned it will be recalled that the General Assembly established at its twelfth session, by resolution 1143 (XXII) of 25 October 1957, a Good Offices Committee composed of three members — Brazil, the United Kingdom and the United States — “to discuss with the Government of the Union of South Africa a basis for an agreement which would continue to accord to the Territory of South West Africa an international status”. At the thirteenth session, the General Assembly by resolution 1243 (XIII) of 30 October 1958, having decided not to accept the suggestions contained in the report²⁰¹ of the Good Offices Committee that envisaged partition of the Territory and the annexation of a part of the Territory by South Africa, had invited the Good Offices Committee to renew discussions with the Government of the Union of South Africa to find a basis for an agreement “which would continue to accord to the Mandated Territory of South West Africa as a whole an international status, and which would be in conformity with the purposes and principles of the United Nations”.

289. Renewed discussions between the Good Offices Committee and the Government of South Africa took place between 11 and 21 September 1959. The Committee informed the General Assembly that the Government of South Africa had not been prepared to agree that “further talks might be concentrated on the negotiation of some form of agreement to which the United Nations might be a party, for the supervision of the administration of South West Africa in a manner which would not impose greater responsibilities on the Union Government or impair the rights enjoyed by it under the Mandate”; and that it had not succeeded in finding a basis for an agreement under its terms of reference.²⁰²

290. The report of the Good Offices Committee was considered by the General Assembly at its fourteenth session.

291. In statements made in the Fourth Committee, the representative of South Africa, while expressing regret that the Good Offices Committee and his Government had not been able to find a basis for agreement, noted that the Committee had been set up in accordance with General Assembly resolution 1143 (XII) which was phrased in broad and general terms and did not even mention the United Nations. It was this fact which had enabled his Government to accept the invitation, but subsequently the Good Offices Committee had been reappointed with extremely restrictive terms of reference. The main point of difference with the renewed Good Offices Committee had been the Committee’s insistence, as a minimum condition, that the Union Government should enter into a formal agreement granting the United Nations the necessary powers for the supervision of the administration of the Territory, an agreement which would be tantamount to recognizing the authority of the United Nations with respect to South West Africa and making it virtually a Trust Territory. That had been the point at issue ever since the San Francisco Conference in 1945. The Government of South Africa could not depart from the policy which it had consistently maintained since the demise of the League of Nations. At its final meeting the League Council had not nominated the United Nations as heir and successor to its responsibilities with respect to South West Africa and the Government of South Africa was therefore not prepared to accept it as such.

292. The representative of South Africa assured²⁰³ the Committee that his Government would, nevertheless, continue to administer the Territory in the spirit of the Mandate. At the same time it was sincerely desirous of finding a solution to the issue and to that end would be prepared to consider all proposals, provided that the South African Government would not be expected to depart from the juridical position it had consistently taken. It would like the door to be kept open for further discussions. The South African Government was ready to enter into negotiations with an appropriate *ad hoc* body that might be appointed after prior consultation with the South African Government on the assumption that such a body would show the necessary goodwill and would approach its work in a constructive fashion, not ruling out the fullest exploration of all possibilities.

293. During the general debate a number of representatives expressed the view²⁰⁴ that there would be no purpose in prolonging the existence of the Good Offices Committee, or in again attempting to negotiate an agreement with the Government of South Africa. Among the arguments put forward in support of that view were that it appeared that the only basis on which

¹⁹⁸ International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950* p. 144.

¹⁹⁹ See paras. 53-60 above.

²⁰⁰ See vol. III under Article 80, paras. 76-100.

²⁰¹ G A (XIII), Annexes, a.i. 39, A/3900.

²⁰² G A (XIV), Annexes, a.i. 38, A/4224, paras. 10 and 16.

²⁰³ G A (XIV), 4th Com., 900th mtg., para.15; 924th mtg., para.2.

²⁰⁴ See for example G A (XIV), 4th Com., 915th mtg.: Venezuela, para. 28; 916th mtg.: Morocco, para. 19; Burma, paras. 25 *et seq.*; 917th mtg.: USSR, para. 12; Yugoslavia, paras. 14 *et seq.*; 918th mtg.: Poland, para. 23; Sudan, para. 34; 919th mtg.: Haiti, para. 17, Liberia, para. 35.

the South African Government was willing to negotiate was that of partition, an alternative the General Assembly had rejected once and for all at the thirteenth session; that the South African Government had made it plain that it would refuse to negotiate on any other basis than one which implied the exclusion of the United Nations as a party and the rejection of the Charter; and that unless the South African Government changed its position, further negotiations would only lead to frustration. The only legally acceptable solution, these representatives felt, would be to place the Territory under the International Trusteeship System.

294. Other representatives,²⁰⁵ while expressing disappointment at the failure of the efforts of the Good Offices Committee, considered that negotiations should still be continued with a view to arriving at an arrangement acceptable both to the United Nations and the Government of South Africa, and one which would give reality to the principle of international accountability, and that to accept that the question was one which could not be solved by negotiation, would augur ill for negotiations of more complex issues. The representative of Mexico suggested²⁰⁶ that supervision over the Territory could be exercised by a committee consisting of the United States, France, the United Kingdom, South Africa and four other States which were not administering Powers. The committee would operate for a period of two or three years, at the end of which, on the basis of a recommendation by the committee, a trusteeship agreement would be signed. The representative of the United States thought²⁰⁷ one constructive possibility would be to apply in some manner the existing Mandate for South West Africa. The representative of Iran considered²⁰⁸ that the South African Government might be persuaded to take an active part in the work of the Committee on South West Africa and other United Nations organizations, including the specialized agencies, and that it might be possible to send a mission to the Territory to ascertain at first hand the aspirations of the people.

295. Following the general debate, a draft resolution²⁰⁹ was submitted whereby the General Assembly would take note of the report of the Good Offices Committee and express its appreciation to the members of the Committee for their efforts.

Decision

The draft resolution was approved²¹⁰ by the Fourth Committee by 59 votes to 7, with 1 abstention. The draft resolution was subsequently adopted by the General Assembly as its resolution 1362 (XIV) of 17 November 1959.

296. A draft resolution²¹¹ was also submitted which, *inter alia*, provided that the General Assembly would invite the Government of South Africa to enter into negotiations "with a view to placing the Mandated Territory under the International Trusteeship System" and would request the Government of South Africa "to formulate... for the consideration of the General Assembly proposals which will enable the Mandated Territory of South West Africa to be administered in accordance with the principles and purposes of the Mandate, the supervisory functions being exercised by the United Nations according to the terms and intent of the Charter".

297. Amendments²¹² to the draft resolution were submitted, some of which were accepted by the sponsors. Two amendments were, however, unacceptable to them. The first would have had the effect of deleting the specific intent in the draft resolution that negotiations should be entered into "with a view to placing the Mandated Territory under the International Trusteeship System" by substituting the words "in order to continue to accord to the entire Mandated Territory of South West Africa an international status which would be in conformity with the principles and purposes of the United Nations". The second amendment would have specified that the proposals to be requested from the Government of South Africa should be "in accordance with the principles and purposes of the Mandate and the advisory opinion of the International Court of Justice of 11 July 1950" and would not specifically have referred to the supervisory functions being exercised by the United Nations.

Decisions

The first amendment was rejected by the Fourth Committee by 44 votes to 20, with 4 abstentions.

The second amendment was rejected by 48 votes to 20, with 5 abstentions.

The wording "with a view to placing the Mandated Territory under the International Trusteeship System" was adopted by 51 votes to 8, with 10 abstentions.

The draft resolution as a whole as orally revised was adopted by a roll-call vote of 56 to 5, with 12 abstentions²¹³ and subsequently adopted by the General Assembly as its resolution 1360 (XIV).

298. The operative paragraphs of the resolution which concern negotiations read as follows:

"The General Assembly,

"...

"1. Notes the statement made by the representative of the Union of South Africa at the 924th meeting of the Fourth Committee on 26 October 1959,

²⁰⁵ G A (XIV), 4th Com. 915th mtg.: Finland, para. 30; New Zealand, paras. 33-35.

²⁰⁶ G A (XIV), 4th Com., 915th mtg., para. 47.

²⁰⁷ *Ibid.*, 919th mtg. para. 4.

²⁰⁸ *Ibid.*, 920th mtg. para. 14.

²⁰⁹ G A (XIV), Annexes, a.i. 38, A/4272/Add.1, para. 39; A/C.4/L.597 submitted by Argentina, Ireland, New Zealand and Norway.

²¹⁰ G A (XIV), 4th Com., 932nd mtg., para. 13.

²¹¹ A/C.4/L.595 and Add.1, submitted by Afghanistan, Argentina, Burma, Ceylon, Ethiopia, Federation of Malaya, India, Indonesia, Iraq, Ireland, Jordan, Lebanon, Libya, Morocco, Nepal, Pakistan, Philippines, Saudi Arabia, Sudan, United Arab Republic, Venezuela, Yemen and Yugoslavia (see G A (XIV) Annexes, a.i. 38, A/4272 and Add.1, para. 26).

²¹² G A (XIV), Annexes, a.i. 38, A/C.4/L.599, submitted by Denmark, Finland, Norway and Sweden. See also A/C.4/L.598/Rev. 1, containing draft resolution submitted by the same States but withdrawn (*ibid.*, A/4272 and Add.1 para. 27).

²¹³ A/C.4/595 and Add. 1 (see G A (XIV), Annexes, a.i. 38, A/4272, paras. 26-33).

expressing, *inter alia*, the Union's readiness to enter into discussions with the United Nations;

"2. *Invites* the Government of the Union of South Africa to enter into negotiations with the United Nations through the Committee on South West Africa, which is authorized under its terms of reference to continue negotiations with the Union, or through any other committee which the General Assembly may appoint, with a view to placing the the Mandated Territory under the International Trusteeship System;

"3. *Requests* the Government of the Union of South Africa to formulate for the consideration of the General Assembly, at its fifteenth session, proposals which will enable the Mandated Territory of South West Africa to be administered in accordance with the principles and purposes of the Mandate, the supervisory functions being exercised by the United Nations according to the terms and intent of the Charter;

"...

"5. *Requests* the Committee on South West Africa, or any other committee which may be appointed in pursuance of paragraph 2 above, to submit to the General Assembly, at its fifteenth session, a report on the negotiations with the Union Government in addition to the annual report on conditions in the Territory of South West Africa."

299. The General Assembly did not appoint another committee to continue negotiations with South Africa and the Committee on South West Africa therefore resumed at its seventh session its efforts to enter into negotiations with the Government of South Africa in accordance with operative paragraph 5 of General Assembly resolution 1360 (XIV).

300. The Committee included in its report to the General Assembly at its fifteenth session the texts of letters exchanged between the Committee and the Government of South Africa concerning the renewal of negotiations.²¹⁴ In reply to a letter from the Committee, *inter alia*, inviting the Government of South Africa to appoint a representative or representatives to enter into negotiations, the South African Government while recalling its offer, which had not been accepted, to enter into discussions with an appropriate United Nations *ad hoc* body appointed after prior consultation with the Union Government, and with terms of reference which would allow the fullest discussion and exploration of all possibilities, stated that it "could not see any possibility of fruitful results flowing from negotiations which required the Union to place 'South West Africa under the International Trusteeship System' — terms of reference which prescribed the end result in advance". The Government of South Africa still believed that "negotiations on the basis proposed would not lead to any positive results".

301. The General Assembly at its fifteenth session did not adopt a specific resolution relating to negotiations but in the fourth preambular paragraph of resolution 1565 (XV), of 18 December 1960, noted in particular the reports of the Committee on South West

Africa "concerning the failure of negotiations with the Government of the Union of South Africa and the Committee's conclusions that the Union had at all times declined to co-operate in any way with the Committee in the discharge of its functions".

302. In the third preambular paragraph of resolution 1568 (XV), of 18 December 1960, the Assembly also took note with deep regret of the refusal of the Government of South Africa "to enter into negotiations with the United Nations through the Committee on South West Africa, with a view to placing the Mandated Territory under the International Trusteeship System".

303. The General Assembly did not thereafter attempt to enter into negotiations with the Government of South Africa concerning the international status of the Territory. It may also be noted that the fourteenth session was the last time the General Assembly, by resolution 1359 (XIV) of 17 November 1959, asserted, as it had in a series of earlier resolutions,²¹⁵ that "in the present conditions of political and economic development of South West Africa, the normal way of modifying the international status of the Territory would be to place it under the International Trusteeship System by means of a trusteeship agreement".

304. With regard to what were considered to be further attempts or intentions of the Government of South Africa to assimilate or annex South West Africa, the Committee on South West Africa in its report to the General Assembly, at its fifteenth session, reported on the decision of the South African Government to allow the European population of South West Africa to participate in the referendum to be held to decide on whether or not South Africa should become a republic.²¹⁶

305. The referendum took place on 5 October 1960 and the Assembly, at its fifteenth session, in the fourth and sixth preambular paragraphs of resolution 1593 (XV) of 16 March 1961, noted with concern the continued acts whereby, since 1950, the Government of the Union of South Africa had attempted to bring about the assimilation of the Territory of South West Africa, and in particular the so-called referendum of 5 October 1960 in which only the "European" inhabitants of the Territory were permitted to take part; and considered that attempts at the assimilation of the Mandated Territory of South West Africa, culminating in the so-called referendum of 5 October 1960, were totally unacceptable, as having no moral or legal basis and being repugnant to the letter and spirit of the Mandate.

306. In operative paragraph 3 of resolution 1596 (XV) of 7 April 1961, the Assembly, again deplored "the attempts at the assimilation of the Mandated Territory of South West Africa culminating in the so-called referendum held on 5 October 1960, as being totally unacceptable, having no moral or legal basis and being repugnant to the letter and spirit of the Mandate".

307. Subsequently, the Committee on South West Africa, in its report to the General Assembly at its sixteenth session,²¹⁷ reported that 19,938 registered

²¹⁴ G A (XV), Suppl. No. 12.

²¹⁵ See this *Supplement* under Article 77.

²¹⁶ G A (XV), Suppl. No. 12, para. 115-117.

²¹⁷ G A (XVI), Suppl. No. 12, paras. 95-97.

voters of South West Africa had voted in favour of a republic compared with 12,017 who had voted against. The corresponding figures for the Union and South West Africa together were 850,458 in favour and 775,878 against. The republic came into force on 31 May 1961. The Committee stated that the status of the Territory had been affected, at least indirectly, by the transformation of the Union of South Africa into a republic, and that as a consequence of the decision of the South African Government to withdraw the application for continued membership in the Commonwealth after South Africa became a republic, the last constitutional link with the British Crown, upon which the Mandate for South West Africa had been conferred, to be exercised on its behalf by the Government of the Union of South Africa, had been broken.

308. At its eighteenth session, in resolution 1899 (XVIII) of 13 November 1963, the Assembly in the eleventh preambular paragraph considered that any attempt by the Government of South Africa to annex a part or the whole of the Territory of South West Africa would be contrary to the advisory opinion of the International Court of Justice of 11 July 1950²¹⁸ and would constitute a violation of that Government's obligations under the Mandate and of its other international obligations. By operative paragraph 4 the Assembly considered that any attempt to annex a part or the whole of the Territory of South West Africa constituted an act of aggression.

309. In connexion with the above-mentioned provision, an amendment²¹⁹ was proposed in the Fourth Committee to operative paragraph 6 of the resolution in its draft form whereby any attempt to annex the Territory would be considered a violation of the Mandate and of international law rather than an act of aggression. In explanation of the amendment the sponsor stated that the Security Council should determine the existence of any act of aggression. While the General Assembly had undoubted authority in that sphere, it would rest initially with the Council, should a unilateral attempt at annexation be made by the South African Government, to determine at that time whether such an attempt constituted aggression.

Decision

The amendment was rejected by 66 votes to 20, with 14 abstentions.²²⁰

310. At its twentieth session the General Assembly, by operative paragraph 5 of resolution 2074 (XX) of 17 December 1965, considered that any attempt to partition the Territory or to take any unilateral action, directly or indirectly, preparatory thereto, constituted a violation of the Mandate and of resolution 1514 (XV). By operative paragraph 6 of that resolution, the Assembly again considered that any attempt to annex a part or the whole of the Territory of South West Africa constituted an act of aggression.

²¹⁸ International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950*, p. 128.

²¹⁹ A/C.4/L.779, submitted by the United States (see footnote 109 above).

²²⁰ G A (XVIII) 4th Com., 1473rd mtg., para. 86.

311. As in the case of the draft of resolution 1899 (XVIII), mentioned in paragraph 309 above, reservations were again expressed in the Fourth Committee about operative paragraph 6 of resolution 2074 (XX) in its draft form on the grounds that it was not for the General Assembly to define an act of aggression.²²¹

Decision

Operative paragraph 6 was adopted by a roll-call vote of 80 to 3, with 15 abstentions.²²²

312. The provisions of resolutions 1899 (XVIII) and 2074 (XX) referred to above implicitly related to the establishment and subsequent recommendations of the Commission of Enquiry into South West African Affairs, 1962-1963 (Odendaal Commission). Information on the Commission and its recommendations was included in the reports 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 to the General Assembly at its eighteenth, nineteenth and twentieth sessions. The Special Committee also included provisions in the resolutions it adopted on South West Africa concerning the recommendations of the Commission of Enquiry.²²³

313. The Odendaal Commission was established in September 1962 by the Government of South Africa to investigate the progress of the inhabitants of South West Africa, more particularly its non-white inhabitants, and to make recommendations on a comprehensive five-year plan for the accelerated development of "the various non-white groups of South West Africa, inside as well as outside their own territories in South West Africa".²²⁴ Its report was published on 27 January 1964. The Special Committee, *inter alia*, stated in its report to the General Assembly at its nineteenth session that the implementation of the recommendations of the Odendaal Commission would involve the division of the Territory and the establishment of different administrations directly responsible to the Government of South Africa without a Government for South West Africa exercising jurisdiction over the Territory as a whole, and closer integration of the Territory with South Africa.

314. In its 1965 report to the General Assembly at its twentieth session, the Special Committee stated that, during 1964 and early 1965, the South West African Administration and the Government of South Africa were jointly engaged in carrying out recommendations of the Odendaal Commission including measures preparatory to the establishment of non-European "homelands". The actual implementation of the fundamental political changes, territorial partitions, and population shifts recommended by the Odendaal

²²¹ For text of relevant statements, see G A (XX), 4th Com., 1581st mtg.: Japan, para. 36; 1582nd mtg.: Colombia, para. 61; Italy, para. 45; United Kingdom, para. 53; United States, para. 40.

²²² G A (XX), 4th Com., 1582nd mtg., p. 425.

²²³ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, chap. IV, p. 76; G A (XIX), Annexes, No. 8 (Part I), A/5800/Rev.1., chap. IV, p. 108; G A (XX), Annexes, a.i. 23/Addendum, A/6000/Rev.1, chap. IV, p. 1717.

²²⁴ G A (XVIII), Annexes, a.i. 23/Addendum, A/5446/Rev.1, para. 23.

Commission and endorsed in principle by the Government of South Africa, remained in abeyance as of April 1965, in accordance with that Government's decision to defer its decision on such questions owing both to considerations relating to the case before the International Court of Justice and to the necessity of carrying out preparatory measures of a practical nature. Meanwhile, in accordance with its announced intention, the Government had proceeded with the preparatory measures which it considered necessary and with the implementation of development plan projects.

315. In its report to the General Assembly at its twenty-first session the Special Committee noted that, despite the strong and long-standing opposition to annexation from the world community, South Africa was currently preparing to partition the Territory into separate racial and ethnic areas on the basis of the recommendations of the Odendaal Commission, the full implementation of which would destroy the territorial integrity of South West Africa, alter the status of the Territory and in effect result in its annexation by South Africa. This development would be the most flagrant violation of General Assembly resolution 2074 (XX).²²⁵

316. At the twenty-first session of the General Assembly the representative of South Africa stated, with regard to the charge that South Africa was not respecting the separate international status of South West Africa, that, as a C Mandate, South West Africa maintained a separate international status but, as a matter of internal arrangements, South Africa was authorized to administer the Territory under its own laws and as an integral part of its own territory. This arrangement, coupled with the fact that South West Africa and South Africa were geographical neighbours, had led to close practical integration in the spheres of public administration, economic affairs, transport and so forth without the separate international status of the Territory being impaired.

317. Although it had maintained that the Mandate had lapsed as a matter of law, South Africa had continued to administer the Territory in the spirit of the Mandate and had voluntarily abstained from unilateral incorporation exactly as if the Mandate were still in force. There was nothing in the proposals of the Odendaal Commission, or South Africa's policy, which in any way amounted to incorporation of the Territory or to interference with its separate international identity. Such administrative arrangements as had been, or might be, made were merely a means to an end, namely, the advancement of the peoples concerned to their self-determination and self-realization, a principle to which the Government of South Africa was completely committed.

318. In the meantime, and pending that emancipation, the South African Government would have to continue to make and adjust internal administrative arrangements in a manner best suited to the interests of the Territory and its inhabitants. There were in

this sphere several recommendations of the Odendaal Commission on which no decisions had yet been taken by the Government, except as a matter of general principle. The decisions would be taken and announced in due course, with recognition of the principle that the Territory could for that purpose, and that purpose alone, best be treated as an integral part of South Africa, without thereby affecting its separate international status.²²⁶

319. In their general statements at the twenty-first session representatives noted,²²⁷ in effect, that the desire and intention of South Africa to annex South West Africa dated back a long way. It was recalled that at the first session of the General Assembly South Africa had proposed, in the Fourth Committee, that South West Africa should be incorporated in South Africa, a proposal that was rejected. A further proposal that the Territory should be partitioned with the richer and more developed southern part being annexed by South Africa had also been rejected. Now, on the basis of the recommendations of the Odendaal Commission and the intensification of the *apartheid* policies whereby the Territory was dismembered into separate racial areas — the better parts being reserved for the white population — South Africa was carrying out its intention to incorporate the Territory.

320. One representative noted that, in fact, South Africa had not only repudiated the Mandate, but had now openly proceeded to govern South West Africa as part of its national territory.²²⁸

Decision

In operative paragraph 2 of resolution 2145 (XXI) — the resolution by which it terminated the Mandate — the General Assembly reaffirmed that South West Africa was a territory having international status and that it should maintain this status until it achieved independence and by operative paragraph 7, called upon the Government of South Africa forthwith to refrain and desist from any action, constitutional, administrative, political or otherwise, which would in any manner whatsoever alter or tend to alter the present international status of South West Africa.

321. It may be noted that during consideration of the termination of the Mandate by the Assembly at its twenty-first session, arguments were put forward to the effect that "termination" would be tantamount to "modification" and consequently unilateral termination of the Mandate by the Assembly would be contrary to the Court's opinion that modification of the international status of South West Africa rested with the Union of South Africa acting with the consent of the United Nations.²²⁹

²²⁵ G A (XXI), Annexes, a.i., 23/Addendum, A/6300/Rev.1, chap. IV, para. 380, referring to appendix, para. 18.

²²⁶ G A (XXI), Plen. 1439th mtg., paras. 188-192.

²²⁷ *Ibid.*, Plen., 1417th mtg.: India, paras. 103-107; 1427th mtg.: Poland, para. 65; Iran, paras. 99 and 100; Somalal, para. 7; 1429th mtg.: Hungary, paras. 91-96; Nigeria, paras. 2 and 3; 1431st mtg.: Tunisia, paras. 41-45; 1439th mtg.: Rwanda, para. 4; 1448th mtg.: Uruguay, para. 125 and others.

²²⁸ *Ibid.*, 1427th mtg.: Ireland, para. 27.

²²⁹ See para. 333 below.

C. The question of the termination of the Mandate and measures to be taken by the United Nations to discharge its responsibilities with respect to South West Africa pending the achievement of independence by the Territory

322. As noted in the General Survey, although there were proposals by various representatives from the fourteenth session to the twentieth session that, because of the failure of the Government of South Africa to fulfil its obligations under the Mandate, the Mandate should be terminated, the view prevailed that the Assembly should not take any action which might prejudice or prejudge the findings of the International Court of Justice and should await its judgement before considering such a step. In this connexion, it may be noted that, at the fifteenth session, a draft resolution²³⁰ submitted in the Fourth Committee, under which the Assembly would have denounced the Government of South Africa for failing to comply with its obligations under the International Mandate of 17 December 1920 for South West Africa and would have decided to entrust the administrative powers to an administrative commission of representatives appointed by the General Assembly, was withdrawn. The sponsors, in withdrawing the draft resolution, *inter alia*, explained that they had taken into account certain observations that had been made to them, in particular, those of representatives who had feared that the text had been intended to revoke the Mandate. They had borne in mind the opinion expressed by the delegations of the two African countries which had instituted proceedings against South Africa and their request that the Assembly should not take any action that might jeopardize their efforts. Though the sponsors still believed that the best, fairest and quickest solution to the question of South West Africa would be to revoke the Mandate, they had yielded to those requests.

323. At the twentieth session, in introducing, in the Fourth Committee, the draft resolution²³¹ on which resolution 2074 (XX) was based, one of the sponsors stated that he was aware that many delegations would be disappointed by the wording since they had hoped that a committee would be set up to consider means by which the intolerable situation in South West Africa could be terminated. The sponsors had nevertheless considered that it would be wiser merely to adopt a provisional text until the International Court of Justice reached a decision in the near future. Once that decision was known, it would be for the United Nations, preferably through the Security Council, to take the decisive steps necessary to liberate the people of South West Africa from South Africa's control.

324. Various suggestions were also made between the fifteenth and twentieth sessions that, pending the decision of the International Court, the General Assembly should initiate studies which in effect, would clarify the legal issues that might be involved, presuming the Assembly were to terminate the Mandate. Among

others, a suggestion was made that the International Court be requested to give an advisory opinion on whether or not the Mandate could be terminated.²³²

325. Proposals were also made to the effect that, presuming the Assembly would eventually terminate the Mandate, detailed studies should be made of how South West Africa might be administered pending the attainment by it of independence and of what measures might be taken by the United Nations to overcome any difficulties in executing the decisions arrived at by the Assembly, including the use of compulsory measures. As noted in paragraph 218, recommendations in this sense were made by the Committee on South West Africa in its report concerning the implementation of General Assembly resolutions 1568 (XV) and 1596 (XV), submitted²³³ to the Assembly at its sixteenth session. Among others, a further suggestion was made²³⁴ at the twentieth session that a study should be undertaken for consideration by the Assembly in 1966 of the most appropriate ways and means of ending South Africa's Mandate for South West Africa and administering the Territory until it gained independence. In reply to that proposal, it was stated on behalf of the sponsors of the draft resolution, eventually adopted as resolution 2074 (XX), that they had given careful consideration to the proposal and had decided against it mainly because the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples had already examined the economic aspects of the situation in South West Africa. They had also assumed that the Special Committee would next examine the political situation and make appropriate recommendations. Furthermore, in view of the fact that the International Court of Justice was soon to rule on the matter, the sponsors had felt that it would strengthen the position of the Fourth Committee and the United Nations if no action was taken until the Court's decision had been handed down. At that point the Security Council should be called upon to consider the situation in South West Africa with a view to finding a permanent solution.²³⁵ The proposal was not pressed.

326. In 1966, at its meetings held prior to the rendering of the final decision of the International Court, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples decided to establish a Sub-Committee to make a "thorough study of the situation and, among other matters, to recommend an early date for the independence of the Territory".²³⁶

327. The Special Committee further considered the question of South West Africa in August and September 1966 when it had before it the report of its Sub-Committee which had met shortly after the judgement

²³⁰ A/C.4/L.653, submitted by Chad, Libya, Mali, Morocco, Togo and Tunisia (see G A (XV), Annexes, a.i. 43, A/4643, para. 37).

²³¹ A/C.4/L.812/Rev.1 and Add.1-3 (see foot-note 124 above).

²³² G A (XVII), 4th Com., 1376th mtg.: Mexico, paras. 32 *et seq.*

²³³ G A (XVI), Suppl. No. 12 A, p. 22.

²³⁴ G A (XX), 4th Com., 1564th mtg.: Venezuela, para. 19. See also *ibid.*, 1581st mtg.: Uruguay, para. 20.

²³⁵ G A (XX), 4th Com., 1582nd mtg.: Somalia, para. 18.

²³⁶ G A (XXI), Annexes, a.i. 23/Addendum, A/6003/Rev.1, chap. IV, para. 306 (10).

of the International Court was delivered on 18 July 1966. On the basis of the Sub-Committee's report, the Special Committee adopted a number of conclusions and recommendations regarding, *inter alia*, the decision of the Court and the action the United Nations should take regarding the future of South West Africa.

328. Among these recommendations were the following: the rights and responsibilities of South Africa as a Mandatory Power in respect of South West Africa should be terminated; responsibility should be assumed by the United Nations for the direct administration of the Territory; the appropriate machinery for the purpose should be created and the Secretary-General should be requested to undertake a thorough study of the administrative, financial, personnel and other prerequisites for such direct administration and submit his findings as early as possible; in following the assumption of direct responsibility by the United Nations, arrangements should be made to hold elections and the Territory should become fully independent following those elections. It was further recommended that, in the event of South Africa resisting the implementation of these decisions, effective measures, including those provided under Chapter VII of the Charter, should be taken against South Africa.²³⁷

329. The Special Committee adopted the report of the Sub-Committee by consensus, with reservations expressed by seven members²³⁸ on the legal and political implications of the conclusions and recommendations and pending full debate on the matter in the General Assembly. In response to a request from thirty-five African States²³⁹ the General Assembly considered the question of South West Africa at its twenty-first session in plenary session concurrently with the general debate.

330. As noted above,²⁴⁰ there was no disagreement in the Assembly — except by representatives of South Africa — that South Africa had failed to fulfil its obligations with respect to the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa.

331. Many representatives further noted, as had the Special Committee, that the fact that the International Court of Justice had not pronounced itself on the substantive issues of the case brought by Ethiopia and Liberia against South Africa had made it clear that the question of South West Africa was primarily a political one for which a political solution would have to be found. Moreover, a solution would have to be found quickly so as to prevent a serious threat to, or a breach of, peace in the area.

332. There was also agreement that the 1966 judgement of the International Court did not invalidate the earlier advisory opinions of the Court that the

Mandate continued to exist and that the General Assembly possessed supervisory responsibilities in respect of the Mandated Territory of South West Africa.²⁴¹

333. Many representatives again proposed that, since South Africa had failed to discharge its obligations under the Mandate, the Mandate should be terminated. One representative, however, while agreeing that South Africa had failed to discharge its obligations, expressed doubts as to whether the General Assembly had the legal right unilaterally to revoke the Mandate. It was argued, in effect, that the Mandate continued to exist and that, in the absence of an express provision for its unilateral revocation, it could not be unilaterally revoked. Furthermore, to revoke the Mandate would be to modify the international status of the Territory, although the International Court of Justice had already decided that the competence to determine and modify its international status rested with South Africa, acting with the consent of the United Nations.²⁴² Furthermore, the revocation of the Mandate would put an end to the obligations of South Africa towards the population of South West Africa so that the Territory would be left in a kind of *res nullius*, without any international legal status and, consequently, vulnerable to conquest or annexation.²⁴³

334. Another representative, while not excluding the possibility that the Mandate might be revoked, felt that it would be advisable first to determine which United Nations bodies would have the competence to effect revocation.²⁴⁴

335. The representative of South Africa also contended that, even if it were accepted that the United Nations had supervisory responsibilities and was a successor to the League of Nations, it had no right of revocation, independently of South Africa's consent.²⁴⁵

336. On this question the majority of representatives considered that, apart from the overriding political necessity of terminating the Mandate, the General Assembly clearly possessed the legal right to do so. Among the arguments put forward in support of this view it was contended that the absence of a clause in the Mandate agreement concerning revocation did not mean that it could not be revoked. Under the general principles of international law, breach of agreement by one party justified denunciation by the other. The Mandatory Power was not the master of the object entrusted to it for safekeeping or administration. The Mandate was a trust and the abuse of the trust indisputably entitled the United Nations to revoke the Mandate. The justification for Assembly action lay in the responsibilities it inherited from the League of Nations and South Africa's failure to fulfil its obligations. South Africa had lost any right which it had with respect to South West Africa because of the countless and flagrant violations of its sacred trust under the Mandate. The termination of the Mandate

²³⁷ *Ibid.*, para. 380; appendix, p. 297, para. 32.

²³⁸ G A (XXI), Annexes, a.i. 23/Addendum, A/6300/Rev.1; reservations were expressed by Australia (p. 293, para. 351); Chile (p. 295, para. 367); Denmark (p. 296, para. 379); Italy (p. 294, para. 363); United Kingdom (p. 294, para. 360); United States (p. 295, para. 366); Uruguay (p. 295, paras. 369-370).

²³⁹ G A (XXI), Annexes, a.i. 65, A/6386.

²⁴⁰ See paras. 101-106 above.

²⁴¹ See paras. 91-93 above.

²⁴² ICJ, *Reports* 1950, p. 143.

²⁴³ G A (XXI), Plen., 1427th mtg.: Brazil, para. 133; see also 1454th mtg.: Portugal, paras. 285-286.

²⁴⁴ *Ibid.*, 1439th mtg.: France, para. 154.

²⁴⁵ *Ibid.*, 1431st mtg., para. 265.

would not diminish or derogate the international status of the Territory which would be preserved until independence.²⁴⁶

337. It was further stated in this connexion that South Africa itself had, in fact, disavowed the Mandate by asserting that it had ceased to exist upon the dissolution of the League of Nations. It was because of South Africa's own action that it could no longer assert its rights under the Mandate.²⁴⁷

338. As to the action to be taken following the termination of the Mandate many representatives proposed, as had the Special Committee, that, pending the attainment of independence by South West Africa, the Territory should continue to possess an international status and that the United Nations should itself assume responsibility for the administration of the Territory. Certain representatives questioned, however, whether from a legal point of view the General Assembly could assume direct responsibility for the Territory. It was stated that the unilateral institution of an Administering Authority might be considered a violation of the principles of the Charter which admitted only trusteeship and of the 1950 decision of the International Court accepted by the Assembly in resolution 449A (V). The General Assembly could not deliberate in this context with the Mandatory Authority, since it was its function only to make recommendations to Member States or to the Security Council.²⁴⁸

339. Several representatives also pointed out the great practical difficulties to be faced by the United Nations if it were to decide to take over the administration of the Territory itself without having first carried out a careful and searching study. If the United Nations were not to deceive the people of the Territory and if it were to achieve eventual success, it should not raise false hopes by hasty and ineffective methods. The United Nations should therefore adopt no resolutions which it felt were beyond its immediate capacity to implement. The question of how the Territory was to be administered, what financial and other resources would be required, where they would come from, how the South African administration was to be brought to a close, how the United Nations Administering Authority should be organized, when it would be in a position to proceed and what policies it would implement in South West Africa, required the most careful and searching study and should be done before and not after any formal and final decision of the Assembly.

340. In view of the complexities involved a number of representatives felt that the Assembly should not decide to take over the administration of the Territory but should, for the time being, while preserving the international status of South West Africa, establish a commission or an *ad hoc* committee, in effect to study the questions that would be involved in terminating the

Mandate and administering the Territory until independence was achieved.²⁴⁹

341. Another suggestion made during the general debate was one to the effect that the General Assembly should again refer to the International Court of Justice for a clarification of certain legal issues. In advocating this course one representative suggested that the Court might be asked for an advisory opinion on whether the policy of *apartheid* was contrary to the provisions of the Mandate or to those of Article 73 of the Charter.²⁵⁰ Another representative suggested, in effect, that the question of whether or not the Assembly could revoke the Mandate and directly assume the administration of the Mandate might be put to the Court whose 1966 decision must be interpreted in the light of the 1962 decision.²⁵¹

342. Other representatives were firmly against the Assembly requesting further advisory opinions from the Court. The General Assembly was now called upon to enunciate clearly its political decision on the future of the Territory and could quite legitimately do so on the basis of the existing jurisprudence of the Court. Any attempt at the present juncture to embroil the Court further in the affairs of South West Africa and in the relations between the General Assembly and the Mandatory Power would only add to the confusion and controversy, and not assuage it, and would complicate still further the work of the General Assembly. To refer again to the Court would be an action essentially aimed at postponing settlement of the problem. All that would be gained from such a course would be juridical acknowledgement of the United Nations' rights and encouragement for a renewal of the struggle with South Africa which would continue for years and years.²⁵²

343. Some representatives felt that the best solution would be for the people of South West Africa to be granted immediate independence and considered that the question of the United Nations undertaking additional financial responsibilities if a United Nations administrative organ were to be established, required close scrutiny.²⁵³ It was suggested that if the people needed assistance in the holding of elections or in taking other measures for the creation of an independent state, such assistance might be provided by the Organization of African Unity (OAU).²⁵⁴ In reply to the latter suggestion, it was stated that the United Nations could not shift the burden to the OAU and ask it to assume the responsibility for applying the measures provided for in the Charter. The OAU did not have the means for such an undertaking and the General Assembly must

²⁴⁶ For text of relevant statements, see, for example, G A (XXI), Plen., 1414th mtg.: Pakistan, para. 109; 1417th mtg.: India, paras. 112-123; 1425th mtg.: Libya, paras. 72-73; USSR, paras. 136-137; 1427th mtg.: Poland, para. 80; 1439th mtg.: Israel, paras. 98-100; Romania, paras. 34 and 40; 1448th mtg.: Uruguay, paras. 127-128; 1451st mtg.: Denmark, para. 63.

²⁴⁷ G A (XXI), Plen., 1439th mtg.: United States, para. 73.

²⁴⁸ *Ibid.*, 1427th mtg.: Brazil, paras. 133-134. See also *ibid.* 1454th mtg.: United Kingdom, paras. 72-74.

²⁴⁹ G A (XXI), Plen., 1427th mtg.: Ireland para. 32; 1431st mtg.: Italy, para. 199; Tunisia, paras. 50-53; 1433rd mtg.: Canada, paras. 40-41; 1439th mtg.: Australia, para. 140; New Zealand, para. 120; 1449th mtg.: Malaysia, para. 77; Panama, para. 64; see also *ibid.*, 1454th mtg.: United Kingdom, paras. 70-77.

²⁵⁰ *Ibid.*, 1419th mtg.: Japan, para. 178.

²⁵¹ *Ibid.*, 1427th mtg.: Brazil, para. 139.

²⁵² *Ibid.*, 1431st mtg.: Jamaica, para. 65; Saudi Arabia, para. 155; 1439th mtg.: Israel, para. 100; Yugoslavia, para. 88.

²⁵³ G A (XXI), Plen., 1425th mtg.: USSR, paras. 141-145; 1429th mtg.: Hungary, paras. 109 and 110; Mongolia, paras. 55-57.

²⁵⁴ *Ibid.*, 1431st mtg.: Ukrainian SSR, para. 99.

demand that the Security Council fully assume that responsibility.²⁵⁵

344. One representative considered that the people of South West Africa should be granted immediate independence and that only they could find a solution to the problem, including a solution brought about by armed combat.²⁵⁶

345. It was also stated²⁵⁷ that in the event South Africa resisted the implementation of the decisions arrived at by the General Assembly, effective measures, including those provided under Chapter VII of the Charter, should be taken against it.

346. During the general debate a draft resolution²⁵⁸ was submitted, reading, in part, as follows:

“*The General Assembly,*

“ . . .

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

“ . . .

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

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

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

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

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

“7. *Requests* the Security Council to take the necessary effective measures to enable the Administer-

ing Authority to discharge its functions in accordance with the present resolution;

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

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

347. On the assumption that this draft resolution would be adopted, a second draft resolution²⁵⁹ was submitted whereby the Assembly would, *inter alia*, decide, pending the functioning of the United Nations Administering Authority for South West Africa, and only on an interim basis, to request the President of the General Assembly together with the Secretary-General to hold consultations with Member States with a view to asking one or more Members to act on behalf of the United Nations as Co-Administrators with South Africa for the administration of South West Africa.

348. Amendments to the first draft resolution²⁶⁰ were submitted. By the first amendment the Assembly would not only declare in operative paragraph 3 that South Africa had failed to fulfil its obligations in respect of the administration of the Mandated Territory, but that it had also “in fact, disavowed the Mandate”.

349. Operative paragraphs 4 to 9 would be replaced by the following:

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

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

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

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

²⁵⁵ *Ibid.*, 1433rd mtg.: Mali, para. 64.

²⁵⁶ *Ibid.*, 1449th mtg.: Cuba, para. 52.

²⁵⁷ *Ibid.*, 1414th mtg.: Guinea, para. 125.

²⁵⁸ G A (XXI), Annexes, a.i. 65, A/L.483 and Add. submitted by Afghanistan, Algeria, Burma, Burundi, Cambodia, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Ethiopia, Gabon, Gambia, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Laos, Lebanon, Libya, Madagascar, Mali, Mauritania, Mongolia, Morocco, Niger, Nigeria, Pakistan, Philippines, Rwanda, Senegal, Sierra Leone, Singapore, Somalia, Sudan, Syria, Thailand, Togo, Turkey, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta, Yemen and Zambia.

²⁵⁹ A/L.486, submitted by Saudi Arabia (see G A (XXI), Plen., 1449th mtg., paras. 172-178).

²⁶⁰ G A (XXI), Annexes, a.i. 65, A/L.488, submitted by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela.

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

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

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

350. An amendment²⁶¹ to this amendment would replace operative paragraph 4 by the following:

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

351. Finally, a third draft resolution²⁶² was submitted whereby the Assembly would declare that South Africa was a racist colonial Power and should only be considered as such by the United Nations.

Decisions

The amendment to operative paragraph 3 of the first draft resolution to add the words "... and has, in fact, disavowed the Mandate" was adopted by a roll-call vote of 90 to 2, with 27 abstentions.

The paragraph as a whole as amended was adopted by 90 to 4, with 18 abstentions.

The amendment to the amendment pertaining to operative paragraph 4 was rejected by a roll-call vote by 52 to 18, with 49 abstentions.

The amendments to operative paragraphs 4 to 9 were adopted in a roll-call vote of 85 to 2, with 32 abstentions.

The first draft resolution, as a whole, as amended, was adopted by a roll-call vote of 114 to 2 (Portugal and South Africa), with 3 abstentions (France, Malawi, United Kingdom), as General Assembly resolution 2145 (XXI) of 27 October 1966.

Upon the adoption of the resolution, the second draft resolution was not put to the vote, its sponsor having stated²⁶³ that he would consider it in suspension since it had been conditional upon the intent in the original draft resolution to establish a United Nations Administering Authority.

The third draft resolution was rejected by a roll-call vote of 22 to 17, with 58 abstentions.

352. Resolution 2145 (XXI) reads as follows:

"*The General Assembly,*

"*Reaffirming* the inalienable right of the people of South West Africa to freedom and independence in

accordance with the Charter of the United Nations, General Assembly resolution 1514 (XV) of 14 December 1960 and earlier Assembly resolutions concerning the Mandated Territory of South West Africa,

"*Recalling* the advisory opinion of the International Court of Justice of 11 July 1950,²⁶⁴ accepted by the General Assembly in its resolution 449 A (V) of 13 December 1950, and the advisory opinions of 7 June 1955²⁶⁵ and 1 June 1956²⁶⁶ as well as the judgement of 21 December 1962,²⁶⁷ which have established the fact that South Africa continues to have obligations under the Mandate which was entrusted to it on 17 December 1920 and that the United Nations as the successor to the League of Nations has supervisory powers in respect of South West Africa,

"*Gravely concerned* at the situation in the Mandated Territory, which has seriously deteriorated following the judgement of the International Court of Justice of 18 July 1966,²⁶⁸

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

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

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

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

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

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

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

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

²⁶¹ A/L.490 submitted by the United States (see G A (XXI), Plen., 1454th mtg., para. 68).

²⁶² A/L.487/Rev.1 submitted by Saudi Arabia (see G A (XXI), Plen., 1454th mtg., paras. 252-262).

²⁶³ G A (XXI), Plen., 1454th mtg.: Saudi Arabia, paras. 248 and 249.

²⁶⁴ International status of South West Africa, Advisory Opinion: ICJ, *Reports 1950*, p. 128.

²⁶⁵ South West Africa-Votings procedure, Advisory Opinion: ICJ, *Reports 1955*, p. 67.

²⁶⁶ Admissibility of hearings of petitioners by the committee on South West Africa, Advisory Opinion: ICJ, *Reports 1956*, p. 23.

²⁶⁷ South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment: ICJ, *Reports 1962*, p. 319.

²⁶⁸ South West Africa, Second Phase, Judgment: ICJ, *Reports 1966*, p. 6.

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

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

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

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

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

"6. *Establishes* an *Ad Hoc* Committee for South West Africa — composed of fourteen Member States to be designated by the President of the General Assembly — to recommend practical means by which South West Africa should be administered, so as

to enable the people of the Territory to exercise the right of self-determination and to achieve independence, and to report to the General Assembly at a special session as soon as possible and in any event not later than April 1967;

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

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

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

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

353. The President of the General Assembly, in pursuance of paragraph 6 of the above-mentioned resolution, designated the following as members of the *Ad Hoc* Committee for South West Africa: ²⁶⁹ Canada, Chile, Czechoslovakia, Ethiopia, Finland, Italy, Japan, Mexico, Nigeria, Pakistan, Senegal, Union of Soviet Socialist Republics, United Arab Republic and United States of America.

²⁶⁹ G A (XXI), Plen., 1471st mtg., para. 108.