

ARTICLE 81

CONTENTS

Text of Article 81	
Introductory note	<i>Paragraphs</i> 1-5
I. General survey	6-20
II. Analytical summary of practice	21-198
A. Organization and operation of the United Nations administration in South West Africa	21-109
1. Nature of the machinery	21-37
2. Composition of the United Nations Council for South West Africa and the appointment of the Commissioner for South West Africa	38-51
a. United Nations Council for South West Africa	38-45
(i) Tenure of the Presidency	39-45
b. Appointment of the United Nations Commissioner for South West Africa	46-51
3. Consideration of communications and requests for hearing	52-66
4. Participation of the people of South West Africa in the work of the Council and other United Nations bodies	67-84
a. The Council	67-72
b. Regional Economic Commissions of the United Nations	73-81
c. Representation in the specialized agencies	82-84
5. Relationship of the Council with the Organization of African Unity (OAU), United Nations bodies and specialized agencies	85-104
a. Organization of African Unity	85-87
b. United Nations bodies	88-101
(i) Special Committee on decolonization and the Special Committee on the Policies of <i>Apartheid</i>	88
(ii) Advisory Committee on the United Nations Educational and Training Programme for Southern Africa	89-101
c. Specialized agencies and other organizations within the United Nations system	102-104
6. Changing of the name of the Territory from South West Africa to Namibia	105-109
B. The illegal presence of South Africa in South West Africa	110-145
1. Transfer of administration from South Africa to the United Nations Council for South West Africa	110-114
2. Establishment of the presence of the United Nations Council for South West Africa in the Territory of South West Africa	115-126
3. Non-withdrawal of South Africa from the Territory of South West Africa	127-135
4. Illegal arrests and trials of South West Africans by the Government of South Africa	136-145
C. Scope of the authority of the Council	146-198
1. Authority of the Council outside the Territory	146-153
2. Review of South African laws and practices affecting the Territory	154-168

Paragraphs

3. Assistance to inhabitants outside the Territory	169-198
<i>a.</i> Issue of travel and identity documents	169-181
<i>b.</i> Programmes of assistance	182-198

ARTICLE 81

TEXT OF ARTICLE 81

The Trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

INTRODUCTORY NOTE

1. The study of this Article in the *Repertory*¹ related exclusively to issues which arose during the discussion of proposed Trusteeship Agreements. Specifically, the study dealt with certain questions related to the terms of the Trusteeship Agreements, and the designation of the authority to administer the Trust Territories. Since then no further Trusteeship Agreements have been proposed.

2. It will be recalled² that, as this Article provides that the Organization itself may be designated the Administering Authority of a Trust Territory, such designation was discussed, but was not accepted, in the cases of Western Samoa, New Guinea and the Italian colonies of Libya and Eritrea.

3. On the other hand, the United Nations was briefly entrusted with the authority to administer the Non-Self-Governing Territory of West Irian.³ This was a result of the agreement between the Republic of Indonesia and the Kingdom of the Netherlands signed on 15 August 1962 concerning the establishment of a United Nations Temporary Executive Authority (UNTEA) under the jurisdiction of the Secretary-General.

4. Thus the action by the General Assembly at its twenty-first session⁴ to terminate South Africa's mandate over South West Africa and its assumption of

direct responsibility over the Territory was without precedence. Furthermore it was a unilateral decision by the Assembly without the agreement and co-operation of the administering Power which refused to recognize the termination of its mandate.

5. While there was otherwise unanimous agreement that the responsibility of the United Nations was to enable the people of the Territory to exercise their right of self-determination and to attain independence, discussions centred on the question of the form, nature and duration of the United Nations administration; the withdrawal of South Africa and the establishment of a United Nations presence in the Territory; the territorial integrity of South West Africa and the target date for its independence. Although it was generally recognized that solutions to the problem had to be sought in terms of fundamental human rights and the principles of the Charter, particularly those contained in Article 73, and General Assembly resolution 1514(XV),⁵ which in any case also applies to Trust Territories, the United Nations' responsibility was considered by most delegates as at least analogous to an international trusteeship.⁶ In view of this and for purposes of convenience, the issues arising from the United Nations' responsibility for South West Africa (Namibia) are covered in the study of this Article, rather than under Article 80 as in the *Repertory* and its prior *Supplements*.

¹*Repertory*, vol. IV, under Article 81.

²*Ibid.*, paras. 62-90.

³*Repertory, Supplement No. 3*, vol. III, under Article 73, paras. 841-876.

⁴*Repertory, Supplement No. 3*, vol. III, under Article 80, paras. 322 *et seq.*

⁵See for example, G A (XXI), Annexes, a.i. 23/Addendum, A/6300/Rev.1, chap. IV, Appendix, paras. 30-32.

⁶G A (S-V), 1505th mtg., Algeria, paras. 36 and 37; 1508th mtg., Jamaica, para. 30.

I. GENERAL SURVEY

6. As has been reported,⁷ by its resolution 2145(XXI) of 27 October 1966 terminating the League of Nations Mandate, the Assembly also established an *Ad Hoc* Committee for South West Africa to recommend practical means by which the Territory should be administered, so as to enable the people of the Territory to exercise the right of self-determination and to achieve independence.

7. Accordingly, the *Ad Hoc* Committee for South West Africa examined the question and submitted its report⁸ to the General Assembly at its fifth Special Session. As the *Ad Hoc* Committee was unable to arrive at an agreed conclusion, it submitted to the Assembly three separate proposals: one sponsored by Ethiopia, Nigeria, Pakistan, Senegal and the United Arab Republic; one sponsored by Canada, Italy, and the United

States; and one sponsored by Chile and Mexico and supported by Japan. Also presented were suggestions by Czechoslovakia and the Soviet Union reflecting a fourth position but these were not put forward formally.

8. Although all the three separate proposals were purportedly addressed to the question of the United Nations machinery for the administration of the Territory, they differed widely in their approach to South Africa. Since, by resolution 2145(XXI), the General Assembly had reaffirmed the international status of South West Africa and had terminated the South African mandate to administer that Territory, the underlying issue was the question of the competence of the United Nations to administer that Territory faced with *de facto* continued South African control.

9. The African-Pakistan proposal took the position that, since the General Assembly had terminated the mandate, South Africa should be made to withdraw by

⁷*Repertory, Supplement No. 3*, vol. III, under Article 80, para. 352.

⁸G A (S-V), Annexes, a.i. 7, A/6640.

sanctions imposed by the Security Council and the United Nations should take over the administration of the Territory. The proposal of Chile and Mexico also accepted that South Africa should withdraw but envisaged that the transfer of authority to the United Nations should be effected through an arrangement agreed upon with South Africa. The western proposal, on the other hand, started from the premise that, since South Africa was in *de facto* control over the Territory, it was unrealistic to establish a United Nations administration; instead a solution to the problem of leading the Territory to independence should be worked out in a dialogue with South Africa.

10. Since it was clear that there could be no effective United Nations administration unless South Africa agreed to transfer its authority, the discussions centred largely on the "practical means" of establishing international control.

11. In essence therefore the initial question of a United Nations administration involved two main issues: (a) the withdrawal of South Africa and how this should be attained and (b) the nature and authority of the United Nations machinery to administer the Territory.

12. In spite of the decision⁹ taken by the General Assembly at its fifth special session to create a United Nations Council for South West Africa to administer the Territory, the problem of securing the withdrawal of South Africa remained for the Council, which first sought the co-operation of South Africa and later sought to establish its presence in the Territory.

13. In establishing the Council for South West Africa, the General Assembly made it the legal Administering Authority of the Territory with responsibility for the Territory until independence. As such, the Council was to ensure the maximum possible participation of the people of the Territory and it was endowed with authority to promulgate legislation and to maintain law and order. It was to establish a constituent assembly to draw up a constitution on the basis of which elections would be held for a legislative assembly and a responsible government. The Council was to transfer all powers to the people of the Territory upon the declaration of independence which the Council was requested to enable it to attain by June 1968. However, in consequence of the refusal of South Africa to withdraw from the Territory, the Council was unable to establish itself in the Territory in order to assume the administrative tasks envisaged. This led the Assembly to decide,¹⁰ at its twenty-second session, that the Council, as a matter of priority, should establish a programme to assist the people of the Territory "in order to meet the exigencies of the present situation". In particular, the Council was to organize a training programme to develop a cadre of civil servants and technical and professional personnel; it was also to continue consultations on the question of issuing travel documents to Namibians to enable them to travel abroad.

14. Also at the twenty-second session, the Assembly, in recognition of the views of the representatives of the people of the Territory, decided¹¹ that South West Africa would henceforth be known as "Namibia" and the name of the Council changed accordingly.

15. During the twenty-second and twenty-third sessions, various issues arose in connexion with the United

Nations role as the Administering Authority of the Territory. In spite of the fact that the General Assembly had endowed the Council with broad powers, its competence in regard to specific questions was repeatedly challenged. Thus, for instance, the right of the Council to review existing legislation and to enact new laws and decrees had to be asserted by the General Assembly. Various issues also arose in connexion with the representation and participation of the inhabitants of the Territory in the Council, the Council's relations with other United Nations bodies, and the consideration of communications and requests for hearings.

16. Under resolution 2248(S-V), the General Assembly had decided that the Council should administer South West Africa until independence "with the maximum participation of the people of the Territory". As there could not be direct representation of the people, the question arose as to who could be considered to represent the people and what form participation should take.

17. When the Council received requests for hearing from individuals and representatives of political groups, the question arose as to whether such hearings by themselves would constitute a form of participation in the work of the Council. Eventually the Council accepted the practice of considering all communications and requests for hearings on a case-by-case basis. In addition, it decided that a representative of the people of the Territory should participate in the work of the Council and it requested the Organization of African Unity (OAU) to advise it as to who this representative should be. However, up to the end of the period covered by this *Supplement*, no decision had been taken, largely because there existed several political groups claiming to represent the people of the Territory.

18. The question of representation of the Territory in other organs of the United Nations first arose in relation to the Economic Commission for Africa (ECA). Originally South Africa, as the Mandatory Power, had represented the Territory in ECA. Thus when South Africa was suspended from participating in the work of ECA because of its racial policy, the question of representation was brought to the attention of the Council as the Administering Authority.

19. On the question as to who should designate the representative of Namibia to ECA, the General Assembly eventually decided to accept the Council's view that OAU should advise the Council in that regard (see paragraph 81 below). The question eventually became whether the Council, in addition to its functions as an Administering Authority, also had the attributes of a Government and could therefore become a member of the specialized agencies. In the period under review, this issue had not become clearly defined and the Council merely took a decision to request associate membership in the specialized agencies.

20. Because of South Africa's refusal to withdraw from the Territory, the Council found it necessary to clarify the scope of its authority outside the Territory, especially in view of the fact that it had been charged with establishing a co-ordinated emergency programme for the Territory. Thus, in the period covered, the Council's attention became increasingly concerned with the need to assist Namibians living outside the Territory. In line with this orientation, the Council took steps to issue travel documents and set up a subsidiary body to prepare, *inter alia*, a short-term emergency programme for rendering technical assistance to the inhabitants outside the Territory.

⁹G A resolution 2248(S-V) of 19 May 1967.

¹⁰G A resolution 2372(XXII).

¹¹*Ibid.*

II. ANALYTICAL SUMMARY OF PRACTICE

A. Organization and operation of the United Nations administration in South West Africa

1. NATURE OF THE MACHINERY

21. As has been reported,¹² the General Assembly, by resolution 2145(XXI) of 27 October 1966, terminated the League of Nations Mandate over South West Africa conferred upon His Britannic Majesty to be exercised on his behalf by the Government of South Africa, decided that South Africa had no other rights to administer the Territory and that henceforth South West Africa would come under the direct responsibility of the United Nations. By the same resolution, the General Assembly reaffirmed that South West Africa was a Territory having international status and that it should maintain that status until it achieved independence. The Assembly also 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 current international status of South West Africa and called the attention of the Security Council to that resolution.

22. Furthermore, the General Assembly decided to establish an *Ad Hoc* Committee for South West Africa—composed of fourteen Member States to be designated by the President of the 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.

23. Three main views developed in the *Ad Hoc* Committee. One view favoured the immediate creation of appropriate United Nations machinery to administer the Territory until independence, a second view held that the people of the Territory should administer themselves with United Nations assistance through the creation of a "self-governing nucleus", and the third view held that the United Nations should immediately declare the Territory independent. The first two views were embodied in formal proposals. In the end the *Ad Hoc* Committee was unable to reach agreement and set forth the views expressed and the proposals in its report to the General Assembly.¹³

24. Two proposals envisaged the immediate creation of a direct United Nations administration of the Territory.

25. One proposal, put forward by Ethiopia, Nigeria, Senegal, United Arab Republic and later also co-sponsored by Pakistan, called for direct temporary administration through a United Nations Council for South West Africa assisted by a Commissioner. The Council, which was to be given legislative authority, would proceed to the Territory with a view to taking over the administration and ensuring the withdrawal of South African police, military and other personnel and their replacement by United Nations personnel, and would also, in consultation with the people, establish a constituent assembly to draft a constitution. New elections by universal suffrage would be held to establish a legislative assembly and, upon the formation of a government, the Territory would be declared indepen-

dent no later than June 1968. Any action by South Africa to impede the Council's work would constitute a flagrant defiance of United Nations authority, calling for action by the Security Council under Chapter VII of the Charter.

26. Another proposal, put forward by Chile and Mexico, also called for the establishment of a United Nations Council and Commissioner with functions similar to those proposed by the African States. However, this proposal envisaged that the Council, instead of exercising administrative functions, would first contact the authorities of South Africa to lay down procedures for the transfer of the Territory to the Council.

27. Envisaging a different approach, a proposal by Canada, Italy and the United States called for the appointment of a special representative who would make a comprehensive survey of the situation in the Territory, establish all contacts he deemed necessary and, among other things, determine the conditions necessary to enable the Territory to achieve independence. He would report to the General Assembly at its twenty-second session. The sponsors explained that, instead of a United Nations administration, it was proposed that the Organization would assist in the establishment of a "nucleus of self-government" sufficiently representative of the various sections of the population. This body would gradually develop into a representative central government capable of exercising the functions of an independent State.

28. The discussions during the fifth special session centred on the question as to which proposal would be the best "practical means" of carrying out the mandate of the General Assembly, namely, to enable the people of the Territory to exercise the right to self-determination and to attain independence.

29. In support of the proposal of the African countries and Pakistan, it was emphasized that the United Nations administration should be physically established in the Territory. The League of Nations administration of the Saar was cited as a precedent.¹⁴ It would be inconsistent and impractical to envisage any other arrangement and an administration by remote control would be academic. Moreover, the proposed Council would be able to undertake all necessary contacts, including contact with the *de facto* administration. However, any such contact had to be limited to the actual transfer of administrative functions. There could be no negotiations since the Assembly had already called upon South Africa to withdraw. Nevertheless, since South Africa remained defiant of the United Nations, it was necessary to provide for eventual enforcement action by the Security Council subject to the findings of that body itself.¹⁵

30. Against this proposal it was argued that it did not provide a practical way of installing the Council in the Territory. Moreover it implicitly envisaged a direct confrontation with South Africa. It was unrealistic to expect the question of South West Africa to be decided by a decision of the General Assembly, especially as South Africa remained in *de facto* control.

31. The Latin American proposal was seen by its sponsors as a practical solution which would avoid a direct

¹²Repertory, Supplement No. 3, vol. III, under Article 80, paras. 322 *et seq.*

¹³G A (S-V), Annexes, a.i. 7, A/6640.

¹⁴G A (S-V), Plen., 1505th mtg., Algeria, para. 45.

¹⁵*Ibid.*, 1503rd mtg., Ethiopia, paras. 18-36; 1509th mtg., Tanzania, paras. 66-68.

confrontation with South Africa. At the same time it would ensure that the United Nations would become an effective and working reality as the proposed Council would immediately enter into contact with the South African authorities: "in order to lay down procedures, in accordance with resolution 2145(XXI), for the transfer of the Territory with the least possible upheaval, a time limit for its completion being prescribed." There would thus be strict compliance with resolution 2145(XXI) and contact with the *de facto* administration would be solely and exclusively in that context.

32. Against the immediate establishment of any United Nations administration and in favour of the western proposal it was argued that only this approach provided an opportunity for full agreement on the basis of a careful study and assessment of the problems so as to advance towards the goal of enabling all the people of South West Africa to proceed to self-determination and independence.¹⁶ It was essential to establish whether South Africa was willing to co-operate with the United Nations and to explore all avenues for a negotiated solution. In this view, the most practical way of implementing resolution 2145(XXI) was for the United Nations to seek, in co-operation with the *de facto* administration, to establish a "nucleus of self-government".¹⁷

33. The main criticisms of the western proposal were as follows: it did not recommend measures for the administration of the Territory, but instead it accepted the continuation of the illegal presence of South Africa, thereby creating a dangerous departure from resolution 2145(XXI); it aimed at consultations "with all representative elements in order that, with their accord, a nucleus of self-government may be established", which patently fell short of the goal of self-determination and independence; the adoption of this proposal would be tantamount to postponing the implementation of resolution 2145(XXI) and subverting any effective role the United Nations might have in the liberation of South West Africa.¹⁸ In one view, this proposal to begin a "dialogue" with South Africa was seen as collusion "between" the western powers with South Africa to delay the liberation of South West Africa.¹⁹

34. Those in favour of immediately granting the Territory independence considered that the people of South West Africa were entitled to create their own sovereign national State and did not need to be prepared for independence. The primary requisite was to expel South Africa. Instead of the creation of special United Nations machinery—which might be used by those who opposed the Territory's independence, as in the Congo—OAU, with the co-operation of the United Nations, could take appropriate measures to prepare and conduct the general elections which would lead to the transfer of power and the genuine independence of the people of South West Africa.²⁰

35. Subsequently a draft resolution was introduced embodying the African proposal. Following further discussion it was revised and adopted by the General Assembly as resolution 2248(S-V).

¹⁶*Ibid.*, 1504th mtg., United Kingdom, paras. 149-161.

¹⁷*Ibid.*, 1504th mtg., Canada, paras. 50-59; 1505th mtg., United States, paras. 19-31.

¹⁸*Ibid.*, 1503rd mtg., Ethiopia, paras. 41-45, and Guinea, para. 79; 1504th mtg., Pakistan, paras. 13-22; 1505th mtg., Algeria, paras. 49-51; 1506th mtg., Kenya, paras. 34 and 35; 1509th mtg., Tanzania, paras. 90-95.

¹⁹*Ibid.*, 1504th mtg., USSR, paras. 96 and 97.

²⁰*Ibid.*, USSR, paras. 102-110.

Decision

36. By this resolution the General Assembly decided to establish a United Nations Council for South West Africa with the following powers and functions to be discharged in the Territory: (a) to take over the administration of the Territory; (b) to ensure the withdrawal of the South African police and military forces; (c) to ensure the withdrawal of South African personnel and their replacement by personnel operating under the authority of the Council; and (d) to ensure that, in the utilization and recruitment of personnel, preference was given to the indigenous people.

37. The Assembly decided that the Council should be based in the Territory and requested it to proceed there in order to: (a) administer South West Africa until independence, with the maximum possible participation of the people of the Territory; (b) promulgate such laws, decrees and administrative regulations as were necessary for the administration of the Territory until a legislative assembly was established following elections conducted on the basis of universal adult suffrage; (c) take as an immediate task all the necessary measures, in consultation with the people of the Territory, for the establishment of a constituent assembly to draw up a constitution on the basis of which elections would be held for the establishment of a legislative assembly and a responsible government; (d) take all the necessary measures for the maintenance of law and order in the Territory; and (e) transfer all powers to the people of the Territory upon the declaration of independence.

2. COMPOSITION OF THE UNITED NATIONS COUNCIL FOR SOUTH WEST AFRICA AND THE APPOINTMENT OF THE COMMISSIONER FOR SOUTH WEST AFRICA

a. United Nations Council for South West Africa

38. The General Assembly, pursuant to section II of its resolution 2248(S-V) of 19 May 1967, elected²¹ the following Member States to be members of the United Nations Council for Namibia: Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, United Arab Republic, Yugoslavia and Zambia.

(i) Tenure of the Presidency

39. At its first meeting, on 10 August 1967, the Council decided²² that the Office of the President of the Council should rotate among members in alphabetical order, each member presiding for one month.

40. At its fifteenth meeting, on 6 March 1968, the Council considered²³ the question of the Presidency of the Council. During the discussion, one representative recalled that the rotation system for the Presidency had been adopted as the result of a "gentleman's agreement" in order to facilitate the early work of the Council. His delegation had never considered that solution to be the final one. He also stated that the Council in a way represented the provisional Government of the people of South West Africa and hence the Presidency of the Council carried wide responsibilities. He therefore expressed the view that a permanent President would be in a better position to carry out such vast responsibilities.

²¹G A (S-V), Suppl. No. 1, p. 2.

²²G A (XXII), Annexes, a.i. 64, A/6897, para. 11.

²³A/AC.131/SR.15, pp. 3-4.

41. At the 16th meeting, on 8 March 1968, the President of the Council stated²⁴ that, as a result of informal consultation, no consensus could yet be reached on the question of the Presidency of the Council. It was suggested²⁵ that the President should continue his consultations until unanimity could be achieved, since it would be more appropriate for the Council to have greater continuity in the Presidency.

42. At its thirty-third meeting, on 26 June 1968, the President of the Council stated²⁶ that no consensus had been reached on the question of the Presidency; that the question had been examined in a general way by the African Group and, although some delegations had reservations, the general feeling had been that greater continuity could be ensured by a permanent President. Speaking as representative of Zambia, he expressed the view²⁷ that the President should serve for a longer term rather than permanently. A longer tenure would ensure continuity in that a President would be able to develop and pursue action which he had initiated.

43. One representative stated²⁸ that the Council was insufficiently informed as to the wishes of the African States with regard to the tenure of the Presidency. He therefore proposed that informal consultations should be held to enable the Council to achieve a consensus. Accordingly, the Council decided that informal discussions as to the length of the tenure of the Presidency should take place and that the views of the African States should be ascertained.

44. At the thirty-fourth meeting, on 25 July 1968, the President stated²⁹ that he had discussed the matter with all the delegations concerned but that no clear decision had emerged concerning the desirability of changing the existing monthly rotation system. He had been informed by the Chairman of the African Group that it would be desirable for the President of the Council to hold office for a longer period, perhaps three or six months; the African Group, however, had no desire to impose its views and considered that it would be advisable to continue the rotation of the Presidency on the existing basis until agreement on the matter could be reached within the Council itself.

45. Throughout the period under review, the system of monthly rotation of the Presidency of the Council continued.

b. Appointment of the United Nations Commissioner for South West Africa

46. The General Assembly, in section II, paragraph 3, of its resolution 2248(S-V) of 19 May 1967, decided that the United Nations Council for South West Africa should entrust such executive and administrative tasks as it deemed necessary to a United Nations Commissioner for South West Africa who should be appointed by the General Assembly on the nomination of the Secretary-General.

47. On 13 June 1967, the General Assembly considered a note³⁰ by the Secretary-General in which he informed the Assembly that he had been unable to undertake all the consultations necessary and proposed,

as an interim arrangement, the appointment of the United Nations Legal Counsel as Acting Commissioner until the twenty-second regular session.

Decision

48. The Assembly agreed to the Secretary-General's proposal without objection.³¹

49. At its seventh meeting, on 30 November 1967, the Council decided³² to inform the Secretary-General of the Council's wish that the Legal Counsel of the United Nations should continue to serve as Acting Commissioner for South West Africa until such time as the General Assembly, on the Secretary-General's recommendation, decided to appoint a permanent Commissioner.

Decision

50. The General Assembly decided³³ at its 1635th meeting, on 16 December 1967, that the existing arrangements regarding the Acting United Nations Commissioner for South West Africa would continue.

51. The Legal Counsel of the United Nations resigned³⁴ his position as Acting Commissioner for Namibia³⁵ effective from 1 January 1970. He was succeeded by Mr. Agha Abdul Hamid, Assistant Secretary-General for Public Information, as Acting Commissioner for Namibia.

3. CONSIDERATION OF COMMUNICATIONS AND REQUESTS FOR HEARING

52. At its third meeting, in November 1967, the Council was informed by the Acting Commissioner of the receipt of a number of communications addressed to the President or the Secretariat by individuals who signed themselves as South West Africans. The President also drew attention to communications addressed to himself which he had circulated as requests for hearing.³⁶

53. Some members pointed out that, according to General Assembly resolution 2248(S-V), representatives of the African people of the Territory were to participate in the work of the Council and could not be considered as petitioners. As no immediate distinction was made between the participation of representatives of the Territory in the work of the Council and communications and requests for hearing, these issues were often intermingled.

54. When the Council received a request for a hearing from the Secretary-General of the South West Africa Peoples' Organization (SWAPO), the view was expressed that, in so far as the hearing of South West Africans was concerned, the Council would have to decide whether the persons to be heard had to represent some organization or could be heard purely on an individual basis. One view, however, was that requests for hearing should be dealt with on their merits and accordingly the Council should hear the representative of SWAPO. This view was accepted by the Council which

³¹*Ibid.*, Plen., 1524th mtg., para. 8.

³²A/AC.131/SR.7, p. 4.

³³G A (XXII), Annexes, a.i. 64, pp. 28 and 29.

³⁴G A (XXIV), Annexes, a.i. 64, A/7788. At the 1819th plenary meeting on 1 December 1969, the General Assembly appointed the new Acting Commissioner.

³⁵By G A resolution 2372(XXII), the name of the Territory was changed from South West Africa to Namibia.

³⁶A/AC.131/SR.3, p. 7 (mimeographed).

²⁴A/AC.131/SR.16, p. 2.

²⁵*Ibid.*

²⁶A/AC.131/SR.33, p. 10.

²⁷*Ibid.*, p. 11.

²⁸*Ibid.*

²⁹A/AC.131/SR.34, p. 23.

³⁰G A (S-V), Annexes, a.i. 7, A/6656.

heard the SWAPO representative at a subsequent meeting.³⁷

55. When a communication was received from the Executive Director of the American Committee on Africa, the Council was asked to consider whether communications should be circulated as a matter of course, whether they should be acknowledged and whether the Council would have to decide on their receivability.³⁸ In this connexion, the view was expressed that the Council had a responsibility to all persons wishing to express their views about the situation in the Territory; on the other hand, it should not waste time on petitions of no value. In line with this view, it was suggested that the Council should be free to consider each communication on its own merits and to grant a hearing, if it so wished. A suggestion was also made that the Council should acquaint itself with the practice followed by other organs of the United Nations which received communications.

56. The Council then decided to request the Secretariat to prepare a paper on the practices of other organs in regard to communications received. It also decided at the same meeting to hear the Executive Secretary of the American Committee on Africa.³⁹

57. The Secretariat working paper prepared for the Council suggested that the Council consider two options. Under the first option, the Secretariat could circulate, upon receipt, copies of all communications received to members of the Council. The Council could then periodically examine these and decide what action to take. Under the second option, the Council would appoint a small working group to screen all communications and to recommend appropriate action to the Council. Regardless of what procedure was adopted, it was suggested that it would be desirable to establish co-ordination with the Special Committee on decolonization to ensure that communications not specifically addressed to either were eventually referred to the appropriate body.

58. When the Council discussed the question of the participation of the people of Namibia in its work, in accordance with resolution 2248(S-V), one of the sub-items listed related to communications from the people of Namibia. As these communications had been received from organizations and individuals concerned with the Territory, one view was that they also related to the participation of Namibians in the Council's work and that the sub-item could include "hearings of people from Namibia".⁴⁰

59. Another view was that communications from Namibia did not constitute real participation and required different criteria.⁴¹ Nevertheless it was maintained that, as resolution 2248(S-V) had called upon the Council to ensure maximum participation of the people of Namibia, every Namibian should have the right to send communications.⁴² In line with this view, it was suggested that the Council should continue its practice of hearing representatives of the Namibian people who expressed a wish to address it. It was further suggested that the Council should consider the establishment of definite rules of procedure for hearing representatives of the people of Namibia.⁴³

60. The need for a definite procedure was further emphasized when, at its forty-second meeting, the Council learned that there had been a delay in circulating to members two communications concerning Namibia because originally these communications had been sent to the Special Committee on decolonization and had been processed as petitions to that body.⁴⁴ As one communication had been received in August 1967 and the other a week earlier, the delay was considered to be serious in so far as the Council had a duty to the population to take immediate action on any matter that was brought to its attention.⁴⁵

61. Although the Council, in its report to the General Assembly at its twenty-second session, did not make any reference to the question of procedures relating to communications but only referred to the issue of the participation of representatives of the people of Namibia, it had by then accepted the practice that such communications should be brought to the attention of the Council for its consideration and action as necessary.

62. The fact that both the Special Committee on decolonization and the Council, each under its own mandate, continued to consider communications on Namibia became the subject of a draft resolution at the twenty-third session of the General Assembly when the question of Namibia was considered directly in plenary.⁴⁶ The text of this draft resolution was subsequently adopted by the General Assembly at its 1742nd plenary meeting on 16 December 1968.

Decision

63. By resolution 2404(XXIII), the General Assembly took note that the Special Committee on decolonization had taken account of petitions on Namibia in the context of the Declaration on decolonization and that matters in those petitions of concern to the Council had been taken into account by the Council in the performance of the functions assigned to it in resolution 2248(S-V). The Assembly further drew the attention of the petitioners to the reports of both bodies as well as to the relevant resolutions.

64. After the twenty-third session, the Council, in reviewing the pending items before it, decided to establish an *ad hoc* committee on organization to study and make recommendations on the organization of the Council's work. Subsequently, on the basis of the interim report of this *ad hoc* committee,⁴⁷ the Council decided to create two small standing committees, each comprising not more than five members, one of which was to be responsible for planning the Council's work, screening incoming communications and dealing with questions relating to publicity.⁴⁸

65. As regards requests for hearing contained in some communications, discussions in the Council showed that it had become clearer that these were a separate issue from the question of the participation of Namibians in the work of the Council. Furthermore, it was clear from the records that it had become the practice of the Council to grant requests for hearing, both at Headquarters in New York and during its visits abroad. In its report to the twenty-fourth session,⁴⁹ the Council

³⁷A/AC.131/SR.6, p. 7 (mimeographed).

³⁸*Ibid.*, SR.10, p. 7 (mimeographed).

³⁹*Ibid.*, p. 8.

⁴⁰A/AC.131/SR.41, United Arab Republic, p. 66.

⁴¹*Ibid.*, Turkey and Zambia, pp. 66-67.

⁴²*Ibid.*, United Arab Republic, p. 67.

⁴³*Ibid.*, p. 69.

⁴⁴Communications No. 1871 of 7 August 1968 and No. 1878 of 12 September 1968 (mimeographed).

⁴⁵A/AC.131/SR.42, pp. 80-81.

⁴⁶G A (XXIII), Annexes, a.i. 64, A/L.557.

⁴⁷A/AC.131/15.

⁴⁸A/AC.131/SR.82, p. 9.

⁴⁹G A (XXIV), Suppl. No. 24, para. 7.

included a section on the organization and methods of work of the Council in which reference was made to the decision to create a standing committee which, *inter alia*, would be responsible for screening incoming communications. In the same section it noted that the Special Committee on decolonization had examined petitions relating to Namibia in accordance with its established procedures and had reported separately to the Assembly.

Decision

66. In its resolution 2517(XXIV), the General Assembly, noting with appreciation the report of the Council, accepted the procedure which the Council had adopted relating to communications. Further, by its resolution 2518(XXIV), the Assembly reiterated its position, as expressed in resolution 2404(XXIII), and again took note of the consideration by the Special Committee on decolonization and by the Council of petitions relating to Namibia with each body acting under its own mandate.

4. PARTICIPATION OF THE PEOPLE OF SOUTH WEST AFRICA IN THE WORK OF THE COUNCIL AND OTHER UNITED NATIONS BODIES

a. The Council

67. At the third meeting of the Council, the President drew attention to a number of communications addressed to him, including a request for a hearing. In this connexion, it was pointed out that the General Assembly had decided by resolution 2248(S-V) that the Council should administer the Territory with the maximum possible participation of the people of the Territory. It drew attention to the difference between participation and petitioning.⁵⁰

68. Pending a decision on this question, the Council, at its sixth meeting, decided to hear the Secretary-General of SWAPO who said that he felt that it was his duty not only to address the Council but to participate in its deliberations. South West Africans and other persons concerned should be able to make contact with the President and to put proposals before him.⁵¹ At the same meeting a proposal was made that, in order to settle the question of participation, the Council should address a letter to the Secretary-General of OAU asking what organizations it considered to be most representative of the Territory. In this connexion, it was suggested that the Council should first decide that it wished to invite representatives of the Territory to be associated with it at such an early stage of its proceedings. In a letter dated 5 January 1968, OAU informed the Council that it only recognized SWAPO. The Council considered this reply and other aspects of the question and decided, at its forty-fourth meeting, on 27 September 1968, to convene, with the assistance of the Acting Commissioner, a meeting with the representative of all Namibian political parties and organizations to work out final arrangements in this regard. The Council at the same time decided that it should continue to hold periodic consultations with Namibian representatives in order to ascertain their views on various aspects of the question of Namibia.

69. In 1968, the Council gave a mandate⁵² to its Mission to East Africa to hold consultations with Namibian representatives in order to ascertain their views, *inter alia*, on the question of participation in the work of the Council. Reporting to the Council on its work, the Mission stated that SWAPO would like to appoint a representative to the United Nations Council for Namibia, since it considered itself to be the most broadly based and the largest of the political parties which had branches throughout the country and members from all sections. It further stated that SWAPO was the only organization which was helping the refugees regardless of their political affiliations.

70. The Mission also reported⁵³ that the representatives of the South West African National Union (SWANU) had expressed the hope that some participation of Namibian representatives in the work of the Council would be effected. They were aware that several groups were attempting to receive recognition from the Council, but said that they recognized only two, their own organization, SWANU, and SWAPO. They recognized that SWAPO represented the largest and most densely populated part of the country and expressed the wish that the Council should use its best efforts to encourage collaboration between the two groups.

71. In 1969, the Council's *Ad Hoc* Committee on Organization was also entrusted⁵⁴ with the examination of the question of the participation of Namibians in the work of the Council. The *Ad Hoc* Committee held consultations with representatives of organizations of the Namibian people present in New York concerning methods of enabling the Namibian people to participate in the work of the Council and the consultations continued during the year. At the end of the period under review, the *Ad Hoc* Committee was also planning to meet with the representatives of OAU on the question.

72. During the period under review, no formal representation on the Council for Namibia was, however, accorded to the representatives of the people of Namibia.

b. Regional Economic Commissions of the United Nations

73. The Economic and Social Council resolution which established the Economic Commission for Africa (ECA) provided that the Commission's membership should consist of (a) independent States in Africa; and (b) States which had territorial responsibilities in Africa.⁵⁵ Under this provision, South Africa participated in the work of the Commission as the administering Power responsible for South West Africa. However, even before the termination of the Mandate, the Territory had, by resolution 974 D (XXXVI) of 24 July 1963, been admitted as an associate member of the Commission; the same resolution provided that South Africa should not take part in the work of ECA until the Economic and Social Council "on the recommendation of ECA should find that conditions for constructive co-operation had been restored by a change in its racial policy".

74. The question of the participation of representatives of South West Africa in the work of ECA was raised by the Acting Commissioner at the third meeting

⁵⁰A/AC.31/SR.3, pp. 7 and 8.

⁵¹A/AC.31/SR.7, p. 4.

⁵²G A (XXIV), Suppl. No. 24, para. 13.

⁵³*Ibid.*

⁵⁴G A (XXIV), Suppl. No. 24, para. 14.

⁵⁵E S C resolution 671 A (XXV), para. 5.

of the Council. In a note⁵⁶ the Acting Commissioner drew attention to the terms of reference of the Commission, as amended by Economic and Social Council resolution 947 D (XXXVI) of 24 July 1963, whereby South West Africa was an associate member of the Commission, and to ECA resolution 151(VIII) of 21 February 1967, in which it contemplated referring the question of the representation of South West Africa in ECA to OAU; the Economic and Social Council had not taken any action on that resolution, which had preceded the adoption of resolution 2248(S-V). However, in view of the functions entrusted to it, the Council was asked whether it might wish to consider the possibility of informing ECA that it would be prepared, at the latter's request, to arrange for the representation of South West Africa in ECA.

75. In this connexion, the Commission informed the Council at its third meeting that, as it had been decided⁵⁷ that representatives of the indigenous inhabitants should be invited to sit in ECA, the Council should suggest names of the representatives of South West Africa to the Commission.

76. The Council decided to study the question and simply reported to the General Assembly at its twenty-second session that it had the question of the participation of representatives of South West Africa in the work of ECA under consideration and would submit a further report on the matter in due course.⁵⁸

77. This question was not taken up by the Council in its report to the General Assembly at its twenty-third session.

78. In considering its report to the twenty-fourth session of the General Assembly, the Council decided to include a section entitled "D. Consultations and co-operation with the specialized agencies and other organs of the United Nations". On the question of the associate membership of Namibia in ECA, the Council recalled that ECA had recommended that OAU should propose the names of the representatives of the Namibian people to participate in ECA. In this connexion it was proposed that a sentence should be added to the effect that the Council considered that OAU should propose the names of the Namibian representatives to ECA at an early date.⁵⁹

79. This led to a discussion as to who had the authority to designate representatives of the Territory and, if the Council had competence to do so, whether it could delegate its authority to OAU. It was recalled that some members of ECA had thought that OAU should designate the representatives of Namibia, while others had thought it should be the Council. After some discussion the members of the Council agreed that it was the clear responsibility of the Council to do so. Some members, while accepting this view, felt that, as this authority had been delegated to the Council by the General Assembly, according to principles of administrative law the Council could not in turn delegate this authority to OAU.⁶⁰

80. As the Council was divided over the issue, an attempt was made to drop the whole question from the report. The Acting Commissioner pointed out however that, as the decision to admit Namibia as an associate member of ECA had been taken even before the establishment of the Council, he believed that the Council

was not directly responsible for the appointment of representatives. The Council then agreed to a formulation proposed by the President to the effect that: "The Council hopes that in due course the OAU will, after the necessary consultations with the Council for Namibia, propose the name of a representative of Namibia to the Commission."

Decision

81. By resolution 2517(XXIV), the General Assembly in effect accepted the Council's view that OAU should advise the Council in regard to proposing representatives of Namibia to ECA.

c. Representation in the specialized agencies

82. During the consideration of the Council's report to the twenty-fourth session of the General Assembly, it was pointed out that according to the constitutions of certain specialized agencies, the colonial Powers had a right to associate their colonial territories with their own membership; since Namibia came under the direct responsibility of the United Nations, the Council could represent it in the specialized agencies.⁶¹

83. Subsequently this proposal was incorporated in the report of the Council, as follows:

"36. In regard to the specialized agencies of the United Nations, the Council has decided to seek associate membership for Namibia in accordance with the respective constitutions of these agencies".⁶²

Decision

84. The General Assembly, by adopting resolution 2517(XXIV), in effect approved the decision of the Council that it was competent to seek associate membership in the specialized agencies.

5. RELATIONSHIP OF THE COUNCIL WITH THE ORGANIZATION OF AFRICAN UNITY (OAU), UNITED NATIONS BODIES AND SPECIALIZED AGENCIES

a. Organization of African Unity (OAU)

85. At the tenth meeting of the Council for South West Africa on 31 January 1968, one representative suggested⁶³ that OAU should be invited to send a representative to participate as an observer in all meetings of the Council, except those necessarily limited to members only by the nature of the agenda. He further suggested that negotiations should be undertaken with the Secretary-General of OAU and, in particular, with its Liberation Committee.

86. Accordingly, the Council decided⁶⁴ that the President should be authorized to communicate with the Secretary-General of OAU, either directly or through its representative at United Nations Headquarters, indicating the questions on which the Council would welcome a close relationship with OAU, and to undertake detailed negotiations on the subject with the OAU representative at Headquarters.

⁵⁶A/AC.131/5.

⁵⁷A/AC.131/SR.3, p. 7.

⁵⁸G A (XXII), Annexes, a.i. 64, A/6897, para. 16.

⁵⁹A/AC.131/SR.76, p. 14.

⁶⁰*Ibid.* and SR.77.

⁶¹A/AC.131/SR.74, p. 10.

⁶²G A (XXIV), Suppl. No. 24, para. 36.

⁶³A/AC.131/SR.10, p. 6.

⁶⁴G A (XXIV), Suppl. No. 24, para. 14.

87. In 1960, the Council decided that a representative of OAU should be invited to attend meetings of the Council as an Observer.

b. *United Nations bodies*

(i) *Special Committee on decolonization and the Special Committee on the Policies of Apartheid*

88. During the period under review the Council did not establish any formal links with these bodies. Instead it developed the practice of close consultations on matters of common interest, as in the case of petitions.⁶⁵

(ii) *Advisory Committee on the United Nations Educational and Training Programme for Southern Africa*

89. Pursuant to sub-paragraph 4(b) of General Assembly resolution 2372(XXII), the Council established a sub-committee to examine the question of organizing a training programme for the Territory. The sub-committee concluded⁶⁶ that inhabitants of the Territory requiring training could obtain it under the already existing consolidated educational and training programme for southern Africa and that a special programme was therefore not essential at that time. However, it believed that a relationship should be established between the Council and the consolidated programme.

90. The Council expressed the view⁶⁷ that such a relationship could be established by inclusion of the representative of the Council in the Committee of seven Member States envisaged in paragraph 6 of resolution 2349(XXII), under which the General Assembly requested the President of the Assembly "to nominate seven Member States, each of which should appoint a representative to serve on a committee which will advise the Secretary-General on the granting of such subventions."

91. The Council, therefore, recommended⁶⁸ necessary action by the General Assembly to provide for such representation for the Council on the Committee to be established under resolution 2349(XXII).

92. The General Assembly, by paragraph 2 of resolution 2431(XXIII) of 18 December 1968, requested the Secretary-General to establish an Advisory Committee on the United Nations Educational and Training Programme for Southern Africa, composed of representatives of Member States. The Assembly did not, however, make any provisions for representation of the Council on the Advisory Committee.

93. Consequently, at the sixty-second meeting of the Council, on 29 April 1969, the President stated⁶⁹ that he had been requested by the Secretariat to draw the Council's attention to the question of its representation on the Advisory Committee on the United Nations Educational and Training Programme for Southern Africa established under General Assembly resolution 2431(XXIII). He suggested that it would be easier to maintain regional balance on the Committee if the Council would designate as its representative one of the three members of the Advisory Committee which were also

members of the Council, namely, Colombia, India and Zambia.

94. One representative stated⁷⁰ that his delegation had understood that a member of the Council would be an *ex officio* member of the Advisory Committee, independently of Council members represented on the Committee by virtue of their membership in the United Nations. Such members would represent their own Governments and not the Council.

95. The Secretary of the Council explained⁷¹ that, since the appointment of an additional member of the Committee would disturb the geographical distribution of the membership, the Committee had been asked, as a matter of convenience, to designate one of the Committee's members who was also a Council member to represent it.

96. Another representative stated⁷² that it was his understanding that a member of the Council was to be an *ex officio* member of the Advisory Committee. He expressed the view that it was not correct to consider the question in terms of the principle of equitable geographical distribution and that it would be an invidious task to have to choose among the three States which appeared to be members of both bodies. He suggested that the President should conduct informal consultations to appoint an *ex officio* Council member to serve on the Advisory Committee.

97. The Acting Commissioner pointed out that it might not be correct constitutionally for the Council to decide to appoint a representative to the Advisory Committee without a resolution of the General Assembly approving it or, at best, without an invitation from the Advisory Committee itself. He suggested that the President should first contact the Advisory Committee and seek its reaction.

98. Another representative, however, pointed out⁷³ that the Council's proposal set forth in paragraph 37 of the Council's report to the General Assembly at its twenty-third session, on the basis of which the General Assembly had adopted resolution 2431(XXIII), had made direct reference to the inclusion of a representative of the Council in the Committee. It had been the understanding of those drafting General Assembly resolution 2431(XXIII) that the Council would be represented separately on the Advisory Committee.

99. The President of the Council expressed the view⁷⁴ that it was necessary for him to consult the Chairman of the Advisory Committee and the Secretariat to clarify the situation. He would also conduct informal consultations among Council members with a view to resolving the differences of opinion. The majority of the Council members seemed to support the view that one of their number should be an *ex officio* member of the Advisory Committee.

100. In accordance with the provisions of General Assembly resolution 2431(XXIII), the Secretary-General established⁷⁵ the Advisory Committee on the United Nations Educational and Training Programme for Southern Africa to be composed of the representatives of the following seven Member States: Canada, Democratic Republic of Congo, Denmark, India, United Republic of Tanzania, Venezuela and Zambia.

⁶⁵See Section A.3 above.

⁶⁶A/AC.131/SR.42, p. 74.

⁶⁷G A (XXIII), a.i. 64, A/7338, para. 37.

⁶⁸*Ibid.*

⁶⁹A/AC.131/SR.62, p. 12.

⁷⁰*Ibid.*, United Arab Republic, p. 12.

⁷¹*Ibid.*, p. 13.

⁷²*Ibid.*, Nigeria, p. 13.

⁷³*Ibid.*, United Arab Republic, p. 13.

⁷⁴*Ibid.*, p. 14.

⁷⁵G A (XXIV), Suppl. No. 24, para. 55.

In response to the Council's request for representation, the Secretary-General also decided⁷⁶ to recommend to the Advisory Committee that it provide for the Council's participation in its work, in an observer capacity, as appropriate.

101. On 27 May 1969, the Council decided⁷⁷ officially to inform the Secretary-General that it would send an observer to the Advisory Committee.

c. Specialized agencies and other organizations within the United Nations system

102. In the discussion of this question in the Council, it was pointed out that General Assembly resolution 2248 (S-V), section III, paragraph 2, had requested the specialized agencies and appropriate organs of the United Nations to render the Territory technical and financial assistance through a co-ordinated emergency programme. In addition there was a training programme and a scholarship programme that had been established before the termination of South Africa's Mandate. These had to be reviewed. In addition there were no doubt other programmes. It was therefore decided to request the Secretariat to prepare a working paper giving an account of the various programmes and activities relating to the Territory.⁷⁸ No final decision was taken by the Council on the subject of this working paper.

103. By its resolution 2372(XXII), the General Assembly *inter alia* decided that the Council should, as a matter of priority, assume responsibility for establishing a co-ordinated emergency programme for rendering the assistance envisaged under resolution 2248(S-V). Accordingly, the Council established a sub-committee to implement this provision. On the basis of the sub-committee's report, the Council concluded that the initial and primary responsibility for establishing a co-ordinated programme rested with the Council and decided that the Acting Commissioner should approach the specialized agencies and other organs of the United Nations to seek the assistance of experts in the preparation of that programme.

104. As from the twenty-third session the Council continued its practice of consultations and co-operation with the specialized agencies and with other organs of the United Nations.⁷⁹

6. CHANGING OF THE NAME OF THE TERRITORY FROM SOUTH WEST AFRICA TO NAMIBIA

105. The question of the name of the Territory was first raised by representatives of the Territory in the information they provided to the Council. During the Council's first visit to Africa, the choice of the name of Namibia as the authentic name for an independent South West Africa was cited by SWAPO leaders as an example of their national non-tribal outlook. As this name designated the strip of coastal desert land stretching from the north to the south of the Territory, they said it had a strong evocative and unifying appeal for describing the identity of the Territory of South West Africa as a whole. Other political leaders of the Territory also indicated to the Council their preference that the name Namibia should be adopted in all formal references to the Territory of South West Africa.

106. On this basis, in its report to the General Assembly at its twenty-second session, the Council said that the representatives of the South West African people had informed it that their country should be called Namibia. It added that it supported this request and considered that the name Namibia should be used in all formal references to the Territory.⁸⁰

107. During the consideration of the Council's report, a draft resolution was submitted in the General Assembly by Afghanistan together with 54 other members, in which the General Assembly, among other things, was to decide that, in conformity with the wishes of the representatives of the people of South West Africa, their country be called "Namibia". The United Nations Council for South West Africa would be called the "United Nations Council for Namibia", and the Commissioner would be called the United Nations Commissioner for Namibia.⁸¹

108. In a revised text, a paragraph was added whereby the General Assembly would proclaim that, in accordance with the desires of its people, South West Africa should henceforth be known as Namibia.⁸²

Decision

109. At its 1671st meeting, the General Assembly, by a vote of 96 to 2, with 18 abstentions, adopted the draft resolution, as revised, as its resolution 2372(XXII). The Assembly thereby approved the change of the names of the Territory, of the Council and of the Commissioner.

B. The illegal presence of South Africa in South West Africa

1. TRANSFER OF ADMINISTRATION FROM SOUTH AFRICA TO THE UNITED NATIONS COUNCIL FOR SOUTH WEST AFRICA

110. Pursuant to section IV of General Assembly resolution 2248 (S-V), the Council, on 28 August 1967, addressed a letter⁸³ to the Minister of Foreign Affairs of the Republic of South Africa requesting him to indicate the measures that his Government proposed to take in order to facilitate the transfer of the administration of the Territory to the Council.

111. In response, the Minister of Foreign Affairs of South Africa, in his letter of 26 September 1967⁸⁴ addressed to the Secretary-General, *inter alia*, explained his Government's attitude in regard to General Assembly resolutions 2145(XXI), 2146(XXI) and 2248(S-V) concerning the Territory. In essence, the Foreign Minister stated that his Government considered the relevant General Assembly resolutions to be illegal and it was consequently unwilling to comply with those resolutions, that it was energetically pursuing the task of developing South West Africa in keeping with the spirit of the sacred trust which it had accepted with the grant of the original Mandate and that it would resist with all the means at its disposal any attempt to endanger the safety of the country and the peoples committed to its care.

⁷⁶*Ibid.*

⁷⁷A/AC.131/SR.63, p. 7.

⁷⁸A/AC.31/SR.10, pp. 4 and 5.

⁷⁹G A (XXII), a.i. 64, A/7338, paras. 28-31; and G A (XXIV), Suppl. No. 24, paras. 26-36.

⁸⁰G A (XXII), Annexes, a.i. 64, A/7008, para. 71.

⁸¹*Ibid.*, A/L.546 and Add.1.

⁸²*Ibid.*, A/L.546/Rev.1.

⁸³G A (XXII), Annexes, a.i. 64, A/6897, Annex I.

⁸⁴*Ibid.*, Annex II.

112. In its report to the General Assembly at its twenty-second session, the Council stated⁸⁵ that the attitude of the Government of South Africa constituted a flagrant defiance of the General Assembly and an outright rejection of its resolutions 2145(XXI) and 2248(S-V). That defiance was rendered even more blatant by the continuing actions of the South African authorities in South West Africa, particularly the application of the so-called Terrorism Act of 1967, and the illegal arrest, deportation and trial in South Africa of thirty-seven South West Africans, which had shocked international opinion. Under these circumstances, the Council reaffirmed even more strongly its determination to seek by all means to obtain the implementation of the General Assembly resolutions notwithstanding the negative attitude and actions of the Government of South Africa.

113. In its recommendations to the General Assembly, the Council concluded⁸⁶ that the refusal of the Government of South Africa to co-operate in the implementation of General Assembly resolutions 2145(XXI) and 2248(S-V) made it impossible for the Council to discharge effectively all the functions and responsibilities entrusted to it by the Assembly. The Government of South Africa was not only defying the United Nations but was continuing to act in a manner which was designed to consolidate its control over South West Africa. The Council considered that the continued presence of South African authorities in the Territory constituted an illegal act, a usurpation of power and a foreign occupation of the Territory which seriously threatened international peace and security. In the circumstances, the Council recommended to the Assembly that it should take the necessary measures, including addressing a request for appropriate action on the part of the Security Council in accordance with section IV, paragraph 5, of resolution 2248(S-V), to enable the Council to discharge all its functions and responsibilities entrusted to it by the General Assembly.

Decision

114. By resolution 2325(XXII), adopted on 16 December 1967,⁸⁷ the General Assembly requested the Council to fulfil by every available means the Mandate entrusted to it by the General Assembly; condemned the refusal of the Government of South Africa to comply with resolutions 2145(XXI) and 2248(S-V); declared that the continued presence of South African authorities in South West Africa was a flagrant violation of its territorial integrity and international status as determined by General Assembly resolution 2248(S-V); called upon the Government of South Africa to withdraw from the Territory, unconditionally and without delay, all its military and police forces and its administration, to release all political prisoners and to allow all political refugees who were natives of the Territory to return to it; urgently appealed to all States, particularly the main trading partners of South Africa and those which had economic and other interests in South Africa and South West Africa, to take effective economic and other measures designed to ensure the immediate withdrawal of the South African administration from the Territory, thereby clearing the way for the implementation of resolutions 2145(XXI) and 2248(S-V); requested the Security Council to take effective steps to enable the United

Nations to fulfil the responsibilities it had assumed with respect to South West Africa; and further requested the Security Council to take all appropriate measures to enable the United Nations Council for South West Africa to discharge fully the functions and responsibilities entrusted to it by the General Assembly.

2. ESTABLISHMENT OF THE PRESENCE OF THE UNITED NATIONS COUNCIL FOR SOUTH WEST AFRICA IN THE TERRITORY OF SOUTH WEST AFRICA

115. In March 1968, the United Nations Council for South West Africa, in pursuance of its Mandate laid down in General Assembly resolution 2248(X-V), section IV, paragraph 3, decided⁸⁸ to proceed to South West Africa accompanied by the Acting Commissioner for South West Africa.

116. The main objectives of the trip were, first, to prepare the ground for the implementation of General Assembly resolution 2248(S-V) and, in particular, its section IV, paragraph 3, namely, to take over the administration of the Territory of South West Africa, and, second, in pursuance of section II, paragraph 1a, of the same resolution, to meet those representatives of the people of South West Africa who then resided in Zambia and the United Republic of Tanzania.

117. Before departing from New York, the Council began to explore⁸⁹ the possibilities of gaining access to the Territory of South West Africa, either directly from New York or through Lusaka, Zambia. Contacts were made with a number of international airlines but some of them indicated that they could not provide aircraft and others did not respond to the Council's inquiries.

118. The Council proceeded to Lusaka in April 1968 and made efforts⁹⁰ to charter a commercial aircraft either from Air Congo or from Air Zambia Ltd., both of which had expressed a willingness to provide a charter aircraft to the Council, but had received messages from Windhoek, South West Africa, to the effect that landing clearances had been denied by the Government of South Africa.

119. In that connexion,⁹¹ the Council took the view that the legal status of any area of land or water attached equally to the air space over that area. Consequently the termination of the South West Africa Mandate by General Assembly resolutions 2145(XXI) and 2248(S-V) necessarily applied to the air space over that Territory as well and it followed that South Africa had no jurisdiction in the air space of the Territory of South West Africa. In planning the trip, therefore, the Council did not consider itself subject to any jurisdiction other than that of the United Nations.

120. The Council also considered⁹² the possibility of entering the Territory by land but was advised by the Zambian authorities that, for practical reasons, including the fact that the adjacent areas were flooded by the Zambia River, a land trip was not possible.

121. In the face of these difficulties, the Council approached⁹³ the Government of Zambia for assistance. In response, Air Zambia offered an aircraft to be chartered by the United Nations and operated under its responsibility. The offer was, however, subject to certain conditions including, *inter alia*, that the aircraft would have to carry the United Nations markings and

⁸⁸G A (XXII), Annexes, a.i. 64, A/7088, para. 5.

⁸⁹*Ibid.*, para. 7.

⁹⁰*Ibid.*, paras. 8 and 9.

⁹¹*Ibid.*, para. 10.

⁹²*Ibid.*, para. 11.

⁹³*Ibid.*, para. 12.

⁸⁵*Ibid.*, A/6897, para. 15.

⁸⁶*Ibid.*, Annex I, paras. 18 and 19.

⁸⁷*Ibid.*, A/L.540 and Add.1 and 2.

that the crew, a pilot and a co-pilot engineer, would be engaged by the United Nations as United Nations personnel for the duration of the charter. Other conditions related to the estimated costs, including liability insurance, compensation and indemnity to the crew, the cost of replacing the aircraft in case of loss or confiscation and miscellaneous other expenses.

122. In view of the various issues involved, the Council referred⁹⁴ the matter to the Secretary-General and recommended that he should give consideration to making all appropriate arrangements in that regard to enable the Council to fulfil its mission to proceed to the Territory.

123. In response, the Secretary-General informed⁹⁵ the Council, in a communication dated 15 April 1968, that the proposed arrangements gave rise to a number of questions which, in his view, he should examine in consultation with the members of the Security Council and the members of the Advisory Committee on Administrative and Budgetary Questions (ACABQ); these consultations would take some time. He, however, assured the Council that he would do all he could to assist it in carrying out the mandate conferred upon it by the General Assembly.

124. In a further communication, dated 17 April 1968, the Secretary-General informed⁹⁶ the Council that he had consulted the members of the Security Council and the members of ACABQ on the matter. All members of the Security Council had stated that they would seek instructions from their respective Governments and, upon receipt of such instructions, would let him know the position of their Governments. Consultations with ACABQ were being carried on by the cable and were then incomplete. He reiterated that he would endeavour to conclude the consultations as soon as possible and advise the Council when he was in a position to do so.

125. As the Secretary-General's reply could not be expected for some time, the Council decided⁹⁷ to return to New York. The Council, however, reaffirmed its determination to proceed to the Territory and would do so as soon as the necessary arrangements had been made.

126. During the period under review, the Council for South West Africa was unable to proceed to the Territory and consequently did not establish its presence in the Territory.

3. NON-WITHDRAWAL OF SOUTH AFRICA FROM THE TERRITORY OF SOUTH WEST AFRICA

127. As recorded above,⁹⁸ the Government of South Africa refused to comply with General Assembly resolutions 2145(XXI), 2248(S-V) and 2325(XXII) as well as with Security Council resolutions 245(1968) and 246(1968) and, consequently, it refused the entry of the United Nations Council for South West Africa into the Territory of South West Africa and failed to transfer the administration of the Territory to the Council for South West Africa.

128. In the circumstances, the Council for South West Africa concentrated its efforts on the question of withdrawal of South Africa from the Territory of South West Africa. Accordingly, the General Assembly, by

paragraph 6 of its resolution 2372(XXII) of 12 June 1968, condemned the Government of South Africa for its persistent refusal to comply with the resolutions of the General Assembly and the Security Council, its refusal to withdraw from the Territory and its obstruction of the efforts of the United Nations Council for South West Africa to proceed to the Territory.

129. Subsequently, the Assembly, by resolution 2403(XXIII) of 16 December 1968, reiterated its condemnation of the Government of South Africa for its persistent defiance of the authority and resolutions of the United Nations, its refusal to withdraw from the Territory and its policy and actions designed to destroy the national unity and territorial integrity of the Territory. The Assembly also recommended that the Security Council urgently take all effective measures in accordance with the relevant provisions of the Charter, to ensure the immediate withdrawal of South African authorities from the Territory so as to enable it to attain independence in accordance with the provisions of resolutions 1514(XV) and 2145(XXI).

130. Accordingly, the Security Council, by resolution 264(1969) of 20 March 1969, recalling its resolutions 245(1968) and 246(1968), called upon the Government of South Africa to withdraw its administration from the Territory immediately.

131. In response, the Government of South Africa informed⁹⁹ the Secretary-General that it was not willing to comply with Security Council resolution 264(1969). Consequently, the Security Council, at the request of the eleven Member States comprising the United Nations Council for Namibia, considered¹⁰⁰ the question of Namibia and adopted resolution 269(1969) on 12 August 1969, whereby it, *inter alia*, condemned the Government of South Africa for its refusal to comply with resolution 264(1969) and for its persistent defiance of the authority of the United Nations; called upon the Government of South Africa to withdraw its administration from the Territory immediately and in any case before 4 October 1969; and decided that in the event of failure on the part of the South African Government to comply, the Security Council would meet immediately to determine effective measures in accordance with the appropriate provisions of the relevant Chapters of the Charter.

132. In his response to the Secretary-General, the Foreign Minister of South Africa reiterated the arguments that his Government had previously adduced for contesting the validity of General Assembly resolution 2145(XXI) and added that the same reasons applied with equal force to all subsequent resolutions of the United Nations, including those of the Security Council, which were based on that resolution. In essence, the communication made it clear that the Government of South Africa would not comply with Security Council resolution 269(1969) and consequently would not withdraw its administration from the Territory of Namibia.

133. In a communication dated 10 October 1969, addressed to the Secretary-General, the Council for Namibia expressed¹⁰¹ its grave concern at the defiant and negative response of the Government of South Africa to Security Council resolution 269(1969) and voiced its unanimous opinion that the persistent refusal by South Africa to comply with the decisions of the

⁹⁴*Ibid.*, para. 13.

⁹⁵*Ibid.*, para. 15.

⁹⁶*Ibid.*, para. 16.

⁹⁷*Ibid.*, para. 17.

⁹⁸See para. 111 above.

⁹⁹G A (XXIV), Suppl. No. 24, para. 108.

¹⁰⁰*Ibid.*, para. 109.

¹⁰¹G A (XXIV), Suppl. No. 24, para. 111.

Security Council in violation of Article 25 of the Charter would inevitably aggravate a situation which already constituted a serious threat to international peace and security in southern Africa. The Council for Namibia accordingly drew the attention of the Security Council to the urgent need for effective action by the latter to give effect to its resolution 269(1969).

134. The question of South Africa's failure to withdraw from the Territory was again considered by the Special Committee on decolonization and by the Fourth Committee and the Plenary at the twenty-fourth session of the General Assembly. Since the Government of South Africa continued to fail to withdraw from Namibia and thereby defied the relevant resolutions of the General Assembly and the Security Council, the Assembly, by resolution 2517(XXIV) and 1 December 1969, again condemned the Government of South Africa for its persistent refusal to withdraw its administration from the Territory and for its policies and actions designed to destroy the national unity and territorial integrity of Namibia thus persistently violating the principles and obligations of the Charter. The Assembly also drew the attention of the Security Council to the need for taking appropriate measures in accordance with the relevant provisions of the Charter to solve the grave situation that had arisen as a result of South Africa's refusal to withdraw its administration from the Territory.

135. During the period under review, the Security Council did not take any further action in the matter.

4. ILLEGAL ARRESTS AND TRIALS OF SOUTH WEST AFRICANS BY THE GOVERNMENT OF SOUTH AFRICA

136. The Government of South Africa, on 22 June 1967, promulgated the Terrorism Act of 1967 to be applied retroactively to South West Africa. The following day, it was announced in Pretoria that 37 South West Africans who had been arrested in the Territory in 1966 and had been imprisoned in South Africa would be brought to trial in Pretoria on charges under the Terrorism Act. The 37 South West Africans were accused of conspiracy to take over the Government of the Territory.

137. The question of the arrest and trial by South Africa of the South West Africans was brought before the Council as a flagrant violation by South Africa of the Territory's international status. The Council's attention was also drawn to a resolution adopted by the Special Committee on decolonization at its 557th meeting on 12 September 1967, condemning South Africa.¹⁰² The Council was asked to decide what action to take to assert its rights as the sole legal authority in the Territory and to fulfil its obligations towards South West Africans being illegally tried by South Africa.¹⁰³

138. The Council adopted a consensus in which it noted with concern the arrest, deportation and trial of the 37 South West Africans under the retroactive Terrorism Act which, by its very terms, was a clear violation of fundamental human rights and contrary to the principles of the Charter. Noting that the South African authorities had taken the action after the General Assembly had adopted resolution 2145(XXI), by which it terminated the Mandate over South West Africa, the Council called upon the Government of South Africa to

respect the international status of the Territory and to release the South West Africans. The Council also appealed to all Member States to use their influence to dissuade South Africa from pursuing its illegal course and to secure the release of the persons illegally on trial.

139. By resolution 2324(XXII), the Assembly, among other things, (a) condemned the illegal arrest, deportation and trial at Pretoria of the 37 South West Africans as a flagrant violation by the Government of South Africa of their rights, of the international status of the Territory and of General Assembly resolution 2145(XXI); (b) called upon the Government of South Africa to discontinue forthwith the illegal trial and to release and repatriate the South West Africans concerned; (c) appealed to all States and international organizations to use their influence with the Government of South Africa in order to obtain its compliance with the provisions of paragraph (b) above; and (d) drew the attention of the Security Council to the resolution.

140. When it became clear that international efforts had failed to persuade the South African Government to release and repatriate them, 31 of the South West Africans who had been convicted and sentenced earlier by the South African High Court appealed¹⁰⁴ their sentence on the ground that a South African Court did not have jurisdiction over South West Africa since South Africa's Mandate over the Territory had been terminated by the General Assembly of the United Nations.

141. The Council for South West Africa once again considered¹⁰⁵ the question of the illegal arrest, deportation and trial of South West Africans and authorized its President to issue a statement indicating that the Council, as the only legal authority charged with the administration of the Territory, reiterated and reaffirmed that, after the adoption of General Assembly resolution 2145(XXI) of 27 October 1966, South West Africa had come under the direct responsibility of the United Nations and that South Africa had no right to legislate for, or exercise any administration over, the Territory and that, consequently, the 31 South West Africans should be immediately released and repatriated. The statement¹⁰⁶ was forwarded to the President of the General Assembly for the information of its members.

142. In November 1968, the Appellate Division of the South African Supreme Court in Bloemfontein rejected¹⁰⁷ the appeal on the grounds that it had no authority to pronounce on the legality of the application of the law to South West Africa.

143. Following the Court's ruling, the United Nations Council for Namibia reiterated and reaffirmed¹⁰⁸ the statement issued by its President on 27 September 1968. The Council's position was also made known to the President of the General Assembly and the President of the Security Council.¹⁰⁹

144. On 1 July 1969, eight more Namibians were brought to trial before the Supreme Court in Windhoek on charges under the South African Terrorism Act of 1967 and two alternative charges under the Suppression of Communism Act of 1950.¹¹⁰ The accused were

¹⁰²A/AC.131/2.

¹⁰³A/AC.131/SR.6, pp. 3-5.

¹⁰⁴G A (XXIII), a.i. 64, A/7338, para. 19.

¹⁰⁵*Ibid.*

¹⁰⁶G A (XXIII), Annexes, a.i. 64, A/7249.

¹⁰⁷G A (XXIV), Suppl. No. 24, para. 92.

¹⁰⁸*Ibid.*, para. 93.

¹⁰⁹G A (XXIII), Annexes, a.i. 64, A/7365 (also issued as S/8908).

¹¹⁰G A (XXIV), Suppl. No. 24, para. 94.

reported to have been detained in the Central Prison for periods up to three years, to have been informed of the charges against them only on 22 February 1969, and to have been subsequently returned to Windhoek, Namibia for trial. All the defendants pleaded not guilty to the charges.

145. On 23 July 1969, the President of the Council for Namibia addressed a letter to the President of the Security Council¹¹¹ expressing *inter alia* great concern at the Government of South Africa's continued flouting of the Security Council's authority as evidenced by the steps it was continuing to take towards dismembering the Territory and by the illegal trials of Namibians under the Terrorism Act of 1967. The President of the Council for Namibia stated that, in the circumstances, the Council for Namibia had unanimously concluded that the Security Council should take urgent measures to ensure the speediest possible implementation of its resolution 264(1969).

C. Scope of the authority of the Council

1. AUTHORITY OF THE COUNCIL OUTSIDE THE TERRITORY

146. At the fifth meeting of the Council, during a discussion on its draft report to the General Assembly, the question arose as to the scope of its authority under General Assembly resolution 2248(S-V). As the Council had not yet established itself in the Territory, the only administrative matters considered up to that time had been the question of issuing travel documents and the participation of representatives of the Territory in the work of the Council and other bodies. Accordingly some members considered that references to administrative matters should be kept to a minimum. During the discussion one member expressed the view that an important matter of principle was involved, namely, whether the Council's administrative powers under General Assembly resolution 2248(S-V) could be considered to be operative outside the Territory.

147. The Acting Commissioner took the view that it was important that the Council's report should include a certain amount of information on the administrative matters that the Council had discussed, even though it had not yet established itself in the Territory. Otherwise the Assembly might not realize that, strictly speaking, the Council was acting outside its terms of reference under resolution 2248(S-V). By including such information, if the Assembly then failed to comment on the matter, the Council would be entitled to assume that the Assembly had given its tacit assent to action by the Council outside the Territory.¹¹²

148. In its report to the twenty-second session of the General Assembly, the Council therefore included a section entitled "Matters pertaining to administration", in which it referred to the two above-mentioned aspects of its work. In its conclusions and recommendations, the Council stated that the refusal of the Government of South Africa to co-operate in the implementation of resolutions 2145(XXI) and 2248(S-V) made it impossible for the Council to discharge effectively all the functions and responsibilities entrusted to it by the Assembly. The Council therefore recommended that the Assembly should take the necessary measures, including

addressing a request to the Security Council for appropriate action in accordance with section IV, paragraph 5 of resolution 2248(S-V), in order to enable the Council for South West Africa to discharge all its functions and responsibilities effectively.¹¹³

149. During the consideration of the Council's report in the General Assembly, most of the discussion centred on the need for action by the Security Council to secure the withdrawal of South Africa and the release of the 37 South West Africans who had been illegally arrested by South Africa.¹¹⁴ In regard to the functions of the Council, one view was put forward that the Council should exercise all administrative and legislative powers which were required to establish the authority of the United Nations and which could help the people of the Territory. Furthermore, in line with this view, the Council should be requested to draw up a plan for the development of the Territory in all fields.¹¹⁵ It was also pointed out that, since the United Nations was responsible for the Territory, the nationalists fighting to liberate the Territory were in fact fighting for the United Nations. Above all, the United Nations had to carry out its responsibilities for the administration of South West Africa whether or not it was able to enter the Territory. The Council should therefore study the possibility of administering the Territory from the outside.¹¹⁶ A further suggestion was that the Council should follow all developments in the Territory in which it could be helpful, including legislation, education, economy and the promotion of United Nations activities in the social and humanitarian fields once the Territory was liberated.¹¹⁷

150. A draft resolution was subsequently introduced, which was jointly sponsored by 49 member States and which, in paragraph 2, requested the United Nations Council for South West Africa "to fulfil by every available means the Mandate entrusted to it by the General Assembly".¹¹⁸

151. In opposition to this provision it was argued that it would be more realistic for the Council to explore ways and means of achieving the objectives of resolutions 2145(XXI) and 2248(S-V), taking into account the circumstances which made it impossible for the Council to be based in the Territory.¹¹⁹ Reservations were also expressed by some members who had not supported resolution 2145(XXI).¹²⁰

Decision

152. By paragraph 2 of resolution 2324(XXII) of 16 December 1967, the Assembly requested the Council for South West Africa to fulfil, by every available means, the Mandate entrusted to it by the General Assembly.

153. By resolutions 2324(XXIII) and 2403(XXIII) the Assembly reiterated this request to the Council to continue to discharge by every available means the responsibilities and functions entrusted to it. By resolution 2517(XXIV), the Assembly widened the reference to functions entrusted to it by adding the words "in the relevant resolutions of the General Assembly".

¹¹¹*Ibid.*, para. 97. See also S C, 24th yr., Suppl. for July-Sept., p. 136, S/9352.

¹¹²A/AC.131/SR.5/Add.1, pp. 2 and 3.

¹¹³G A (XXII), Annexes, a.i. 64, A/6897, paras. 16-19.

¹¹⁴See section B above.

¹¹⁵G A (XXII), Plen., 1627th mtg., Algeria, para. 163.

¹¹⁶*Ibid.*, 1635th mtg., Guinea, paras. 127-139.

¹¹⁷*Ibid.*, Yugoslavia, paras. 112-114.

¹¹⁸G A (XXII), Annexes, a.i. 64, A/L.540 and Add.1 and 2.

¹¹⁹G A (XXII), Plen., 1635th mtg., Chile, para. 199.

¹²⁰*Ibid.*, Finland, para. 204, and USSR, para. 217.

2. REVIEW OF SOUTH AFRICAN LAWS AND PRACTICES AFFECTING THE TERRITORY

154. By resolution 2248(S-V), the General Assembly, *inter alia*, entrusted to the Council for South West Africa the power "to promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory" until a legislative Assembly was established.

155. At the twenty-second session, under an item entitled "Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese administration", a draft resolution¹²¹ was submitted in the Fourth Committee by which, among other things, the Assembly would call on colonial Powers to prohibit practices contrary to the principles of the Charter, such as the exploitation of human and natural resources contrary to the interests of the inhabitants, and call upon the colonial Powers "to review, in accordance with the provisions of the resolution, all privileges and concessions which are against the interests of the indigenous inhabitants". As the South African Mandate over South West Africa had been terminated, the Assembly would also request the Council for South West Africa "to put an end to laws and practices established in the Territory of South West Africa by the Government of South Africa contrary to the purposes and principles of the Charter".

156. During the discussion on this draft resolution, several administering Powers criticized it on the ground that the report on which it was based had not taken into account the differing economic conditions in individual Territories. The sub-committee had not differentiated between economic activities that were helpful and those that were harmful. It was also argued that there was no evidence that private investment impeded decolonization. It was said that, in fact, standards of living of the inhabitants were generally highest in those dependent Territories where there was most private investment.¹²² Other speakers expressed their reservations respecting the draft resolution as a whole because, in their view, it was not yet possible to assess the real impact of foreign investments and the draft resolution was too general.¹²³

157. It was also proposed that the Council should review all the laws in force in the Territory of South West Africa.

158. While supporting these proposals, one representative considered that they required careful study as they raised considerable legal complexities and involved the abrogation or amendment of legislation passed by a sovereign Government. Following a suggestion that the Acting Commissioner for Namibia, who was also the Legal Counsel, should be requested to prepare a paper on this question, the Council decided to request him to give a legal opinion concerning the consideration of ways and means whereby the Council could review the laws in force in Namibia.

159. At a subsequent meeting, although he had not been able to study the matter, the Acting Commissioner expressed the view that no measures could become

effective until the Council was actually in the Territory, which would not be the case for some considerable time.

160. The Acting Commissioner also suggested that the problem could be approached in another way by studying past precedent for the issue of laws by an authority not actually in the Territory to which the laws applied. During the Second World War a number of Governments in exile had had their seats in London and had issued laws of limited application, dealing mainly with the regulation of shipping. However, there was no direct precedent, since the shipping with which those laws dealt had been under control of the authorities issuing the laws, while in Namibia any laws passed by the Council could not be applied by the local population and would not be applied by the South African authorities. Foreign companies operating in the Territory would continue to make the necessary payments to the Government of South Africa, with which they concluded agreements, rather than to the Council, and it was difficult to think of circumstances under which a national or international court would uphold the Council's claim if it chose to sue the companies for what they owed.

161. At a subsequent meeting, the Acting Commissioner informed the Council that, although he had not yet had time to study the matter, the main problem, in his view, was that, even if the Council revoked certain laws or abolished certain practices, these measures could not be enforced in the Territory until the Council had established its presence there. As an example of the difficulties involved, he cited the laws issued by Governments in exile during the Second World War.

162. According to another view¹²⁴ it was important to establish what laws should apply in an occupied Territory, whether those of the occupying or those of the original authority, and whether, in the case of a transfer of authority, the new administration had the right to review former legislation. That right seemed clearly established since, on the accession to independence of former colonial Territories, the new Governments immediately reviewed the laws which had been in force under the colonial Power. However, the question remained as to whether the Council could, legally speaking, issue laws if it was not in control of the Territory. In this view, the problem was a political one. The laws and practices in question were of two kinds: those issued by the South African Government at a time when it was still the legal authority in Namibia and those so issued after termination of the South African Mandate. In view of the precedents existing in international law, such as those set by the Governments in exile referred to by the Acting Commissioner, the Council should abrogate the former category, whether or not it could implement its decision. The basis in principle for such an action already existed and the question of practicability was a political matter to be decided on by the Council. In view of the clear statements by the United Nations that South Africa had no right to administer the Territory, those laws issued by the South African Government after revocation of its Mandate could also be abrogated. Such action would serve as an encouragement to the people of Namibia and to world public opinion and might indeed have practical results; the defending lawyer in a trial in Namibia had recently advanced the argument that the prosecution was acting on the basis of laws which were in fact invalid, since they had been issued after the termination of South Africa's Mandate

¹²¹A/L.875/Rev.1 and Rev.1/Add.1 and 2. See also G A (XXII), Annexes, a.i. 24, A/6939.

¹²²G A (XXII), 4th Com., 1735th mtg., Australia, paras. 4-11; United Kingdom, paras. 18-23.

¹²³*Ibid.*, Greece, paras. 24 and 25; Norway, paras. 32-35.

¹²⁴A/AC.131/SR.42, pp. 75 and 76.

to govern the Territory, and revocation of those laws by the Council might serve to give weight to such arguments.

163. Accordingly, it was suggested that a sub-committee should be established to review all the discriminatory laws and regulations enforced in Namibia with a view to preparing the Council for the action it would have to take when it gained control of the Territory.

164. In support of this proposal, it was suggested that the sub-committee's task would be two-fold: to examine earlier laws to see which should be revoked when the Council was in occupation of the Territory and to state that laws issued since the termination of South Africa's Mandate were not acceptable. However, the Council's position was not that of a Government which had succeeded another Government, since in such a case the succeeding Government was in occupation of the Territory. Hence, an important task of the sub-committee would be to decide what the Council could and could not effectively do.

165. Following this discussion, the Council for Namibia decided to establish a sub-committee with terms of reference covering both a review of the laws and practices established in the Territory by the Government of South Africa and a study of the implementation of paragraph 9 of General Assembly resolution 2288 (XXII), which would be prepared by the Secretariat and which the Commissioner had indicated was already in progress.¹²⁵

166. In its report to the twenty-third session of the General Assembly, the Council said that, on the completion of the review, the sub-committee would make recommendations to the Council with regard to which laws and regulations in force prior to the termination of the Mandate should be abrogated as being against the purposes and principles of the Charter. It would also make recommendations regarding the status of laws and regulations issued by South African authorities after the termination of the Mandate.¹²⁶

167. At the twenty-fourth session of the General Assembly, the Acting Commissioner reported¹²⁷ to the Council for Namibia that, in order to speed up the work, he had engaged the services of an expert consultant to assist him in the study, which he hoped to submit to the Council at an early date. The Council considered that the study would facilitate implementation of the General Assembly's decision that effective measures should be taken to put an end to laws and practices established in Namibia by the Government of South Africa contrary to the purposes and principles of the Charter.

168. During the period under review, the study in question was not completed.

3. ASSISTANCE TO INHABITANTS OUTSIDE THE TERRITORY

a. *Issue of travel and identity documents*

169. The question of issuing travel and identity documents was first raised at the third meeting of the Council for South West Africa on 16 October 1967.

170. The Acting Commissioner for South West Africa reported¹²⁸ to the Council that several communications had been addressed to the Secretariat and the President of the Council by individuals who had signed themselves as South West Africans and had requested the United Nations to issue passports to them. He did not feel that it was possible for the United Nations to provide passports, since they could be issued only by sovereign States; but the United Nations had issued travel documents to inhabitants of West Irian, with the agreement of Indonesia and the Netherlands, during the period of United Nations administration of that Territory. There would therefore be a precedent for issuing such travel documents. It would be necessary however to ensure that the person receiving the travel documents was a *bona fide* South West African or the procedure could be abused by other individuals wanting passports. He suggested that the Council might wish to authorize him to study the question and report to it.

171. The note¹²⁹ prepared at the Council's request suggested that as resolution 2248(S-V) had entrusted the Council with certain powers and functions "to be discharged in the Territory", the Council might first wish to address itself to the question whether that phrase limited its exercise of its functions. While this was a question of principle to be decided by the Council, it was nevertheless clear that the Council's original Mandate had assumed the co-operation of South Africa, which could no longer be expected. On the assumption that the Council would decide that the implementation of resolution 2248(S-V) had to be carried out to the extent possible and that the powers already entrusted to the Council included the issuance of travel documents, information on past precedents was cited. One example was the case of the Governments in exile of continental European countries occupied by enemy forces; those had established themselves outside the continent and continued to exercise executive authority to the extent possible, an authority that had been recognized by the host State and other allied Powers. One of their functions had been the issuance of passports. The decisive feature of a travel document was not that it was issued by, or on behalf of, the authority in *de facto* control of the country or territory but rather that it would be accepted as valid by other countries.

172. A further precedent related directly to the authority of the United Nations in the case of West New Guinea (West Irian). Among the functions entrusted by Indonesia and the Netherlands to the United Nations Temporary Executive Authority (UNTEA) had been "the authority at its discretion to issue travel documents to Papuans (West Irianese)".

173. It therefore appeared that there was sufficient precedent for the Council to consider making arrangements for the issuance of travel documents to nationals of South West Africa.

174. The note further suggested that, in keeping with UNTEA practice, it might be preferable to call the documents "travel documents" rather than "passports". The Council was also asked to consider whether it wished to authorize the Commissioner to issue the travel documents as one of the "executive and administrative tasks" envisaged in resolution 2248(S-V). As a

¹²⁵A/AC.131/SR.42, p. 78.

¹²⁶G A (XXIII), a.i. 64, A/7338, para. 40.

¹²⁷G A (XXIV), Suppl. No. 24, para. 58.

¹²⁸A/AC.131/3, p. 6.

¹²⁹A/AC.131/4.

first step, it would be necessary to ascertain whether Member States would accept such travel documents.

175. Because of the complexity of this problem the Council established a small committee, which was later named the *Ad Hoc* Committee on the Question of Travel Documents, comprising four members representing Africa, Asia, Latin America and Yugoslavia to study, with the assistance of the Acting Commissioner, the political, legal and administrative aspects of the question of travel documents.

176. In reporting to the Council, the *Ad Hoc* Committee concluded that the Council had the competence to issue travel documents and suggested that it should be empowered, on behalf of the Council, to negotiate arrangements with those countries where South West Africans normally took refuge. It recommended that the Council should then dispatch a circular letter to Member States requesting them to recognize the travel documents issued by the Council and should authorize the Committee to proceed with the preparation of a set of draft regulations for the issue of travel documents. After some discussion that supported the view that resolution 2325(XXII) gave the Council competence to act in this case, the Council decided¹³⁰ to authorize the *Ad Hoc* Committee to prepare a set of draft regulations for the issue of travel documents after approaching the Governments concerned to ascertain whether they were agreeable in principle to permitting travel to their countries by South West Africans using travel documents issued by the Council.

177. In its report dated 4 May 1968,¹³¹ the Council informed the Assembly that it had concluded that its competence to issue travel documents was established by resolution 2325(XXII), by paragraph 2 of which the Assembly had requested the Council "... to fulfil by every available means the Mandate entrusted to it by the General Assembly". Accordingly the Council had decided in principle to proceed with arrangements for the issuance of travel documents in the Council's name at an early date. The Council further reported that regulations were being drafted and that consultations with Zambia and Tanzania had been initiated concerning the granting of the right of entry to those South West Africans holding travel documents issued by the Council.

Decision

178. By resolution 2372(XXII) the Assembly decided that, taking into account resolution 2248(S-V), the Council should, as a matter of priority, continue, with a sense of urgency, its consultations on the question of issuing to South West Africans travel documents enabling them to travel abroad.

179. Pursuant to the General Assembly resolution, the Council decided¹³² to send a mission, composed of the representatives of Guyana and the United Arab Republic (both members of the *Ad Hoc* Committee on Travel Documents) and the Acting Commissioner, with the following terms of reference: (a) to finalize the necessary arrangements to enable the Council to issue travel documents to Namibians; (b) to visit Lusaka, Dar es Salaam and Addis Ababa, as well as the capitals of such other African countries as the mission might deem necessary; and (c) after having completed the negotiations with the

United Republic of Tanzania and Zambia, to hold consultations on the question of travel documents and other matters concerning Namibia with the secretariat of OAU and with individual Foreign Ministers attending the meeting of the Council of Ministers of OAU, opening on 17 February 1969.

180. In the meantime, in response to the Secretary-General's communication, dated 12 December 1968, addressed to all Member States of the United Nations on the question of recognition and acceptance as valid of the travel and identity documents issued by the Council to Namibians abroad, a majority of the forty Member States which replied signified¹³³ their readiness to recognize, and accept as valid, travel and identity documents issued under the terms indicated in the Secretary-General's letter.

181. Formal arrangements for the issuance of travel and identity documents by the Council for Namibia were not, however, finalized during the period under review.

b. Programmes of assistance

182. Under resolution 2248(S-V), section III, paragraph 2, the General Assembly had requested "the specialized agencies and the appropriate organs of the United Nations to render to South West Africa technical and financial assistance through a co-ordinated emergency programme to meet the exigencies of the situation."

183. At its tenth meeting, the Council had on its agenda the question of the organization and operation of its work and a subitem relating to co-ordination of the work of United Nations bodies, including the specialized agencies, concerning South West Africa. The view was expressed that, as resolution 2248(S-V) had explicitly requested the specialized agencies to undertake a co-ordinated emergency programme and as a scholarship programme for South West Africa already existed, there was an obvious need to review those programmes and to consult UNESCO concerning the development of new education programmes for the Territory.

184. During its visit to Africa, the Council received suggestions for action by representatives of political parties of the Territory. Specific suggestions from SWAPO included the following:¹³⁴ that the Council should train an indigenous police force to maintain law and order in the Territory and embark on a crash programme to train the largest possible number of indigenous people in public administration; it should also train a large number of medical personnel; the Council should also provide a large number of scholarships for all South West Africans in exile.

185. In its report to the twenty-second session of the Assembly, the Council said that, with a view to fulfilling its mandate by every available means, it was in the process of discussing with the specialized agencies and with other appropriate organs of the United Nations the implementation of section III, paragraph 2, of resolution 2248(S-V) with a view to rendering technical and financial assistance to South West Africa through a co-ordinated emergency programme to meet the exigencies of the situation. The Council was also considering the question of establishing an educational and training

¹³⁰A/AC.131/SR.11.

¹³¹G A (XXII), Annexes, a.i. 64, doc. A/7088.

¹³²G A (XXIV), Suppl. No. 24, para. 42.

¹³³*Ibid.*, paras. 47 and 48. See also A/AC.131/10 and Add.1.

¹³⁴G A (XXII), Annexes, a.i. 64, A/7088, para. 29.

programme for South West Africans to be administered by the Council. Furthermore it was considering the question of assistance to South West African refugees, either through UNHCR or by other suitable arrangements.

Decision

186. By resolution 2372(XXII) of 12 June 1968 the Assembly decided that, taking into account the provisions of 2248(S-V), the Council should, as a matter of priority: (a) in consultation and co-operation with the specialized agencies and other appropriate organs of the United Nations, assume responsibility for establishing a co-ordinated emergency programme in order to meet the exigencies of the current situation; and (b) organize a training programme for Namibians, in consultation with those Governments which had indicated interest and concern, so that a cadre of civil servants and of technical and professional personnel could be developed who would be in a position to undertake the public administration and the social, political and economic development of the State.

187. Following the adoption of this resolution, the Council at its thirty-third meeting, on 26 June 1968, took up the implications of resolution 2372(XXII) and agreed to set up a sub-committee to find practical ways of implementing paragraph 4(b) of that resolution.¹³⁵ At the following meeting, the Council decided to appoint a sub-committee to prepare a preliminary document on both paragraph 4(a) and 4(b).¹³⁶

188. The sub-committee concluded that, in order to avoid the duplication of administrative machinery by the establishment of a separate educational and training programme for Namibians, it would not be advisable at that time to disturb the existing administrative set-up of the consolidated educational and training programme which had originally been established under General Assembly resolution 1705(XVI) of 19 December 1961 and which had been later consolidated under resolution 2349(XXII) with programmes for other dependent territories in southern Africa.

189. In discussing the sub-committee's conclusions, the view was expressed that resolution 2372(XXII) had specifically called for the organization of a separate training programme for the people of Namibia giving special attention to their needs. To do this it would be necessary to study the situation in the Territory. It appeared that the sub-committee had not taken into account the fact that the United Nations was responsible for the administration of Namibia.

190. On the other hand it was pointed out that the arrangements envisaged by the sub-committee were provisional although it had proposed that a representative of the Council should be included in the Committee in charge of the consolidated programme. The sub-committee had taken account of the existing voluntary contributions to the consolidated programme.¹³⁷

191. As the Council was unable to agree on the adoption of the sub-committee's recommendations, it was decided to ask that body to revise its report taking into account the comments that had been made.

192. During the discussion of the revised report¹³⁸ of the sub-committee, it was pointed out that useful contacts had been made with the specialized agencies, which had indicated that they were prepared to provide Namibia with technical and financial assistance. It was therefore up to the Council to prepare definite programmes on the basis of which the specialized agencies could be asked to give practical support.

193. After some discussion, it was decided to request the Acting Commissioner to approach the specialized agencies, as well as other organs of the United Nations, to ask for the assistance of experts in the preparation of a co-ordinated programme.¹³⁹ Further statements were made emphasizing, on the one hand, that the Assembly had envisaged a separate training programme for Namibians to be set up by the Council. It was felt that the participation of Namibians in the consolidated programme would end as soon as the separate programme became a reality. Unless the Council were to establish a separate programme, it would be tantamount to overriding a decision by the General Assembly.¹⁴⁰

194. In its report¹⁴¹ to the Assembly at its twenty-third session, the Council stated that it had transmitted the text of resolution 2372(XXII) to the specialized agencies and to UNHCR. Already replies had been received from WHO and UNESCO indicating their willingness to co-operate with the Council, where appropriate. The Council had concluded that the initial and primary responsibility for establishing a co-ordinated programme rested with itself and that the specialized agencies should merely be required to support this effort. Accordingly the Council had decided that an outline of a co-ordinated emergency programme should be prepared and requested the Acting Commissioner to approach the specialized agencies and other organs of the United Nations to seek the assistance of experts in its preparation.

Decision

195. By resolution 2403(XXIII) of 16 December 1968, the Assembly, noting with appreciation the report of the Council, commended to the appropriate organs of the United Nations acting in conformity with the relevant resolutions of the General Assembly, for their consideration, the recommendations contained in the report, and requested the Council to continue to discharge by every available means the responsibilities and functions entrusted to it.

196. In its report to the twenty-fourth session of the Assembly,¹⁴² the Council stated that it had considered two aspects of the question of an emergency programme, namely, the preparation of the long-term plan for economic and social development of the Territory to be implemented when the Council was able to discharge its powers and functions in the Territory and, second, the short-term emergency programme for rendering technical assistance to Namibians limited to meeting the exigencies of the existing situation.

197. The report further outlined the steps envisaged by the Council to develop these programmes and consultations with the specialized agencies.

¹³⁸The reports of the sub-committee were circulated to the members of the Council as temporary working papers.

¹³⁹A/AC.131/SR.44, pp. 92 and 93.

¹⁴⁰*Ibid.*, SR.45, pp. 9 and 10.

¹⁴¹G A (XXIII), a.i. 64, A/7338 and Corr.1.

¹⁴²G A (XXIV), Suppl. No. 24, para. 26.

¹³⁵A/AC.131/SR.33, p. 9.

¹³⁶*Ibid.*, SR.34, p. 16.

¹³⁷A/AC.131/SR.43, pp. 84 and 85.

Decision

198. By resolution 2517(XXIV) the General Assembly commended the report of the Council to all States and to the subsidiary organs of the General Assembly and

other competent organs of the United Nations, as well as to the specialized agencies and other international organizations concerned, for appropriate action, acting in conformity with the relevant resolutions of the General Assembly and the Security Council.