

ARTICLE 81

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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. Studies under Article 81 in the *Repertory* have in the past treated questions regarding the terms under which Trust Territories are administered by designated Administering Authorities. In keeping with the practice begun in the previous *Supplement*,¹ however, and given that no new trusteeship agreements were proposed in the period under review, the study of this Article deals solely with the responsibilities of the United Nations as Administering Authority for the Territory of South West Africa, known since 1968 as Namibia.²

2. While this study generally follows the structure of *Supplement No. 4*, several changes have been made which deserve mention. Most importantly, as a result of the 1971 advisory opinion of the International Court of Justice, which clarified in terms of international law certain crucial questions regarding the scope of the authority of the Council, section C on the scope of the authority of the Council has been eliminated. Sub-section 3 of section C, on the question of assistance to Namibians, is considered in this *Supplement* under section A of the analytical summary of practice. This permits a more comprehensive discussion of assistance programmes inside and outside the Territory that were increasingly integrated through the creation of institutions

such as the Fund for Namibia, the Nationhood Programme and the Institute for Namibia. A sub-section has also been added on Decree No. 1 for the Protection of the Natural Resources of Namibia and the related question of hearings by the Council for Namibia on the exploitation and purchase of Namibian uranium.

3. Sub-section 2 of section C in the previous *Supplement*, on the illegal arrests and trials of Namibians by the Government of South Africa, has been moved to section B and is considered therefore under the heading of the illegal presence of South Africa in Namibia. Sub-section 1 of the previous section C, on the authority of the Council outside the Territory, has been replaced by a discussion of the 1971 ICJ ruling, which is also considered under section B as a question regarding the illegal presence of South Africa in Namibia.

4. Also in the section on the illegal occupation of the Territory by South Africa, a sub-section has been added to address the question of the competence of the General Assembly to request the Security Council to recommend that the Secretary-General break off talks with the Government of South Africa that had been initiated at the behest of the Security Council. Under the same section, discussion in the General Assembly regarding the support of armed struggle to achieve the right of self-determination required the addition of a new sub-section.

¹*Repertory, Supplement No. 4*, vol. II, under Article 81.

²G A resolution 2372 (XXII).

I. GENERAL SURVEY

5. The period under review saw a significant expansion of the responsibilities of the Council for Namibia, which, it may be recalled, was created by the United Nations to administer the Territory of Namibia as the legal Administering Authority. The Council accordingly developed and refined a number of administrative and legal instruments to fulfil its mandate, even as it remained unable in the period under review, as in the previous period, to establish a physical presence in the Territory due to the ongoing occupation by South Africa.

6. In 1971, in response to a request by the Security Council, the International Court of Justice issued an advisory opinion regarding the legal consequences for States of the continued presence of South Africa in Namibia. The Court

considered South Africa's presence to be illegal and considered that it was the obligation of States Members of the United Nations to recognize the illegality of South Africa's presence in Namibia and to refrain from acts that supported or strengthened South Africa's illegal position. That decision was understood by the Council for Namibia as considerably strengthening its position, and it reacted accordingly by enhancing its own administrative capacities and asserting its authority as the *de jure* sovereign over Namibia in a number of new ways.

7. In order to fulfil its mandate more effectively, the Council restructured itself around three standing committees and a Steering Committee, each with specific terms of reference. The Council itself was enlarged three times (in

1972, 1974 and 1978) to bring its total membership to 31 States. The tenure of the President was extended (in two phases) from one month to one year in order to ensure a greater consistency in its leadership. In addition, three Vice-Presidents were created to aid the President and the Council in their work.

8. The activities of the Commissioner for Namibia were also expanded and clarified. In particular, the Commissioner was given responsibility for the issuance of travel documents to Namibians and for the collection and analysis of information on the Territory. In 1973, the Secretary-General for the first time appointed a full-time Commissioner for Namibia (the previous practice had been to appoint an official from the Secretariat as a part-time Acting Commissioner), and in 1978, the Secretary-General named the Commissioner as his Special Representative to Namibia.

9. The Council continued to grant hearings to Namibians both in New York and while on visiting missions to Africa and elsewhere, for the purpose of gaining first-hand information on the situation in the Territory, and for the purposes of representing the people of Namibia in the work of the Council.

10. A related development of interest was the recognition accorded by the General Assembly to the South West Africa People's Organization as the "sole and authentic" representative of the Namibian people. Moreover, beginning in the twenty-eighth session, SWAPO was allowed to participate in debates of the Fourth Committee regarding Namibia in the capacity of observer. During the period under review, the General Assembly repeatedly urged Member States to "grant all necessary support and assistance to [SWAPO] in its struggle to achieve self-determination, freedom and national independence in a united Namibia".³ The Assembly affirmed its full support for the "armed struggle" of the Namibian people under the leadership of SWAPO, and reaffirmed the legitimacy of that struggle by "all means at their disposal" against the illegal occupation of Namibia by South Africa.⁴ That provision, on which many Member States reserved their positions as they considered it to be an encouragement of the use of violence, might also be looked at alongside general questions regarding the legitimacy of the struggle in the exercise of the right to self-determination of colonial countries, which are examined more comprehensively under Article 73 of the present *Supplement*.⁵ It is also significant in terms of the practice of the Organization that the General Assembly financed the representation of SWAPO at United Nations Headquarters in New York and the participation of SWAPO representatives in missions that the Council undertook abroad.

11. During the period under review, the Council for Namibia undertook to work more closely with the Organization of African Unity, the Special Committee on decolonization and the Special Committee on Apartheid. The Council also gained increasing recognition as the de jure representative of Namibia among the specialized agencies. By the end of the period under review, the Council,

³G A resolution 3295 (XXIX).

⁴Ibid.

⁵See the present *Supplement*, under Article 73, paras. 184-220.

representing Namibia, enjoyed full membership in FAO and ILO and was an associate member of UNESCO, WHO and WMO. It represented Namibia on the Governing Council of the United Nations Development Programme and attended numerous conferences sponsored by United Nations agencies as a member with full status representing Namibia, including the United Nations Conference on Succession of States in Respect of Treaties, which, inter alia, declared that South Africa was not the predecessor State of Namibia, and the Third United Nations Conference on the Law of the Sea.

12. A crucial service was rendered to the people of Namibia through the issuance by the Council of travel documents that permitted Namibians to travel to other countries for educational and other purposes. The present *Supplement* describes how the Council obtained agreements with a substantial number of Member States to accept those documents and, with a more limited number of States, to offer the right of return for Namibians bearing the documents.

13. Assistance to Namibians continued during the period under review through the United Nations Educational and Training Programme for Southern Africa. However, the primary vehicle of assistance to Namibians became the United Nations Fund for Namibia, which was created in 1970, at the beginning of the review period. The fund, made up of voluntary contributions and allocations from the regular budget of the United Nations, was designed to provide a comprehensive programme of assistance to Namibians. Initially managed by the Secretary-General, the fund eventually came under the trusteeship of the Council for Namibia. The Council also developed the Nationhood Programme for Namibia, which had the goal of preparing Namibians for independence. Finally, the Council created the Institute for Namibia, funded by voluntary contributions and allocations from the regular budget, for research and training activities for Namibians.

14. As the legal administering authority over the Territory, the Council used its legislative power to issue its Decree No. 1 for the Protection of the Natural Resources of Namibia on 17 December 1974, which, inter alia, declared null and void any permission granted by South Africa, and without the consent of the Council for Namibia, for the exploration, extraction or export of any natural resource found within the territory of Namibia. The Decree was ratified by the General Assembly, which also decided to make adequate budgetary provisions for its enforcement. The rationale for the Decree was the ongoing presence of foreign economic interests in the Territory, which the Assembly judged to be a major impediment to Namibian independence. The Council continued to monitor and report on the activities of foreign economic interests in Namibia.

15. The General Assembly continued to condemn the illegal presence of South Africa in the Territory, as well as the extension of South African laws, particularly those that replicated the system of apartheid and of "bantustans"⁶ that served to divide the Namibian people. South Africa continued to occupy the Territory and maintained its efforts

⁶Bantustans were enclaves established along ethnic and racial lines.

to incorporate Namibia by extending the application of South African laws to the Territory, a practice which the Council for Namibia labelled "legislation as an instrument of oppression". The Council continued to monitor and catalogue such practices during the period under review and took a lead role in attempting to end South Africa's illegal occupation, including recommending to the Security Council that Chapter VII measures should be applied to South Africa and requesting the Security Council to recommend to the Secretary-General that he break off talks with the South African Government that had been initiated at the behest of the Security Council.

16. Of significant juridical importance as well was the passage of a resolution by the General Assembly supporting the "armed struggle" of Namibians, under the leadership of SWAPO, in the exercise of their right to self-determination and independence. This was a provision that engendered significant debate and substantial reservations. It might also be read in conjunction with the question of the legitimacy of

the struggle of colonial peoples to exercise their right to self-determination and independence, included in the present *Supplement* under Article 73.

17. Consideration of the question of Namibia during the period under review was affected by the rejection of the credentials of South Africa by the General Assembly from the twenty-ninth session to the end of the review period. Though South Africa was no longer recognized as the administering Power for Namibia, it continued to occupy the Territory, and it was therefore constantly referred to in the resolutions of the General Assembly regarding the Territory. The question of the credentials of the representatives of South Africa are dealt with elsewhere in the present *Supplement*.⁷

⁷*Repertory, Supplement No. 5*, vol. I, under Article 9, paras. 39-72.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Organization and operation of the United Nations administration in Namibia

1. NATURE OF THE MACHINERY

18. In the previous *Supplement* the discussion under this heading described how the Council of Namibia was conceived from contending proposals on the nature of the United Nations administration over Namibia. The discussion below describes the "nature of the machinery" in general terms as to how the United Nations Council for Namibia, an unprecedented institution, defined itself in practice. It should first be noted that, procedurally, the Council made recommendations to the General Assembly in a similar manner to other subsidiary bodies. Those recommendations were usually endorsed by the Assembly through specific resolutions.⁸

19. During the period under review, the machinery employed by the United Nations Council for Namibia to exercise its mandate over Namibia was diversified and strengthened at the same time as the terms of its mandate were clarified and expanded. The Council began to structure its work around its dual functions as a United Nations policy-making body and as the legal Administering Authority for Namibia. The work of the Council was given impetus during the period under review by the advisory opinion of the International Court of Justice of 21 June 1971, in which the Court reaffirmed that the Council was the de jure authority over the Territory and stated that States Members of the United Nations were obliged to recognize the illegality of South Africa's occupation and to refrain from any dealings with that Government that abetted its illegal occupation of Namibia.

20. A draft resolution was submitted to the General Assembly at its twenty-sixth session with the purpose of setting out in greater detail the functions and responsibilities

of the United Nations Council of Namibia in light of the advisory opinion of the Court.⁹ By the resolution, the Assembly welcomed the ICJ decision and requested the Council for Namibia to discharge its functions in more specific ways than had been enumerated in previous resolutions.¹⁰ Namely, the General Assembly asked the Council to represent Namibia whenever it was required, to continue its consultations at United Nations Headquarters, in Africa or elsewhere, with the representatives of the Namibian people and the Organization of African Unity and to assume responsibility for the urgent establishment of a short-term and long-term coordinated programme of technical and financial assistance to Namibia.

21. The Council itself took note of the ICJ opinion at the twenty-sixth session, and in the light of it identified a broad series of activities that it would explore as part of its responsibility over Namibia. These were: (a) the issuance of visas; (b) membership and participation in international bodies, conferences, and conventions; (c) invalidation and revalidation of certain acts of the Government of South Africa; (d) substitution for South Africa in multilateral treaties; (e) drafting of interim laws; (f) registration and (re)incorporation of organizations doing business in Namibia; (g) levying taxes; and (h) issuing concessions.¹¹ As is documented in the present study, some of these activities were pursued with a great deal of assiduity during the period under review, and others were considered more difficult to implement or were superseded by events. It might also be of interest to compare this list of activities with the priorities identified by the first full-time Commissioner for Namibia several years later (see para. 47 below) in order to chart the evolution of the Council's administrative priorities.

22. In addition to the added impetus provided to the Council by the ICJ advisory opinion, the inability of the

⁸G A resolution 2679 (XXV).

⁹G A (26), 4th Comm., 1965th mtg., Yugoslavia, para. 36.

¹⁰G A resolution 2871 (XXVI), para. 13.

¹¹G A (26), Suppl. No. 24, para. 196.

Council for Namibia to physically establish itself in the Territory¹² provoked an increasingly innovative approach to fulfilling the requirements of its mandate. The results of this approach included, inter alia, the creation of a United Nations Fund for Namibia, the Nationhood Programme for Namibia and the issuance of identification and travel documents to Namibians who were unconditionally deprived by the Government of South Africa of such documents, and, ipso facto, deprived of the exercise of their right to petition the United Nations.¹³ Many of the practices established by the Council were of judicial importance, and these are described in greater detail below, according to the themes established in the previous *Supplement*.

2. COMPOSITION OF THE UNITED NATIONS COUNCIL FOR NAMIBIA AND THE APPOINTMENT OF THE UNITED NATIONS COMMISSIONER FOR NAMIBIA

(a) *The United Nations Council for Namibia*

23. The United Nations Council for Namibia had been established by the General Assembly pursuant to resolutions 2145 (XXI) of 27 October 1966 and 2248 (S-V) of 19 May 1967,¹⁴ with the mandate of administering Namibia until its independence.¹⁵

24. During the period under review, the membership of the Council for Namibia was enlarged several times. By its resolution 3031 (XXVII) of 18 December 1972, the General Assembly increased the membership of the Council by 7 members to a total of 18 members.¹⁶ The Council also granted observer status to the delegations of Botswana and Togo. By its resolution 3295 (XXIX) of 13 December 1974, the Assembly further increased the membership of the Council by 7 members, bringing the total membership to 25.¹⁷ By its resolution 33/182 A of 21 December 1978, the Assembly increased the membership of the Council by 6 more members, bringing total membership in the Council to 31 at the end of the period under review.¹⁸

¹²According to G A resolution 2248 (S-V) of 19 May 1967, section IV, para. 1, the Council was to have been based in the Territory.

¹³See *Repertory*, vol. V, under Article 80, paras. 25-32; *Repertory, Supplement No. 1*, vol. II, under Article 80, paras. 28-42; *Repertory, Supplement No. 2*, vol. III, under Article 80, paras. 28-58; *Repertory, Supplement No. 3*, vol. III, under Article 80, paras. 107-126; *Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 52-66.

¹⁴*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 36 and 37.

¹⁵The original 11 members of the Council were: Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, United Arab Republic, Yugoslavia and Zambia.

¹⁶G A (28), Suppl. No. 24, para. 4. The new members of the Council were: Burundi, China, Liberia, Mexico, Poland, Romania and Union of Soviet Socialist Republics.

¹⁷G A (30), Suppl. No. 24, vol. II, annex I, para. 6. The new members of the Council were: Algeria, Australia, Bangladesh, Botswana, Finland, Haiti and Senegal.

¹⁸G A (34), Suppl. No. 24, vol. I, para. 22. The new members of the Council were: Angola, Belgium, Bulgaria, Cyprus, United Republic of Cameroon and Venezuela.

25. At the same time, the structure of the Council evolved considerably to reflect the increasing scope and size of its work programme. In particular, three standing committees were formed (see paras. 30-32 below), as well as a Steering Committee (see para. 33) and a Committee on the United Nations Fund for Namibia (see para. 34).

26. Other changes in the structure of the Council included the creation of three vice-presidencies. At the 229th meeting of the Council, on 3 March 1976,¹⁹ three Vice-Presidents were elected to terms of office coterminous with that of the President. It was also decided that the Vice-Presidents would be members of the Steering Committee.

27. The Council and all its subsidiary bodies continued to be serviced by the secretariat of the Council, a section of the Division of the Secretariat Services of the Department of Political Affairs, Trusteeship and Decolonization, within the United Nations Secretariat.²⁰

(i) *The tenure of the Presidency*

28. On 1 May 1970, the tenure of the presidency of the Council was extended from one month to four months to ensure greater continuity in the work of the President. The presidency continued to rotate among members of the Council according to English alphabetical ordering.²¹

29. At the 164th meeting of the Council, on 21 December 1972, during the twenty-seventh session, Paul Lusaka, the Permanent Representative of Zambia to the United Nations, was elected to the presidency of the Council for one year, thus marking the abandonment of the four-month rotating system for the tenure of the presidency.²²

(ii) *The establishment of standing committees*

30. At its meeting on 20 April 1970, during the twenty-fifth session, the Council established two standing committees. The first was mandated to manage the planning of the work of the Council, screen incoming communications, deal with questions related to publicity and study ways to enable the people of Namibia to participate more closely in the work of the Council. The second was responsible for studying all questions of an administrative and legal nature concerning Namibia. Upon the creation of the standing committees, all functions previously entrusted to the then existing ad hoc bodies were transferred to one of the two standing committees, except those functions entrusted to the Ad Hoc Committee on Travel Documents, which was maintained.²³

31. During its twenty-eighth session, the terms of reference of the two standing committees were slightly revised according to the recommendations of an Ad Hoc Committee on Reorganization.²⁴ In addition, a third standing committee was established to deal with matters concerning

¹⁹G A (31), Suppl. No. 24, vol. I, para. 17.

²⁰G A (33), Suppl. No. 24, vol. I, para. 361.

²¹G A (25), Suppl. No. 24, vol. I, para. 6.

²²G A (28), Suppl. No. 24, para. 8.

²³G A (25), Suppl. No. 24, para. 7.

²⁴G A (28), Suppl. No. 24, para. 11. See document A/AC.131/L.7 for the recommendations of the Reorganization Committee.

the provision of travel documents to Namibians as well as other issues. The Ad Hoc Committee on Travel Documents was therefore ended.²⁵

32. At its 79th meeting, on 15 November 1978, the Steering Committee requested the chairmen of the standing committees to review their terms of reference and make appropriate recommendations to the Council for their possible revision.²⁶ At the end of the thirty-third session, the terms of reference of the three standing committees were as follows:²⁷

Standing Committee I:

(a) Representation of Namibia in international organizations, at conferences and on any other occasions as may be required;

(b) Continuing consultations at United Nations Headquarters, in Africa or elsewhere with representatives of the Namibian people;

(c) Consultations with Governments of Member States;

(d) Relations with the specialized agencies and other organizations within the United Nations system;

(e) Cooperation with OAU;

(f) Relations with non-governmental organizations.

Standing Committee II:

(a) Consideration of the compliance of Member States with the relevant United Nations resolutions, taking into account the advisory opinion of the International Court of Justice of 21 June 1971;

(b) Consideration of foreign economic interests operating in Namibia with a view to recommending effective means for regulating such activities;

(c) Examination of the questions of bilateral and multilateral treaties which, explicitly or implicitly, include Namibia, with a view to replacing South Africa as the party empowered to represent Namibia in all relevant bilateral and multilateral treaties;

(d) Consideration of legal issues related to the borders of Namibia;

(e) Consideration of South African military operations and installations in Namibia;

(f) Consideration of other economic and legal matters.

Standing Committee III:

(a) Participation in an appropriate capacity of the representatives of the Namibian people in the activities of the Council;

(b) Evaluation of short-term and long-term coordinated programmes of technical and financial assistance to Namibia in the light of the relevant provisions of General Assembly resolution 2248 (S-V) of 19 May 1967 and taking into

²⁵Ibid., paras. 9-11. The revised work programmes for each standing committee are contained in paragraph 11.

²⁶G A (34), Suppl. No. 24, vol. I, paras. 31-38. Any noteworthy changes in the committee mandates that may result from this review will be covered in *Repertory No. 6*.

²⁷G A (33), Suppl. No. 24, vol. I, para. 347.

account the provisions of Assembly resolution 2872 (XXVI) of 20 December 1971;

(c) Examination of questions relating to the issuance of travel and identity documents to Namibians;

(d) Consideration of ways and means of increasing the dissemination of information relating to Namibia and of assisting the Secretary-General in the discharge of the task entrusted to him under the terms of section III of General Assembly resolution 3111 (XVIII) of 12 December 1973.²⁸

(iii) *Other committees and working groups*

33. During the twenty-eighth session of the General Assembly, the Council decided to form a Steering Committee to be made up of the chairmen and vice-chairmen of the three standing committees and the President of the Council. The Steering Committee would, inter alia, perform the functions normally entrusted to a rapporteur.²⁹ At its 229th meeting, during the thirty-first session, the Council elected three Vice-Presidents (see para. 26 above), who were named to the Steering Committee, replacing on it the vice-chairmen of the three standing committees. At its next meeting, the Council decided to include the rapporteur of the Committee on the United Nations Fund for Namibia (see para. 34 below), as a member of the Steering Committee.³⁰ The Steering Committee met in closed session to discuss major policy issues and consider and organize the procedures of the Council. The United Nations Commissioner for Namibia was permitted to attend the meetings at the discretion of the President of the Council.³¹ During 1978, the President of the Council deemed it necessary that the Council be able to consult constantly with SWAPO. Consequently, a representative of SWAPO was invited to attend the meetings of the Steering Committee.³²

34. As discussed below (see paras. 120-133), the United Nations established a Fund for Namibia according to the provisions of General Assembly resolution 2679 (XXV). By General Assembly resolution 3112 (XXVIII) of 12 December 1973, the Council was made the trustee of the United Nations Fund for Namibia (see paras. 134-137). As such, responsibility for the management of the Fund was transferred from the Secretary-General to the Council. To discharge these responsibilities, at its 198th meeting, during the twenty-ninth session, the Council decided to set up a four-member Committee on the United Nations Fund for Namibia and designated the President of the Council as the chairperson and the United Nations Commissioner for Namibia as an ex officio member.³³ At its 230th meeting,

²⁸In the relevant provisions of section III of G A resolution 3111 (XXVIII) the Assembly requested the Secretary-General, in particular: (a) to issue a further series of United Nations commemorative postage stamps on Namibia; (b) to continue to issue the *Namibia Bulletin*; and (c) to continue to explore additional measures for wider dissemination of information concerning the question of Namibia and the activities of the Council.

²⁹G A (28), Suppl. No. 24, para. 10.

³⁰G A (31), Suppl. No. 24, vol. I, para. 21.

³¹G A (32), Suppl. No. 24, vol. I, para. 290.

³²G A (33), Suppl. No. 24, vol. I, para. 342.

³³G A (29), Suppl. No. 24, vol. II, annex I, para. 18. The first members were India, Nigeria, Turkey and Yugoslavia.

during the thirty-first session, the Council adopted a resolution increasing membership in the Committee on the United Nations Fund for Namibia by one member. By the same resolution, the Council decided to include the Rapporteur of the Committee on the Fund as a member of the Steering Committee of the Council.³⁴

Decision

35. The General Assembly approved all of the above measures taken by the Council regarding its procedures and organization throughout the period of review by pro forma resolutions affirming the work performed by the Council. The relevant resolutions are: 2678 (XXV), 2871 (XXVI), 3031 (XXVII), 3111 (XXVIII), 3295 (XXIX), 3399 (XXX), 31/147, 32/9 F and 33/182 C.

(b) *The United Nations Commissioner for Namibia*

36. The General Assembly, by paragraph 3, section II, of its resolution 2248 (S-V) of 19 May 1967, had decided that the United Nations Council for South West Africa (renamed the United Nations Council for Namibia in 1968) would entrust executive and administrative tasks, as deemed necessary, to a United Nations Commissioner for South West Africa who would be appointed by the Secretary-General and approved by the General Assembly. In the year following that decision, the Secretary-General had appointed the United Nations Legal Counsel as Acting Commissioner for Namibia and that that appointment had been proposed as an interim measure.³⁵ The Legal Counsel resigned as Acting Commissioner for Namibia effective 1 January 1970, and was succeeded by the Assistant Secretary-General for Public Information, again as a part-time interim appointment.

37. On 20 November 1970, the representative of Zambia sent a letter³⁶ to the Secretary-General recalling the request made by the President of SWAPO³⁷ in the Fourth Committee that year to the effect that a permanent United Nations Commissioner should be appointed. The representative reminded the Secretary-General of the urgent need for a permanent Commissioner for Namibia rather than an Acting Commissioner. The Secretary-General replied in a letter that in his view the functions could still be adequately undertaken by an Acting Commissioner for Namibia.³⁸ The General Assembly endorsed the Secretary-General's decision unanimously.³⁹

38. The following year, a draft resolution⁴⁰ was submitted in the Fourth Committee that contained a provision regarding the appointment of a full-time Commissioner for Namibia. A sponsor of the draft noted that the role which the Council for Namibia was being requested

to play required that a full-time Commissioner be appointed.⁴¹

39. The draft was approved by the Fourth Committee and subsequently adopted by the General Assembly⁴² as resolution 2871 (XXVI). In paragraph 17 of the resolution, the Assembly urged the Secretary-General, in view of the recommendations of the United Nations Council for Namibia, to undertake the necessary consultations to nominate as soon as possible a full-time United Nations Commissioner for Namibia.

40. On the day that the draft resolution was being considered in the plenary, the Secretary-General issued a note⁴³ which contained the name of Lord Caradon as a possible full-time Commissioner for Namibia. Following the adoption of the draft, the representative of Nigeria, who was also the President of the Council for Namibia, told the General Assembly that there was no commitment one way or another on the appointment of Lord Caradon. He assured the Assembly that he had been consulted by the Secretary-General on the matter, as had been some members of SWAPO, who had raised no objections. He said that he did not think that the Secretary-General had acted inappropriately in not consulting all delegations.⁴⁴ He added that the acting commissioners who had thus far been appointed, and who had other full-time responsibilities, had not been able to discharge their functions as satisfactorily as the Council, the Namibians or they themselves would have liked. For that reason he hoped there would be no postponement of the question.⁴⁵

41. A motion was nonetheless raised to postpone the question, on the grounds that the note had only been received that afternoon and that many delegations required instructions before voting on the proposed Commissioner.⁴⁶

42. One representative said that his Government could not support the appointment of Lord Caradon as he represented a colonial Power which not only maintained Territories under colonial domination but also provided aid in various forms, including military aid, to the racist and colonial regimes in southern Africa. He further believed that consultations should have been held with all delegations or groups of delegations, which was a procedure which had long been accepted in the United Nations, but which for some reason had not been followed in this instance. He suggested that a decision should be postponed, and that otherwise his delegation would insist upon a vote on the question and would vote against it.⁴⁷

43. It was decided to adjourn the debate on the item under rule 76 of the rules of procedure of the General Assembly.

44. At the 2030th meeting of the plenary, the President of the General Assembly referred to a note⁴⁸ from the

³⁴G A (31), Suppl. No. 24, vol. I, para. 21.

³⁵Repertory, Supplement No. 4, vol. II, under Article 81, paras. 46-51.

³⁶A/8194.

³⁷G A (25), 4th Comm., 1887th mtg., paras. 15 and 37.

³⁸A/8220.

³⁹G A (25), Plen., Vol. III, 1923rd mtg., paras. 59 and 60.

⁴⁰A/C.4/L.994.

⁴¹G A (26), 4th Comm., 1965th mtg., Yugoslavia, para. 36.

⁴²G A (26), Plen., 2028th mtg., para. 50.

⁴³A/8638.

⁴⁴G A (26), Plen., 2028th mtg., paras. 52-54.

⁴⁵Ibid., para. 59.

⁴⁶Ibid., Algeria, para. 69.

⁴⁷Ibid., Soviet Union, paras. 74-78.

⁴⁸A/8638/Add.1.

Secretary-General withdrawing the nomination of Lord Caradon as the United Nations Commissioner for Namibia for an initial period of one year.⁴⁹ At the 2031st meeting, the President restated the withdrawal of the nomination and noted that the Secretary-General had issued no further communication on the matter.⁵⁰

45. At its 2205th plenary meeting, on 18 December 1973, the General Assembly, on the recommendation of the Secretary-General, approved the appointment of Sean MacBride for a one-year term, beginning on 1 January 1974, as full-time United Nations Commissioner for Namibia.⁵¹ At its 2318th plenary meeting, on 13 December 1974, the Assembly extended Mr. MacBride's term until 31 December 1975.⁵² At its 2419th plenary meeting, on 26 November 1975, the Assembly further extended his term until 31 December 1976.⁵³ At the 107th plenary meeting of the thirty-first session, the Assembly appointed Martti Ahtisaari for a one-year term beginning on 1 January 1977.⁵⁴ At the 57th plenary meeting of the thirty-second session, the Assembly extended Mr. Ahtisaari's appointment for one year.⁵⁵ At the 90th plenary meeting of the thirty-third session, the Assembly extended his appointment for an additional year.⁵⁶

46. During the period under review, the duties and activities of the Commissioner were clarified to a greater degree than they had been previously. According to section II, paragraph 3, of General Assembly resolution 2248 (S-V) of 19 May 1967, the Commissioner was to be entrusted by the Council for Namibia with "such executive and administrative tasks it deemed necessary". Despite the fact that the Acting Commissioner had several times sought clarification with regard to his functions,⁵⁷ in the period prior to the appointment of a full-time Commissioner such clarifications had not been provided.

47. The first full-time Commissioner for Namibia, Sean MacBride, put before the Council a programme of activity on the occasion of his formal welcome by the Council.⁵⁸ He said he envisaged seven possible courses of action which he hoped the Council would approve generally, and which he would formulate into a programme of action subsequent to consultations with African leaders, including the leaders of SWAPO. The seven courses of action were as follows: (a) to secure support for the cause of Namibia from States which were not yet providing active support; (b) to inform world opinion of the situation in Namibia; (c) to establish a research and training institute for Namibians; (d) to enlist the support of non-governmental organizations; (e) to examine cooperation with the specialized agencies with regard to the liberation of Namibia; (f) to ensure that the people of Namibia were kept fully informed of the actions of the

United Nations; and (g) to mobilize financing for the implementation of the suggested programmes. The Council for Namibia welcomed these proposals and immediately approved the Commissioner's proposed visit to Africa to consult on his intended programme of action with leaders there.⁵⁹

48. The Commissioner released a report of his activities covering the period from 1 January to 1 September 1975.⁶⁰ In the following session, the Commissioner released a report describing his activities during the period from 2 September 1975 to 1 October 1976. These activities included the following: (a) implementation of Decree No. 1 for the Protection of the Natural Resources of Namibia (see paras. 151-154 below); (b) establishment of the Institute for Namibia (see paras. 141-143); (c) assistance to Namibians; (d) preparation of special studies; and (e) travel and identity documents for Namibians (see paras. 115-119). The Council approved the report and requested the Commissioner to continue addressing certain matters and to report on them at the following session.⁶¹

49. The activities of the Commissioner for Namibia were formalized with the acceptance of the work programme of the Council,⁶² adopted at its 250th meeting, which was based on the activities he had identified in his report.⁶³ During the thirty-third session, three major undertakings were added to the activities of the Council: (a) the extraordinary plenary meetings of the Council held at Lusaka from 20 to 25 March 1978; (b) the ninth special session of the General Assembly on the question of Namibia; and (c) the Nationhood Programme for Namibia (see paras. 138-140). The Commissioner was made responsible for implementing the decisions related to these programmes through his offices⁶⁴ in New York, Lusaka and Gabarone.⁶⁵

50. Moreover, subsequent to the adoption of Security Council resolution 431 (1978), requesting the Secretary-General to appoint a Special Representative for Namibia to ensure the early independence of Namibia through free elections under the control of the United Nations, the Secretary-General appointed the Commissioner for Namibia as his Special Representative to Namibia.⁶⁶

3. CONSIDERATION OF COMMUNICATIONS AND REQUESTS FOR HEARINGS

51. The General Assembly's right to hear petitioners from the Territory of Namibia had been upheld by the International Court of Justice in its advisory opinion of 1

⁴⁹G A (26), Plen., 2030th mtg., para. 80.

⁵⁰Ibid., 2031st mtg., para. 99.

⁵¹G A (28), Plen., 2205th mtg., para. 191.

⁵²G A (29), Plen., 2318th mtg., paras. 144 and 145.

⁵³G A (30), Plen., 2419th mtg., paras. 213-215.

⁵⁴G A decision 31/317.

⁵⁵G A decision 32/307.

⁵⁶G A decision 33/322.

⁵⁷A/AC.131/SR.180, p. 20.

⁵⁸A/AC.131/SR.193.

⁵⁹A/AC.131/SR.193, pp. 10-12.

⁶⁰G A (30), Suppl. No. 24, vol. II, annex VIII.

⁶¹A/AC.131/SR.230.

⁶²A/AC.131/L.43.

⁶³G A (32), Suppl. No. 24, para. 185.

⁶⁴The regional office of the Commissioner at Lusaka was established in 1970 (see G A (27), Suppl. No. 24, vol. I, para. 152) and reorganized and consolidated in 1977 (see G A (32), Suppl. No. 24, vol. I, paras. 199-202). The regional office of the Commissioner at Gabarone was established in late 1977 and became operational in March 1978 (see G A (33), Suppl. No. 24, vol. I, para. 250).

⁶⁵G A (33), Suppl. No. 24, vol. I, para. 233.

⁶⁶G A (33), Suppl. No. 24, vol. I, para. 255.

June 1956.⁶⁷ Since then, the Fourth Committee and the Council for Namibia had established their own practices regarding the hearing of petitioners and the treatment of communications pertaining to Namibia.⁶⁸

52. As described in the previous *Supplement*, the question of hearing petitioners from Namibia and the question of the participation of the people of Namibia in the work of the Council (see paras. 67-83) were deemed by the General Assembly to be separate questions.⁶⁹ Nonetheless, in practice, the questions remained closely related, and were particularly so after the Assembly determined a single organization of Namibian people, SWAPO, to be the "sole and authentic" representative of the Namibian people (see para. 82).

53. The Council had set up, during the previous period of review, the machinery to screen incoming communications, some of which included requests for hearings. According to this procedure, Standing Committee I (see para. 32 above) examined the petitions and communications before circulating them to the Council as a whole.⁷⁰ Requests for hearings were considered and approved by the entire Council. Following the hearings, the Council frequently directed questions to the petitioners, took note of the information provided by the petitioners and subsequently took such information into account in its consideration of actions to be taken with regard to Namibia.

54. The records of the Council show some variance in its treatment of petitioners appearing before it, as some of these appearances were labelled as "hearings" and some as "statements". During the period under review, however, the term "statement" was almost exclusively applied to representatives of SWAPO, while the term "hearing" was applied to petitioners from other Namibian groups (and interested parties who were not Namibian).

55. During the twenty-fifth session, the Council heard one petitioner.⁷¹ During the twenty-sixth session, several communications⁷² were circulated as Council documents⁷³ and the Council heard two petitioners.⁷⁴ One of these petitioners appeared before the Council on the invitation of its president, taken at his own initiative.

56. During the twenty-seventh session, the Council heard nine petitioners. Two petitioners, representatives of the International Committee of Jurists, were invited by the Council to appear before it.⁷⁵ Another petitioner, a representative of the International League of the Rights of Man, was heard three times.⁷⁶ The President of SWAPO⁷⁷

made a "statement" before the Council. It should be noted that at this session, the Fourth Committee (see para. 71) had decided that national liberation movements should participate in an observer capacity in discussions of the Fourth Committee regarding their Territories. The remaining petitions were considered as "hearings",⁷⁸ including that of a representative of the South West Africa National Union (SWANU), which also claimed to represent the Namibian people (see para. 72 below).⁷⁹

57. During the twenty-eighth session of the General Assembly, the Council heard eight petitioners. The President of SWAPO was heard twice, once as a "hearing"⁸⁰ and once as providing a "statement".⁸¹ It should be noted that at this time a representative of SWAPO was seated as an observer in the deliberations of the Council as a result of the decision of the Fourth Committee mentioned in the preceding paragraph. The rest of the appearances by petitioners,⁸² including one by a representative of SWANU, were labelled "hearings".

58. Throughout the remainder of the period of review, the Council continued to hear petitioners.⁸³ With three exceptions, it listed all appearances by SWAPO members who were not the regular observers to be "statements", and all other petitioner appearances to be "hearings". The first exception was the statement of a representative of SWANU, delivered during a closed meeting⁸⁴ of the Council at the twenty-ninth session, for which there are no official records. The other exceptions were two "hearings" by the National Chairman of SWAPO and the Vice-President of SWAPO, during the thirtieth session.⁸⁵

59. During meetings of the Council for Namibia, a request for a hearing was deferred at the request of a Council member. During the thirty-first session, the Council considered a petition from the General Secretary of the World Peace Council. The representative of China said that the organization in question had become an interest manipulated by a super-Power and he wished to place on the record his Government's reservations regarding the hearing of the petitioner. The Council then decided, without objection, to invite the petitioner to appear at a later meeting under the agenda item entitled "Other matters".⁸⁶

60. Although there were no petitioners at the thirty-third session, the President of SWAPO,⁸⁷ appearing in the capacity of an observer, made a statement.

61. The Council continued to examine communications from Namibians and other persons with an interest in Namibia, to note them, respond to them and sometimes act on them. The communications are too numerous to mention in this review, and there was no significant change of

⁶⁷ *Repertory, Supplement No. 2*, vol. III, under Article 80, para. 39.

⁶⁸ *Repertory, Supplement No. 4*, vol. II, under Article 80, paras. 52-66.

⁶⁹ *Ibid.*, para. 65.

⁷⁰ A/AC.131/SR.103, p. 7, Turkey (Chairman, Standing Committee I).

⁷¹ A/AC.131/SR.85.

⁷² 4th Comm. 81/71, 90/71 and 91/71.

⁷³ A/AC.131/SR.101, p. 5.

⁷⁴ A/AC.131/SR.115 and 116.

⁷⁵ A/AC.131/SR.127.

⁷⁶ A/AC.131/SR.139, 158 and 159.

⁷⁷ A/AC.131/SR.139, pp. 2-3.

⁷⁸ A/AC.131/SR.123, 143, 144, 146 and 156.

⁷⁹ A/AC.131/SR.163.

⁸⁰ A/AC.131/SR.170.

⁸¹ A/AC.131/SR.169.

⁸² A/AC.131/SR.168, 170 and 188-191.

⁸³ A/AC.131/SR.201, 212, 216 (two hearings), 227 (two hearings), 237 and 266.

⁸⁴ A/AC.131/SR.213.

⁸⁵ A/AC.131/SR.226 and 227.

⁸⁶ A/AC.131/SR.240, p. 7.

⁸⁷ A/AC.131/SR.272.

procedure with regard to them which would require detailed examination in the present study.

62. It will be recalled that the General Assembly in its resolution 1810 (XVII) of 17 December 1962 had requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples⁸⁸ to discharge mutatis mutandis the tasks which it had assigned to the Special Committee for South West Africa in resolution 1702 (XVI) of 19 December 1961, which included the examination of petitions. The Special Committee and the Fourth Committee also continued to hear petitioners⁸⁹ on the question of Namibia in accordance with previous practice.⁹⁰ These petitioners included, but were not limited to, representatives of SWAPO.

63. The Fourth Committee on one occasion refused to hear a petitioner on the question of Namibia. During the thirty-first session, the Secretariat distributed to the Fourth Committee a communication⁹¹ from a member of the National Convention of Namibia requesting a hearing. Subsequently, on 15 November 1976, a letter⁹² addressed to the Chairman of the Fourth Committee from the Acting President of the Council for Namibia regarding the request was circulated to members of the Fourth Committee.

64. In the letter, the Acting President noted that he had been requested by the Steering Committee of the Council for Namibia to transmit the views of the Council regarding the petition, namely that the Council considered the National Convention of Namibia to be a willing participant in a constitutional conference on Namibia that had been sponsored by South Africa and had been condemned by the General Assembly.⁹³ The Steering Committee expressed its hope that the Fourth Committee would vote against the request for the hearing.

65. The Chairman of the Fourth Committee noted the letter of the Steering Committee, referred to the extensive consultations he had undertaken with members and said that it had been his impression that the majority of the members of the Fourth Committee felt that, in view of the special circumstances surrounding the case, the request should be denied. It was so decided by the Fourth Committee.⁹⁴

66. Several delegations expressed their reservations regarding the decision, noting that the Committee should have granted the hearing both on principle and on precedent. It was argued that the established practice of the Committee was to hear petitioners who had requested permission to

express their views on questions pertaining to the Territories and that the members of the Committee should be allowed to make their own assessment of the value of the information that was thereby presented.⁹⁵

4. PARTICIPATION OF THE PEOPLE OF NAMIBIA IN THE WORK OF THE COUNCIL FOR NAMIBIA AND OTHER UNITED NATIONS BODIES

(a) *The Council for Namibia*

67. In paragraph 1 (a), section II, of its resolution 2248 (S-V), the General Assembly had entrusted the Council for Namibia to administer Namibia with the "maximum possible participation of the people of the Territory". As noted in the previous *Supplement*, however, no formal representation in the Council for Namibia had been accorded to representatives of the people of Namibia.⁹⁶

68. In its report to the General Assembly at its twenty-fifth session, the Council noted that it had consulted with representatives of SWAPO and the South West Africa United Front (SWANUF) regarding the question of the participation of the Namibian people in the work of the Council. During those discussions, the President of SWAPO, the only Namibian organization recognized by the Organization of African Unity and the only organization engaged in armed struggle for the liberation of Namibia, said that SWAPO was not prepared to recognize or collaborate with SWANUF or SWANU so long as those parties were not also engaged in armed struggle.⁹⁷ The position of SWANUF, on the other hand, was that the Council should mediate between it and SWAPO in order for both groups to be represented on the Council, or failing that, the Council should recommend to OAU that it recognize SWANUF as well, so that all Namibians could be represented in the Council through SWAPO and SWANUF.⁹⁸ The position of SWANU was that the Council should urgently convene a meeting with the representatives of the major political and militant groups of Namibians to discuss ways and means of enabling them to participate in its work.⁹⁹

69. In face of these incongruous positions, the Council for Namibia stressed that its objective was "limited to devising practical arrangements, whereby the people of Namibia as such can be associated as closely as possible with its work"¹⁰⁰ and that their goal was not to unite the various parties. The Council also noted that OAU had designated SWAPO as the official representative of the Namibian people because of its national character and the fact that it was actively engaged in the armed struggle for liberation. According to the Council's report and in meetings the Council held with OAU in 1970, "it was intimated that OAU's designation of SWAPO as the only recognized

⁸⁸Referred to in this study as the Special Committee on decolonization.

⁸⁹See, G A (25), Suppl. No. 23, vol. II, chap. VI; G A (26), Suppl. No. 23, vol. II, chap. VII; G A (27), Suppl. No. 23, vol. III, chap. IX; G A (28), Suppl. No. 23, vol. III, chap. VIII; G A (29), Suppl. No. 23, vol. III, chap. IX; G A (30), Suppl. No. 23, vol. II, chap. X; G A (31), Suppl. No. 23, vol. II, chap. IX; G A (32), Suppl. No. 23, vol. II, chap. VIII; G A (33), Suppl. No. 23, vol. II, chap. VIII.

⁹⁰*Repertory, Supplement No. 4*, vol. II, under Article 81, para. 66.

⁹¹A/C.4/31/9.

⁹²A/C.4/31/10.

⁹³G A resolution 3399 (XXX).

⁹⁴G A (31), 4th Comm., 29th mtg., para. 7.

⁹⁵*Ibid.*, Netherlands (on behalf of the European Community), paras. 8 and 9; United States, para. 11; Canada, para. 12; Australia, para. 13; New Zealand, para. 14; Ivory Coast, para. 16.

⁹⁶*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 67-72. See also G A (25), Suppl. No. 24, para. 78.

⁹⁷G A (25), Suppl. No. 24, para. 30.

⁹⁸*Ibid.*, paras. 31 and 35.

⁹⁹*Ibid.*, para. 32.

¹⁰⁰*Ibid.*, para. 79.

liberation movement and the criteria on which that designation was based should be a prime consideration for the Council when deciding on the question of participation. On the other hand, the [OAU] officials stressed the desire of OAU to see the creation of a joint front by the parties. It was suggested that the Council might be able to bring about the resumption of the dialogue between the parties in continuation of the efforts — so far abortive — which OAU had made in this direction”.¹⁰¹

70. In order to resolve the question, the Council recommended to the General Assembly that a meeting should be held between the Namibian parties and organizations. The suggestion was not adopted by the General Assembly at the twenty-fifth session.¹⁰² In the meantime, the Council continued to receive petitioners from Namibia (see paras. 51-66) and to meet with Namibians during missions it undertook to Africa and elsewhere.

71. During the twenty-seventh session of the General Assembly, the President of SWAPO in a statement to the Council expressed the view that, in order to enhance its effectiveness, the Council should authorize the representation of SWAPO in all of its meetings. Even if its representatives could not vote, he said, they could advise the Council on matters related to the Territory.¹⁰³ The President stated that he thought a member of SWAPO might attend the meetings of the Council as an observer.¹⁰⁴ Also at the twenty-seventh session, the Fourth Committee decided that representatives of national liberation movements should be allowed to participate in its discussions regarding their Territories “in an observer capacity”.¹⁰⁵ It should be noted, especially in the light of the discussion below, that although the decision was approved by vote in the Fourth Committee, it had not been presented in the form of a General Assembly resolution. Subsequent to that decision, a representative of SWAPO was heard by the Fourth Committee at its 2018th meeting. Similarly, representatives of SWAPO attended meetings of the Council of Namibia in an observer capacity beginning with the 165th meeting of the Council, at the opening of the twenty-eighth session.

72. At the 163rd meeting of the Council, at the end of the twenty-seventh session, a petitioner from SWANU requested the Council to accord his organization the same status as that enjoyed by SWAPO.¹⁰⁶ One representative on the Council noted that the time was not ripe to decide on the question of inviting representatives of the people of Namibia to participate in meetings of the Council.¹⁰⁷ No decision was taken on the matter at the session. The question was again raised during the twenty-eighth session, when the representative from SWANU, appearing as a petitioner, recalled his previous request and suggested that the Council’s delay in responding signified a lack of interest in the proper representation of the Namibian people. He said

that although the General Assembly resolution establishing the Council for Namibia did not say so specifically, it had obviously been the intention of the Assembly that the people of Namibia should participate in major decisions affecting their destiny. Considering the Council’s function as the administrative body for Namibia, it should not need the guidance of the Organization of African Unity to decide which movement best represented the Namibian people.¹⁰⁸ The President of the Council informed the petitioner that Standing Committee III was still studying the report concerning the possible inclusion of SWANU as an observer in the work of the Council.¹⁰⁹

73. For the remainder of the period under review, the Council continued to hear statements from SWANU, though it did not accord it any particular status beyond that of petitioner (see paras. 51-66 above). It also continued to seek information from Namibians in its visiting missions outside New York.¹¹⁰

74. In its report to the General Assembly at the twenty-eighth session, the Fourth Committee recommended that the Assembly adopt “the proposal that the leaders of those national liberation movements of the colonial Territories in Africa which are recognized by the Organization of African Unity should be invited to participate as observers in the proceedings of the Committee relating to their respective Territories”.¹¹¹ The General Assembly adopted the recommendation by 80 votes to 9, with 4 abstentions.¹¹² At the same session, a representative of SWAPO spoke in the capacity of observer at the 2046th meeting of the Fourth Committee.

75. Also at the twenty-eighth session, the General Assembly, by its resolution 3111 (XXVIII), granted formal representation on the Council for Namibia to the people of Namibia by declaring that SWAPO was the authentic representative of the Namibian people. Some Member States were reluctant to accord this status to SWAPO, noting the important constituencies of some other Namibian groups which were not accorded comparable status.¹¹³ By the same resolution, the Assembly decided to defray the expenses of a representative of SWAPO when accompanying such missions as the Council determined. The provision was reiterated in resolutions 3295 (XXIX), 3399 (XXX), 31/152, 32/9 F and 33/182 C.

76. Following the adoption of General Assembly resolution 3111 (XXVIII), SWAPO’s representation in the work of the Council was increased. Representatives of the organization, according to the terms of the resolution, accompanied the missions of the Council to Africa and elsewhere and were able to participate in the work of various international bodies (specialized agencies, international

¹⁰¹Ibid., para. 36.

¹⁰²G A (26), Suppl. No. 24, para. 51.

¹⁰³A/AC.131/SR.139, pp. 2-4.

¹⁰⁴Ibid., p. 4.

¹⁰⁵G A (27), 4th Comm., 1975th mtg., para. 67. See also in this *Supplement*, under Article 73, paras. 402-408.

¹⁰⁶A/AC.131/SR.163, pp. 5-6.

¹⁰⁷Ibid., p. 6.

¹⁰⁸A/AC.131/SR.171, p. 5.

¹⁰⁹Ibid.

¹¹⁰G A (28), Suppl. No. 24, para. 280.

¹¹¹G A (28), annexes, agenda item 23, para. 3.

¹¹²G A (28), Plen., 2139th mtg., para. 358.

¹¹³G A (28), 4th Comm., 2075th mtg., Federal Republic of Germany, para. 78; Netherlands, para. 82; and Greece, para. 111. The draft resolution had been adopted by the Fourth Committee by 99 votes to 1, with 19 abstentions, and was adopted by the General Assembly by 107 votes to 2, with 17 abstentions.

organizations and conferences)¹¹⁴ in which the Council had gained representation (see paras. 94-114).

77. At the thirty-first session, a draft resolution¹¹⁵ was introduced in the Fourth Committee by which the General Assembly would invite "the South West Africa People's Organization to participate in the sessions and the work of the General Assembly in the capacity of observer" and would invite the organization to participate in the capacity of observer in the sessions and the work of all international conferences convened under the auspices of the General Assembly and would consider the organization entitled to participate as an observer in the sessions and work of all international conferences convened under the auspices of other organs of the United Nations. It should be noted in this regard that at the twenty-ninth session the General Assembly, by its resolution 3280 (XXIX), had decided to invite as observers, on a regular basis, representatives of national liberation movements recognized by the Organization of African Unity (of which SWAPO was one) to participate in the relevant work of the Main Committee of the General Assembly and its subsidiary organs.¹¹⁶

78. Arguing against the adoption of the draft resolution, one representative in the Fourth Committee noted that the decision taken by the Committee at the twenty-seventh session to allow national liberation movements to participate in an observer capacity had been sufficient and useful and that the draft proposal currently under consideration was therefore redundant. The draft furthermore entailed contradictions between the functions of the Council for Namibia and SWAPO with regard to the representation of Namibia, which was an international Territory under de jure control of the United Nations. Moreover, observer status was, according to the practices of the United Nations, accorded only to sovereign States or organizations of sovereign States. To grant observer status to any other entity would be contrary to the established practice of the United Nations and would be inconsistent with its Charter.¹¹⁷ Another representative opposed the proposed measure on the grounds that his Government did not consider SWAPO to be the sole legitimate representative of the Namibian people.¹¹⁸ There was little further debate on the draft, which was adopted by the Fourth Committee by 114 votes to none, with 13 abstentions.

Decision

79. By its resolutions 2678 (XXV) and 2871 (XXVI), the General Assembly requested the Council to continue consultations with representatives of the Namibian people. By its resolution 3031 (XXVII) the Assembly requested the Council to "ensure the participation in an appropriate capacity of the representatives of the Namibian people in its activities".

¹¹⁴G A (32), Suppl. No. 24, vol. I, para. 209; G A (33), Suppl. No. 24, vol. I, paras. 256-263.

¹¹⁵A/C.4/31/L.36.

¹¹⁶See the present *Supplement*, under Article 73, paras. 410-421.

¹¹⁷G A (31), 4th Comm., 44th mtg., Canada, para. 26.

¹¹⁸*Ibid.*, United States, para. 94.

80. By its resolution 3111 (XXVIII), the General Assembly recognized the South West Africa People's Organization as the "authentic representative" of the Namibian people and decided "to defray the expenses of a representative of the South West Africa People's Organization when accompanying such missions as the United Nations Council for Namibia may determine and whenever called for consultation by the Council".

81. By its resolution 3295 (XXIX), the General Assembly authorized financial provisions for the maintenance of a SWAPO office in New York.¹¹⁹

82. By its resolution 31/146, the General Assembly recognized SWAPO as the "sole and authentic" representative of the Namibian people. This language was reiterated in resolutions 32/9 D and 33/182 A.

83. By its resolution 31/152, entitled "Observer status for the South West Africa People's Organization", the General Assembly invited SWAPO to "participate in the sessions and the work of the General Assembly in the capacity of 'observer'" and to "participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity as observer"; considered that SWAPO was "entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations"; and requested the Secretary-General "to take the necessary steps for the implementation of the present resolution and to accord all the facilities as may be required".

(b) The Economic Commission for Africa

84. In its report to the General Assembly at its twenty-fifth session, the Council for Namibia recalled Economic Commission for Africa resolutions 151 (VIII) of 21 February 1967 and 194 (IX) of 12 February 1969, which had granted the Council for Namibia associate membership status in that organization. The Council expressed the hope that in due course OAU would, in consultation with the Council, propose the name of a representative of Namibia to the Economic Commission for Africa.¹²⁰

(c) Representation in the specialized agencies

85. The General Assembly effectively approved¹²¹ the decision of the Council that it was competent to seek associate membership in the specialized agencies and, taking into account the recognition by the General Assembly of SWAPO as the authentic representative of the Namibian people (see para. 80), the Council appointed representatives of SWAPO to represent the Council in the agencies where the Council had gained full or associate member status, or to

¹¹⁹The office was established in 1975. See G A (32), Suppl. No. 24, vol. I, para. 211.

¹²⁰G A (25), Suppl. No. 24, para. 87.

¹²¹*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 82 and 83.

accompany delegations of the Council to conferences related to the work of those agencies (see paras. 94-114).¹²²

5. RELATIONSHIP OF THE COUNCIL FOR NAMIBIA
WITH THE ORGANIZATION OF AFRICAN UNITY,
UNITED NATIONS BODIES AND THE
SPECIALIZED AGENCIES

(a) *The Organization of African Unity*

86. The Council for Namibia significantly strengthened its collaboration with the Organization of African Unity during the period under review. This collaboration occurred within a general context of cooperation between the United Nations and OAU which was developed during the same period. Of note in this regard are a series of resolutions adopted by the General Assembly beginning in the twenty-sixth session under the agenda item entitled "The question of cooperation between the United Nations and the Organization of African Unity".¹²³ In April, May and July of 1970, the Council held meetings with senior officials of OAU in Addis Ababa, at which the two bodies agreed to cooperate more closely on the exchange of information and the coordination of assistance to Namibian refugees.¹²⁴

87. In 1971, the President of the Council for Namibia led a delegation to a meeting of the Council of Ministers of OAU,¹²⁵ at which it was decided that the Council should attend meetings of the Council of Ministers and Assembly of Heads of States and Governments of OAU and the Coordination Committee for the Liberation of Africa.¹²⁶ The Council also appealed to OAU members to make a contribution to the Fund for Namibia, which had just been established on a provisional basis by the General Assembly (see para. 124); at the same time the Secretary-General of the United Nations contributed, through the Fund, to the OAU effort to assist Namibian refugees.¹²⁷ OAU included a section on Namibia in its Dar es Salaam Declaration on the New Strategy for the Liberation of Africa, the Consolidation of the Struggle and the Reconstruction of the Liberated Territories, signed on 14 January 1975.¹²⁸ At its twenty-eighth session, in 1976, the OAU Council of Ministers urged cooperation between the United Nations Secretariat and the

¹²²See, for example, G A (29), Suppl. No. 24, para. 217, for the case of WHO, or G A (31), Suppl. No. 24, vol. II, annex I, para. 41, for the 60th International Labour Conference.

¹²³G A resolutions 2863 (XXVI), 2962 (XXVII), 3066 (XXVIII), 3280 (XXIX), 3412 (XXX), 31/13, 32/19 and 33/27. See also the present *Supplement*, under Article 73, paras. 417-421, for a discussion of a provision in G A resolution 3280 (XXIX) regarding the granting of observer status to national liberation movements recognized by OAU.

¹²⁴G A (25), Suppl. No. 24, para. 89.

¹²⁵G A (26), Suppl. No. 24, para. 65.

¹²⁶See G A (27), Suppl. No. 24, vol. I, para. 171; G A (28), Suppl. No. 24, paras. 188 and 194; G A (29), Suppl. No. 24, vol. I, para. 226; G A (30), Suppl. No. 24, vol. I, paras. 276-280; G A (31), Suppl. No. 24, vol. I, para. 134; G A (32), Suppl. No. 24, vol. I, paras. 58-64; G A (33), Suppl. No. 24, vol. I, paras. 188-197.

¹²⁷G A (27), Suppl. No. 24, vol. I, paras. 160 and 173.

¹²⁸G A (30), Suppl. No. 24, vol. I, paras. 279 and 280.

secretariat of OAU to expedite the process of the elimination of colonialism and apartheid from the continent of Africa.¹²⁹

Decision

88. The General Assembly, by its resolution 2678 (XXV), requested the Council for Namibia to perform the functions entrusted to it by the Assembly in previous resolutions, including that of holding consultations with the Organization of African Unity. By its resolution 2871 (XXVI), the Assembly requested all organizations within the United Nations system, in cooperation with OAU, to provide the Namibian people with all moral and material assistance necessary for the restoration of their right to self-determination and independence and to develop, in cooperation with the United Nations Council for Namibia and OAU, concrete programmes of assistance for Namibia. Those provisions were reiterated by the General Assembly in resolutions 3031 (XXVII) and 3111 (XXVIII).

89. By its resolution 31/145, the General Assembly requested the Secretary-General, in cooperation with the Special Committee on decolonization and in consultation with OAU, to organize in 1977 an International Conference in support of the peoples of Zimbabwe and Namibia.¹³⁰

(b) *United Nations bodies*

(i) *Special Committee on decolonization and the Special Committee against Apartheid*

90. The Council for Namibia, the Special Committee on decolonization and the Special Committee against Apartheid held joint meetings in May, August and September 1971 to discuss measures for greater coordination and more effective action, as requested by the General Assembly in its resolution 2671 F (XXV). On 13 September 1971, the joint meeting adopted a consensus¹³¹ by which the participants agreed to cooperate among themselves by sharing information and holding regular meetings between the presiding officers of the three bodies. It was also decided that representatives of each body would participate in the work of the others. Cooperation of this nature continued throughout the period under review.¹³² At the same time, however, the Council for Namibia did not accept certain proposals which had called for the creation of a single organ which would deal comprehensively with the problems of South Africa and would be headed by each of the three bodies in rotation. The Council considered that it was entrusted with special responsibilities for the administration

¹²⁹G A (31), Suppl. No. 24, vol. I, para. 134. See A/31/196, annex, for the text of the OAU resolution; or OAU document CM/Res.477 (XXVIII).

¹³⁰Held at Maputo from 16 to 21 May 1977.

¹³¹A/8388.

¹³²G A (27), Suppl. No. 24, vol. I, paras. 176 and 179; G A (28), Suppl. No. 24, paras. 216, 219 and 225; G A (29), Suppl. No. 24, vol. I, para. 242; G A (30), Suppl. No. 24, vol. I, para. 332; G A (31), Suppl. No. 24, vol. I, paras. 99-101 and 108; G A (32), Suppl. No. 24, vol. I, paras. 65-70; G A (33), Suppl. No. 24, vol. I, paras. 59-67.

of the Territory which it could not share with the other two organs.¹³³

91. As noted above (see para. 89), the Council for Namibia and the Special Committee on decolonization, after consultation with OAU, jointly sponsored an International Conference in Support of the Peoples of Zimbabwe and Namibia, in conformity with the provisions of General Assembly resolution 31/145.

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

92. As in the previous period under review,¹³⁴ the consolidated United Nations Educational and Training Programme for Southern Africa (UNETPSA) continued to provide scholarship assistance to Namibian students, despite the creation of the United Nations Fund for Namibia (see paras. 120-133). The Fund for Namibia was created in order to implement a comprehensive assistance programme that would render redundant the assistance provided by UNETPSA. Due to insufficient resources donated to the Fund, however, the General Assembly deemed it necessary to maintain the eligibility of Namibians to receive assistance through UNETPSA.¹³⁵ At the twenty-fifth session of the General Assembly, the Council for Namibia decided that its President should represent the Council at meetings of the Advisory Committee on UNETPSA.¹³⁶

Decision

93. In its resolution 2679 (XXV), establishing the Fund for Namibia, the General Assembly requested the advice and assistance of UNETPSA in preparing the programme of the Fund. By the same resolution, the Assembly authorized the Secretary-General, in consultation with the Chairman of the Advisory Committee on UNETPSA, to make interim grants from the regular budget of the United Nations to existing programmes, over and above the assistance already provided.¹³⁷ By its resolution 2872 (XXVI), the Assembly decided that Namibians should continue to receive assistance through UNETPSA, pending the entry into full operation of the Fund for Namibia's comprehensive programme. This provision was reiterated in resolutions 3030 (XXVII), 3112 (XXVIII), 3296 (XXIX) and 3400 (XXX). The same decision, without the phrase "pending the entry into full operation of a comprehensive programme", was reaffirmed by the Assembly in resolutions 31/151 and 32/9 B. UNETPSA was not specifically mentioned in the report of the Council to the Assembly at the thirty-third session, nor in resolutions adopted by the Assembly during that session.

¹³³G A (26), Suppl. No. 24, paras. 59-62.

¹³⁴*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 89-101.

¹³⁵G A (27), Suppl. No. 24, vol. I, para. 161.

¹³⁶G A (25), Suppl. No. 24, para. 11.

¹³⁷G A (26), Suppl. No. 24, para. 42. That year the Secretary-General allocated US\$ 30,000 to the programme from the regular budget of the United Nations.

(c) *The specialized agencies and other organizations within the United Nations system*

94. As previously reported,¹³⁸ the General Assembly, by its resolution 2517 (XXIV) of 1 December 1969, had effectively approved the decision of the Council for Namibia that it was competent to seek associate membership in the specialized agencies. During the present period under review, the Council undertook to act upon this competence by meeting regularly with the specialized agencies and adopting resolutions in which it urged the agencies to grant not only associate but full membership to Namibia, as represented by the Council for Namibia.

95. In its report to the General Assembly at its twenty-eighth session, the Council noted that the illegal extension of domestic laws (see paras. 184-189) by the Republic of South Africa to the Territory had led to a de facto representation of Namibia by South Africa in some specialized agencies and conferences. The case which first came to the attention of the Council was the extension by domestic fiat of the boundaries of South Africa's fishing waters to include areas off the coast of Namibia, as a result of which South Africa represented Namibia in the FAO Covenant on fishing waters. The Council concluded in its report to the General Assembly: "[I]t is probable that South Africa similarly represents Namibia de facto in respect of the subject matter of many other multilateral conventions and will continue to do so unless the Council for Namibia is substituted for the Republic in appropriate existing Conventions insofar as Namibia is concerned and is allowed to negotiate, sign and ratify future multilateral conventions directly or indirectly affecting the Territory".¹³⁹

96. In 1973, the Council visited the headquarters of ILO, FAO, UNESCO, WHO and UNHCR to discuss admission to membership of the Council in the respective organizations, assistance by specialized agencies in projects sponsored by the United Nations Fund for Namibia and general assistance to Namibians.¹⁴⁰ The mission was informed by the officials of the agencies that admission of the Council as the de jure authority over the Territory would be subject to the constitutional provisions of each agency and would therefore require the affirmative vote of their respective assemblies. It was at the same time noted that although the Council did not appear to qualify for full membership, the possibility for associate membership was promising.¹⁴¹

97. On 16 May 1974, the Council was admitted as an associate member of WHO.¹⁴² The following year the Council was invited, as the representative of Namibia, to observe the World Meteorological Conference.¹⁴³ It was also admitted to the meetings of the UNDP Governing Council as an observer.¹⁴⁴ It sent further missions to ILO, UNCTAD and UNHCR.¹⁴⁵ In November 1974, the Council was

¹³⁸*Repertory, Supplement No. 4*, under Article 81, paras. 82-84.

¹³⁹G A (26), Suppl. No. 24, para. 94.

¹⁴⁰G A (28), Suppl. No. 24, paras. 202-205.

¹⁴¹*Ibid.*, paras. 209-215.

¹⁴²G A (29), Suppl. No. 24, vol. I, para. 214.

¹⁴³G A (30), Suppl. No. 24, vol. I, para. 283.

¹⁴⁴*Ibid.*, para. 288.

¹⁴⁵*Ibid.*, see annex VI for reports of missions.

represented at the ILO Fourth African Regional Conference and the sixtieth International Labour Conference.¹⁴⁶ The Council also represented Namibia at the Third United Nations Conference on the Law of the Sea.¹⁴⁷ With regard to the latter, the Council for Namibia decided on 11 May 1977 to establish a Working Group on the Law of the Sea, charged with making recommendations on any item of the agenda of the sixth session of the Law of the Sea Conference.¹⁴⁸

98. On 15 August 1975, UNCTAD decided that the Council for Namibia should participate in its work as the representative of Namibia and subsequently invited the Council to send a delegation to the fourth session of the Trade and Development Board from 3 to 28 May 1976.¹⁴⁹ The Council was also granted observer status at the United Nations Conference on Human Settlements in May/June 1976 in Vancouver, Canada.¹⁵⁰

99. Following a mission by the Council for Namibia to the nineteenth Conference of FAO, it was reported to the Council that the legal questions surrounding its participation in the organization's work had been resolved favourably and that on 14 November 1977 the plenary committee of FAO had decided by 112 votes to 4, with 11 abstentions, to admit Namibia, as represented by the Council for Namibia, as a full member.¹⁵¹ Several members of the Council noted for the record that the admission of the Council as a full member of FAO was a diplomatic and political success of great importance which would strengthen its capacity as the legal Administering Authority of Namibia.¹⁵²

100. The Governing Board of UNDP, at its twenty-second session, in June/July 1976, in response to a request of the General Assembly,¹⁵³ approved an indicative planning figure for Namibia of US\$ 4.75 million to be channelled through the Council for Namibia. The Council continued to sit as an observer on the Governing Board of UNDP.

101. At its 251st meeting, in April 1977, the Council decided to send a mission to the headquarters of a number of specialized agencies and other United Nations organizations. The mission, which was undertaken in April/May 1977, visited 11 agencies and organizations, namely ILO, FAO, UNESCO, WHO, ITU, IMCO, IAEA, GATT, UNCTAD, UNIDO and UNHCR.¹⁵⁴ The Council explained to the organizations that the struggle for the liberation of Namibia had entered a critical phase and it strongly emphasized the need for the United Nations family to have no dealings, direct or indirect, with South Africa or its puppet regimes when they were illegally purporting to represent Namibia. The Council reiterated that it was the legal Administering Authority for Namibia until national independence was achieved and in that context it raised the question of its full

¹⁴⁶Ibid., para. 289.

¹⁴⁷Ibid., paras. 220-229.

¹⁴⁸G A (33), Suppl. No. 24, vol. I, para. 354.

¹⁴⁹G A (31), Suppl. No. 24, vol. I, para. 80; see also vol. II, annex III.

¹⁵⁰Ibid., paras. 84-89.

¹⁵¹A/AC.131/SR.266/Add.1, para. 37.

¹⁵²Ibid.

¹⁵³G A resolution 3295 (XXIX).

¹⁵⁴For the report of the mission, see G A (32), Suppl. No. 24, vol. II, annex III.

participation in the deliberations of all the organizations concerned. It noted in particular that while most of the organizations had expressed their willingness to accept the proposal, South Africa still illegally represented Namibia in GATT and IAEA (see also paras. 155-159 regarding IAEA).¹⁵⁵

102. The mission obtained agreements for further cooperation with most of the specialized agencies within their sectors of competence. These agencies included WHO, FAO, ITU, IMCO, UNCTAD, UNIDO and UNHCR.¹⁵⁶ The mission also recommended that the Council and individual Governments should take action within GATT to prevent South Africa from illegally enjoying the benefits of trade agreements to plunder Namibia's natural resources.¹⁵⁷

103. By the end of the period under review, the Council enjoyed associate member status in UNESCO, WHO and WMO¹⁵⁸ and full membership in FAO and ILO.¹⁵⁹ It also represented Namibia at meetings of the UNDP Governing Council and the Committee on Economic Cooperation and the Trade and Development Board of UNCTAD¹⁶⁰ and attended numerous conferences sponsored by United Nations organizations as a participating member with full status.¹⁶¹

Decision

104. The negotiations described above between the Council for Namibia and the various specialized agencies took place within the context of a series of General Assembly resolutions directed at the specialized agencies. By its resolution 2871 (XXVI), the Assembly requested the specialized agencies to work in active cooperation with the Council for Namibia.

105. By its resolution 3031 (XXVII), the General Assembly requested the Council to represent Namibia in international organizations and to examine the question of multilateral treaties signed by South Africa which explicitly or implicitly included Namibia.

106. By its resolution 3111 (XXVIII), the General Assembly "requested the specialized agencies to take such necessary steps as would enable the United Nations Council for Namibia, as the legal authority for Namibia, to participate fully, on behalf of Namibia, in the work of these agencies".

107. By its resolution 3295 (XXIX), section VI, the General Assembly requested specialized agencies to "take such necessary steps as will enable the representation of Namibia in the work of such agencies".

108. By its resolution 31/149, entitled "Action by intergovernmental and non-governmental organizations with respect to Namibia", the General Assembly requested all

¹⁵⁵Ibid., vol. I, paras. 44-50.

¹⁵⁶See *ibid.*, para. 52, for a summary of these agreements.

¹⁵⁷Ibid., para. 52 (d).

¹⁵⁸Ibid., para. 75.

¹⁵⁹G A (33), Suppl. No. 24, vol. I, para. 42; see also vol. II, annexes II and VI.

¹⁶⁰G A (32), Suppl. No. 24, vol. I, paras. 78-83 and paras. 89 and 90.

¹⁶¹See *ibid.*, para. 77, for a full list of conferences.

specialized agencies "to consider granting full membership to the United Nations Council for Namibia so that it may participate in that capacity as the Administering Authority for Namibia in the work of those agencies, organizations and conferences" and to grant a waiver of the assessment during the period in which Namibia was represented by the Council. The Assembly strengthened the wording of this provision in its resolution 32/9 E, when it requested those agencies and organizations within the United Nations system "to grant full membership to the United Nations Council for Namibia".

109. By its resolution S-9/2, the General Assembly declared that membership of the Council in the specialized agencies was an "indispensable element in the fulfilment of the responsibilities of the international community towards the people of Namibia".

110. The question of the representation of the Council for Namibia in United Nations organizations also led to the issuance of an opinion by the Legal Counsel of the United Nations regarding the scope of the Council's authority to represent Namibia in international settings. At its 267th meeting, a member of the Council noted that the Secretariat had apparently taken the initiative of including Namibia in the Secretariat's list of all States. He did not quarrel with the result, but noted that the procedure in failing to consult the Council was objectionable, particularly since it had been done prior to the report of the Council on its mission to FAO, where the Council had been granted full membership in that organization. He wished to know whether it was true that the Secretary-General had taken such action.¹⁶²

111. At the next meeting of the Council, the Legal Counsel responded to the point raised at the 267th meeting. He reminded the Council of a draft resolution¹⁶³ that had been submitted at a plenary meeting of the General Assembly at its thirty-second session, entitled "Consequences of the admission of the Council of [sic] Namibia as a member nation of the Food and Agriculture Organization of the United Nations". The sponsors had introduced the draft in view of certain difficulties encountered by the Secretariat in drawing the proper conclusion in the light of current practices and had therefore decided to request the General Assembly to take an appropriate decision concerning the inclusion of the name of Namibia in the Secretariat list containing the names of all States. The draft had been subsequently withdrawn, however, when the sponsors were informed by the Secretariat that the offices concerned no longer had any difficulty in implementing the FAO decision and that the necessary steps had been taken to include Namibia in the Secretariat list containing the names of all States.¹⁶⁴ The Legal Counsel said that it had later been agreed in the African Group that the Secretary-General would include Namibia or the Council for Namibia in the list of invitees to United Nations international conferences. The African Group had requested written confirmation of that

¹⁶²A/AC.131/SR.267, Senegal, para. 50; see also A/AC.131/SR.268, Senegal, para. 3.

¹⁶³A/32/L.41.

¹⁶⁴G A (32), Plen., 102nd mtg., Benin, paras. 29-31.

undertaking. As a result, he had prepared and circulated the following statement on the question:¹⁶⁵

"I have the honour to inform you that, in view of General Assembly resolution 31/149 of 20 December 1976, requesting all specialized agencies and other organizations and conferences within the United Nations system to consider granting full membership to the United Nations Council for Namibia, and the decision of the Conference of the Food and Agriculture Organization of the United Nations during its nineteenth session to admit Namibia, as represented by the Council for Namibia, to membership in that organization, the Secretary-General has placed the United Nations Council for Namibia, in its capacity as Administering Authority for Namibia, on the Secretariat's list of invitees to international conferences, held under the auspices of the United Nations, which are open, inter alia, to all States."

112. It was subsequently argued by several delegates that the statement undermined the success achieved at FAO, since the Council was already being invited to all United Nations conferences, and that rather than being granted the status of "guest", it was important that the Council should be admitted as a Member of the United Nations, as it had been in FAO.¹⁶⁶ Several members also noted that the rights inherent in "full participation" were not clearly stated, including the question of the right to vote, particularly with regard to the United Nations Conference on Succession of States in respect of Treaties.¹⁶⁷ It was decided to refer the question to Standing Committee II on the basis of opinions to be prepared by the Legal Counsel.¹⁶⁸

113. In compliance with that decision, at the 268th meeting, the Legal Counsel presented his views with respect to the degree of the Council's participation in the resumed session of the United Nations Conference on Succession of States in Respect of Treaties. Those views were, inter alia, as follows: (a) the rights contained in "full participation" included making statements, voting and signing the Final Act and the Convention. It was noted that the Conference had already granted the right to the Council to submit proposals and amendments at its session held at Vienna in April/May 1977; (b) signing the Final Act would not have any legal implications beyond substantiating the fact that the Council had fully participated in the work of the Conference, which constituted the clearest political expression of the authority of the Council to represent Namibia at international conferences; (c) before the termination of South Africa's mandate over Namibia in 1966, South Africa had entered into several treaties on behalf of Namibia which were regarded as applicable to the Territory. Following the termination of the mandate by the United Nations, the Council had concluded valid international agreements with several Members of the United Nations on the question of issuing passports or travel documents to Namibia. When Namibia attained independence, its Government would be at liberty to decide whether it wished to continue to be bound

¹⁶⁵A/AC.131/SR.268, para. 4.

¹⁶⁶Ibid., Senegal, para. 7; Yugoslavia, para. 8; Nigeria, para. 9; India, para. 10; and Egypt, para. 12.

¹⁶⁷Ibid., Nigeria, para. 17; and Algeria, para. 20.

¹⁶⁸Ibid., para. 25.

by any or all of the conventions, treaties and other agreements signed or entered into on its behalf. The Council, as the legal Administering Authority for Namibia, could enter into treaties on behalf of Namibia, but an independent Namibia would not be bound to maintain in force such treaties or conventions.¹⁶⁹

114. At its 282nd meeting, the Council agreed to be represented at the United Nations Conference on Succession of States in Respect of Treaties by a delegation which would include a representative of SWAPO. This was the first time that a SWAPO representative participated with full status at a major international conference. The SWAPO representative attended the conference both in his capacity as a member of the Council delegation and as a representative of SWAPO. At its resumed session, from 31 July to 23 August 1978, the Conference adopted a resolution on the question of Namibia, declaring, *inter alia*, that South Africa was not the predecessor State of Namibia. The resolution formed part of the Final Act of the Conference, which was subsequently signed by the Council on behalf of Namibia.¹⁷⁰

6. ASSISTANCE TO NAMIBIANS OUTSIDE THE TERRITORY

(a) *Travel and identity documents*

115. As previously reported,¹⁷¹ the General Assembly, by its resolution 2372 (XXII) of 12 June 1968, had requested the Council for Namibia to continue with a sense of urgency its consultations on the question of issuing travel documents to Namibians so that they might travel abroad. While consultations had been carried out with Governments of Member States, specific arrangements were not finalized by the end of the previous review period.

116. The Council continued its consultations with regard to travel documents during the present period under review. In July 1970, it signed agreements with the Governments of Zambia and Uganda in order to secure the right of return to those countries for Namibians that were issued travel documents by the Council.¹⁷²

117. The first travel documents were issued in December 1970.¹⁷³ By the end of the period under review, 789 travel documents had been issued (almost all through the Commissioner's office in Lusaka) and over 90 countries had agreed to accept the validity of the documents. Seven countries¹⁷⁴ had signed right-of-return agreements with the United Nations, which were deposited in the United Nations Treaty Section. In its report submitted to the General Assembly at its twenty-sixth session, the Council for Namibia wrote: "The Council is gratified to note that a number of countries which had previously expressed doubts concerning the necessity or desirability of the Council

issuing such documents have now taken a more positive attitude. It may be pertinent to point out that in a number of cases, the Council was given to understand that the recognition of the travel document by these Governments implied a recognition of the Council and signified modifications of previous attitudes."¹⁷⁵

118. In addition to travel documents for Namibians, the Council also began issuing a visa for entry into the Territory in 1972. The visa for Namibia had been requested by the Executive Director of the American Committee for Africa, based on the relevant provisions of General Assembly resolution 2248 (S-V) of 19 May 1967, and was issued by the Council for the purpose of ascertaining whether South Africa would act in compliance with the United Nations decisions and the International Court of Justice advisory opinion. The visa holder reported that he had been prevented from boarding the aircraft to Namibia by the service manager of the airline, who was acting on the instructions of the Government of South Africa.¹⁷⁶ At the following session, an identical request for a visa was received from the Director of the Centre on International Race Relations. In its report to the General Assembly at its twenty-eighth session, the Council said that the request had been received too late to act upon, but that it demonstrated the growing acceptance of the legal authority of the Council to administer Namibia until independence.¹⁷⁷

Decision

119. As previously reported,¹⁷⁸ the General Assembly, by its resolution 2372 (XXII), had approved the Council's decision of 8 February 1968 to investigate the modalities of issuing travel documents to Namibians. By its resolution 2678 (XXV), adopted at the beginning of the period under review, the Assembly endorsed the measures taken by the Council on this issue and appealed to all States to communicate to the Secretary-General their willingness to recognize travel and identity documents issued by the Council. By its resolution 2871 (XXVI), the Assembly noted its appreciation for the large number of States that recognized the documents and called upon other States to recognize them as well. By its resolution 3031 (XXVII), the Assembly requested the Council to expand its programme of issuing travel documents for Namibians. The programme continued to be implemented throughout the period under review.¹⁷⁹

¹⁷⁵G A (26), Suppl. No. 24, para. 34.

¹⁷⁶G A (27), Suppl. No. 24, vol. I, paras. 149-151.

¹⁷⁷G A (28), Suppl. No. 24, paras. 276 and 277.

¹⁷⁸*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 169-181.

¹⁷⁹G A (25), Suppl. No. 24, paras. 46-66; G A (26), Suppl. No. 24, paras. 26-40; G A (27), Suppl. No. 24, vol. I, paras. 144-155; G A (28), Suppl. No. 24, paras. 271-278; G A (29), Suppl. No. 24, vol. I, paras. 186-190; G A (30), Suppl. No. 24, vol. I, paras. 231-235; G A (31), Suppl. No. 24, vol. I, para. 260; G A (32), Suppl. No. 24, vol. I, paras. 265-268.

¹⁶⁹G A (33), Suppl. No. 24, vol. I, chap. X, para. 228.

¹⁷⁰*Ibid.*, paras. 230 and 231; see also paras. 193-197 and annex XIII.

¹⁷¹*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 169-181.

¹⁷²G A (25), Suppl. No. 24, para. 50.

¹⁷³G A (26), Suppl. No. 24, para. 26.

¹⁷⁴Ethiopia, Kenya, Nigeria, United Republic of Tanzania, Uganda, Zaire and Zambia.

(b) *The United Nations Fund for Namibia*(i) *Establishment of the Fund*

120. The Security Council, on 29 July 1970, on the recommendation contained in the report¹⁸⁰ of an Ad Hoc Subcommittee established¹⁸¹ to study ways and means by which the relevant resolutions of the Security Council regarding Namibia could be implemented, adopted a resolution requesting the General Assembly, at its twenty-fifth session, to set up a United Nations fund for Namibia to provide assistance to Namibians who had suffered from persecution and to finance a comprehensive educational and training programme for Namibians, with particular regard to their future administrative responsibilities for the Territory.¹⁸²

121. A draft resolution¹⁸³ proposing the creation of a United Nations fund for Namibia was therefore submitted to the Fourth Committee. A sponsor introduced the resolution recalling the "sacred trust" held by the United Nations towards Namibia as a result of General Assembly resolution 2145 (XXI) of 27 October 1960. The sponsor noted that that trust required more than the offer of financial assistance for relief or education, as had been the practice up to then. Rather, the United Nations had to encourage a sense of nationhood and national responsibility among Namibians by providing them with education, training and other assistance within the specificities of their environment. Accordingly, under the draft the Assembly would take a decision concerning the establishment of a comprehensive fund for Namibia. It would also request the Secretary-General to study and report on the development, planning, execution and administration of a comprehensive programme of assistance. In the meantime, the Assembly would authorize the Secretary-General to make interim grants from the regular budget of the United Nations to provide greater assistance, as necessary, to the people of Namibia. The sponsors made it understood that the adoption of the draft resolution in no way would commit Member States to a given form, size or method of administering the fund, as all such questions would be decided at the subsequent twenty-sixth session once the Secretary-General's report had been submitted and examined.¹⁸⁴

122. The representative of one Member State in the Fourth Committee agreed with the intent of the resolution but suggested that its purposes should be clarified before the General Assembly took a decision on it.¹⁸⁵ Another delegate agreed that the establishment of a comprehensive fund was a logical corollary to resolution 2145 (XXI), but stated that his Government could not support the draft resolution until the study on the arrangement of the fund had been carried out.¹⁸⁶

123. Several Member States raised objections with regard to operative paragraph 5 which requested countries for

assessments to finance the fund. One delegate pointed out that the phrase suggesting that the fund "should be financed through assessments on all Members of the Organization" was unnecessary if provision for the fund was to be made from the general budget.¹⁸⁷ The representative of Guatemala said that while it supported the thrust of the resolution, the provision on assessments prevented his country from supporting the measures as the constitution of Guatemala required that the exact amount of the assessment must be known before requesting its inclusion in the national budget.¹⁸⁸ Another representative objected to the allocation of funds from the regular budget and suggested instead that the Council's mandate should be financed through reimbursements from those countries whose activities were preventing the freedom of Namibians.¹⁸⁹ In response to these considerations the sponsors removed operative paragraph 5 from the draft resolution.¹⁹⁰

124. The draft resolution as amended¹⁹¹ was approved without a vote by the Fourth Committee. It was subsequently adopted by the General Assembly as resolution 2679 (XXV).

125. In compliance with the provisions of resolution 2679 (XXV), prior to the opening of the twenty-sixth session, the Secretary-General prepared a report¹⁹² outlining immediate, short-term and long-term programmes envisaged for the fund and the possible difficulties involved in their implementation.

126. An objection regarding the financing of the fund was again raised at the twenty-sixth session when a representative argued that the allocation of money from the regular budget of the United Nations to the Fund for Namibia was contrary to the Charter.¹⁹³ A resolution (see para. 129) was nonetheless adopted by the General Assembly in which as a transitional measure it allocated money from the regular budget of the United Nations to the Fund. The Assembly also requested the Secretary-General to undertake a study on the economic, social and cultural needs of Namibia, with a view to formulating a contingency plan of coordinated international and technical assistance to be implemented in Namibia following the withdrawal of South Africa from the Territory.

127. At the twenty-seventh session, again faced with States' objections regarding the temporary measure of allocating money from the general budget to the Fund for Namibia, a sponsor of a draft resolution¹⁹⁴ on the Fund before the Fourth Committee noted that in the previous session it had been agreed that no final decision would be taken on the nature of the Fund's financing before the Secretary-General's study was available. He noted, however, that the sponsors of the draft were concerned that the financial response by Member States had been insufficient to allow the Secretary-General to initiate the study. It was therefore imperative to provide the necessary funds to the

¹⁸⁰S/9863.

¹⁸¹S C resolution 276 (1970), para. 6.

¹⁸²S C resolution 283 (1970), para. 12.

¹⁸³A/C.4/L.965.

¹⁸⁴G A (25), 4th Comm., 1892nd mtg., Finland, paras. 24-28.

¹⁸⁵Ibid., 1895th mtg., Venezuela, para. 8.

¹⁸⁶Ibid., 1898th mtg., Guatemala, para. 17.

¹⁸⁷Ibid., 1895th mtg., Venezuela, para. 9.

¹⁸⁸G A (25), 4th Comm., 1898th mtg., Guatemala, para. 17.

¹⁸⁹Ibid., USSR, para. 25.

¹⁹⁰Ibid., para. 38.

¹⁹¹A/8023/Add.2, para. 17.

¹⁹²A/8473.

¹⁹³G A (26), 4th Comm., 1969th mtg., USSR, para. 47.

¹⁹⁴A/C.4/L.1028.

Secretary-General if the United Nations was to fulfil its responsibilities under General Assembly resolution 2145 (XXI), which was binding on the United Nations and required a financial commitment.¹⁹⁵

128. Many delegates, while stating their objections to the principle of allocating funds from the general budget, nonetheless again voted for the measure on the understanding that it was temporary.¹⁹⁶

Decision

129. By its resolution 2679 (XXV), the General Assembly decided to establish a comprehensive United Nations Fund for Namibia, requested the Secretary-General to make a detailed study concerning the development, planning, execution and administration of a comprehensive programme of assistance for Namibians, and authorized the Secretary-General to make interim grants from the regular United Nations budget to provide greater assistance, as necessary, to Namibians.

130. Furthermore, by its resolution 2872 (XXVI), entitled "United Nations Fund for Namibia", the Assembly expressed its appreciation for the report of the Secretary-General¹⁹⁷ on the development, planning, execution and administration of a comprehensive programme of assistance to Namibians in various fields. It decided, as a transitional measure, to allocate to the Fund the sum of \$50,000 from the regular budget of the United Nations, and invited Governments to appeal to their national organizations and institutions for voluntary financial contributions to the Fund. The Assembly also requested the Secretary-General to make the necessary arrangements for the administration of the Fund in conformity with the proposals he had set out in his report, and authorized him to implement the short-term and immediate-term measures contained in his report as soon as the funds were available.

131. Throughout the remainder of the period under review, the General Assembly adopted resolutions¹⁹⁸ on the Fund for Namibia, inter alia, requesting the Secretary-General and the Council for Namibia to continue to appeal to Governments, intergovernmental and non-governmental organizations and private individuals for voluntary contributions to the United Nations Fund for Namibia, and requesting the specialized agencies to render all necessary assistance in implementing the work programme of the Fund.

132. In addition, the General Assembly continued to request that resources be allocated to the Fund from the United Nations general budget. By its resolution 3030 (XXVII), the Assembly requested an allocation of \$100,000 as a transitional measure. By its resolution 3112 (XXVIII), the Assembly once again requested that an allocation of

¹⁹⁵G A (27), 4th Comm., 2021st mtg., Finland, paras. 68-71.

¹⁹⁶Ibid., France, para. 43; Belgium, para. 50; Hungary, para. 52; and G A (27), 4th Comm., 2023rd mtg., USSR, para. 66; United States, para. 70; Belgium, para. 71.

¹⁹⁷A/8473.

¹⁹⁸G A resolutions 3030 (XXVII), 3112 (XXVIII), 3296 (XXIX), 3400 (XXX), 31/51, 32/9 B and 33/182 C.

\$100,000 be made to the Fund from the general budget, but did not explicitly consider it to be a "transitional measure".

133. By its resolutions 3296 (XXIX) and 3400 (XXX), the General Assembly requested that \$200,000 be allocated from the general budget to the Fund. By its resolution 31/51, the Assembly requested that \$300,000 be allocated to the Fund. And by its resolutions 32/9 B and 33/182 C, the Assembly requested that \$500,000 be allocated to the Fund and considered that allocation to be a temporary measure.

(ii) *Appointment of the Council for Namibia as trustee of the Fund*

134. During the twenty-eighth session, the United Nations Council for Namibia, in its report to the General Assembly, recommended that it be appointed as trustee of the United Nations Fund for Namibia and that it prepare guidelines before the following session for the use of the Fund.¹⁹⁹ The recommendation was submitted to the Fourth Committee as an operative paragraph in a draft resolution.²⁰⁰

135. Several representatives expressed reservations regarding the proposed measure.²⁰¹ The reservations were primarily of two orders. The first order concerned approving the Council's jurisdiction over the Fund before it had prepared its outline on the uses of the Fund. One representative, for example, expressed the fear that the guidelines would not be consistent with his Government's view of how the Fund should operate.²⁰² The second set of reservations regarded the elimination of the role of the Secretary-General in the functioning of the Fund. One representative²⁰³ noted that the measure disregarded one of the recommendations of the report of the Secretary-General on the operation of the Fund for Namibia, namely that the Fund should be administered jointly by the Council for Namibia and donor countries,²⁰⁴ and that the Fund might be deprived of potential donors should the proposal be adopted.

136. In defence of the proposal, one representative claimed that it was appropriate that the Council should manage the Fund, since the experience of Council members would help to make the Fund more effective, though it was clear that the Council should also invite suggestions from donor countries on guidelines.²⁰⁵

Decision

137. By its resolution 3112 (XXVIII), the General Assembly appointed the Council for Namibia as trustee of the Fund for Namibia and authorized the Council to prepare guidelines for its orientation. While the Council for Namibia continued to be the trustee of the Fund for the remainder of the period under review, the General Assembly, in its

¹⁹⁹G A (28), Suppl. No. 24, para. 336 (9).

²⁰⁰A/C.4/L.1055.

²⁰¹G A (28), 4th Comm., 2075th mtg., United Kingdom, paras. 71-74; Federal Republic of Germany, para. 79; Netherlands, para. 83.

²⁰²Ibid., France, para. 86.

²⁰³Ibid., Canada, para. 89.

²⁰⁴A/9225/Corr.1.

²⁰⁵G A (28), 4th Comm., 2075th mtg., Indonesia, para. 94.

resolutions on the question,²⁰⁶ continued to request the Secretary-General to report on the implementation of resolutions concerning the Fund.

(iii) *Nationhood Programme for Namibia*

138. During the thirty-first session of the General Assembly, the representative from Finland submitted a draft resolution²⁰⁷ in the Fourth Committee proposing the establishment of a three-stage programme which would deliver a comprehensive and sustained plan of assistance under the aegis of the Council for Namibia and in support of the nationhood of Namibia. The proposal was adopted by the Fourth Committee without a vote and with no noteworthy debate.²⁰⁸ The draft resolution was subsequently adopted by the General Assembly as its resolution 31/153, by which it approved the establishment of the Nationhood Programme for Namibia. The programme would comprise: (a) the review and planning of measures for assistance to Namibians by specialized agencies and other organizations and bodies within the United Nations system; (b) the consolidation of all measures in a comprehensive and sustained plan of action; and (c) the implementation of the plan of action.

139. By its resolution 32/9 A, adopted subsequent to a mission by the Council for Namibia to various specialized agencies (see para. 94), the General Assembly called upon the specialized agencies to elaborate further plans for assistance to the Namibian people in order to enable the Council to consolidate all assistance measures in a comprehensive and sustained plan of action. The resolution listed specific actions to be undertaken by specific specialized agencies.

140. By its resolution 33/182 C, the General Assembly amplified the scope of the Nationhood Programme for Namibia by, inter alia, creating a special account for the programme, requesting the specialized agencies to elaborate their assistance plans and by calling on the agencies to implement projects that had been approved by the Council.

(iv) *Institute for Namibia*

141. In his first report on the administration of the United Nations Fund for Namibia (see para. 125),²⁰⁹ the Secretary-General recommended the establishment of an Institute for Namibia to enable Namibians to undertake research, training, planning and related activities, with special reference to the struggle for the freedom of Namibia and the establishment of an independent state of Namibia. Accordingly, the Council for Namibia decided to establish such an institute and to locate it in Lusaka.²¹⁰

142. At its twenty-ninth session, the General Assembly, by its resolution 3296 (XXIX) on the United Nations Fund for Namibia, endorsed the Council's decision to establish an Institute for Namibia and invited Governments to make available adequate financial contributions to the Fund for

Namibia to finance the cost of setting up and running the Institute. By its resolution 3400 (XXX), the General Assembly, inter alia, appealed to the specialized agencies to provide lecturers for the Institute. By its resolutions 31/151 and 32/9 B, the Assembly requested Member States to make financial contributions to the Institute for Namibia through the United Nations Fund for Namibia. By its resolution 33/182 C, following a recommendation from the Extraordinary Meeting of the Senate of the Institute²¹¹ to forge closer ties between the Institute and the Council, the General Assembly agreed to review the relations between the Institute for Namibia and the United Nations in order to enhance the effectiveness of the Institute.

143. The Council for Namibia reported annually on the activities of the Institute from its creation in the twenty-ninth session to the end of the period under review.²¹²

(c) *The specialized agencies and other organizations within the United Nations system*

(i) *Withholding of assistance from South Africa*

144. The question of the withholding of assistance from South Africa by the specialized agencies and other organizations within the United Nations system was not dealt with under Article 81 in the previous *Supplement*. It is mentioned here, however, in order to draw attention to the consistent adoption throughout the period under review of resolutions by the General Assembly urging the specialized agencies to withhold assistance from South Africa until it recognized the right of Namibians to self-determination. The Assembly adopted these provisions in connection with the withholding of assistance from colonial Powers in the context of the Declaration on decolonization and consequently is dealt with in detail under Article 73d in the present *Supplement*. The relevant General Assembly resolutions are: 2704 (XXV), 2874 (XXVI), 2980 (XXVII), 3118 (XXVIII), 3300 (XXIX), 3421 (XXX), 31/30, 32/36 and 33/41.

(ii) *Assistance to Namibians and the South West Africa People's Organization*

145. The Council for Namibia began to implement its mandate to provide assistance to Namibians in two ways: first, by the elaboration of a short-term emergency programme of assistance to Namibians; and secondly, by the preparation of a long-term plan for the economic and social development of the Territory.²¹³ The Council requested the specialized agencies to assist in the preparation and implementation of both programmes. UNESCO, ILO, FAO and WHO subsequently expressed their willingness to participate in any project of assistance that was consonant

²⁰⁶G A resolutions 3296 (XXIX), 3400 (XXX), 31/151, 32/9 B and 33/182 C.

²⁰⁷A/C.4/31/L.37.

²⁰⁸G A (31), 4th Comm., 44th mtg., para. 63.

²⁰⁹A/8473.

²¹⁰A/AC.131/SR.99, see also G A (29), Suppl. No. 24A, para. 81.

²¹¹Held at Lusaka on 19 May 1978. For the report of the meeting, see G A (33), Suppl. No. 24, vol. II, p. 41.

²¹²G A (30), Suppl. No. 24, vol. I, paras. 236-239; G A (31), Suppl. No. 24, vol. I, paras. 251-253; G A (32), Suppl. No. 24, vol. I, paras. 172-175; G A (33), Suppl. No. 24, vol. I, paras. 107-115.

²¹³G A (25), Suppl. No. 24, para. 83.

with their existing programmes for Namibians outside of the Territory.²¹⁴

146. During the period under review, however, the Council for Namibia, as the legal Administering Authority over the Territory, increasingly sought to bring assistance by organizations of the United Nations system under the institutional umbrella created by the Fund for Namibia and the Nationhood Programme. The Council envisaged that within the context of the implementation of the Nationhood Programme, cooperation between the Council and the specialized agencies would be further intensified and strengthened.²¹⁵ To that end, the Council requested that it be consulted in those cases where assistance was provided outside of these frameworks by the specialized agencies. As a result, most aspects of this question have been dealt with under sections 4 (c) and 6 (b) of this analytical summary. In general, during the period under review, the General Assembly continued to call upon the specialized agencies to render assistance to Namibians and to SWAPO, which was considered from the twenty-eighth session on as the authentic representative of the Namibian people (see para. 80). The specialized agencies, in particular ILO, FAO, UNESCO, WHO and UNHCR, continued to provide assistance such as medical supplies, reading materials and clothing in consultation with the Council for Namibia.²¹⁶

Decision

147. By its resolution 2871 (XXVI), the General Assembly requested the specialized agencies and other organizations within the United Nations system, in cooperation with the Organization of African Unity, to render to the people of Namibia all moral and material assistance necessary to continue their struggle for self-determination and independence (see also paras. 175-183). By its resolution 3031 (XXVII), the Assembly reiterated the wording of resolution 2871 (XXVI) and invited the various organs of the United Nations concerned to effect the greatest possible coordination of their respective activities relating to Namibia. Resolution 3111 (XXVIII) reiterated the request of resolution 2871 (XXVI). By section VI of its resolution 3295 (XXIX), the Assembly reiterated its request of resolution 2871 (XXVI) and further requested the specialized agencies to work in consultation with the Council for Namibia. Resolutions 3399 (XXX), 31/149 and 32/9 E reiterated the wording of resolution 2871 (XXVI).

7. ACTION CONCERNING FOREIGN ECONOMIC INTERESTS IN NAMIBIA

(a) *General*

148. During the period under review, the General Assembly showed increasing concern that the actions of foreign companies in Namibia were impeding the attainment of independence by that Territory. The Special Committee on decolonization also had been studying the activities of

foreign economic interests in Namibia and their implications for the exercise of self-determination by Namibians.²¹⁷ During the period under review, the Council for Namibia took the reports of the Special Committee into account in its consideration of the question and began attaching to its own reports lists of companies that were involved in Namibia, particularly in the mining, petroleum, fishing and agriculture sectors.

149. In its report to the General Assembly at its twenty-eighth session, the Council for Namibia concluded that "the activities of such foreign companies constitute the principal impediments to the attainment of freedom and independence by the Namibian people".²¹⁸

Decision

150. By its resolution 2871 (XXVI), the General Assembly called upon States not to recognize as legally valid any rights or interests in Namibian property or resources acquired from the Government of South Africa after 27 October 1966. It reiterated this provision in its resolution 3031 (XXVII). There was no noteworthy debate on the measure.

(b) *Decree No. 1 for the Protection of the Natural Resources of Namibia*

(i) *Adoption of the Decree*

151. On 17 September 1974, the Council for Namibia used its legislative authority over Namibia to issue its Decree No. 1 for the Protection of the Natural Resources of Namibia,²¹⁹ the purpose of which was to safeguard the natural wealth and resources of the Territory until it achieved independence. The Decree, inter alia, declared any permission, concession or licence granted by the Government of South Africa for the extraction or use of natural resources in the Territory to be "null and void". It also asserted that violators of the decree might be held liable for damages by the future government of an independent Namibia.

152. The operative part of the Decree reads as follows:

"1. No person or entity, whether a body corporate or unincorporated, may search for, prospect for, explore for, take, extract, mine, process, refine, use, sell, export or distribute any natural resource, whether animal or mineral, situated or found to be situated within the territorial limits of Namibia without the consent and permission of the United Nations Council for Namibia or any person authorized to act on its behalf for the purpose of giving such permission or such consent;

"2. Any permission, concession or licence for all or any of the purposes specified in paragraph 1 above whensoever granted by any person or entity, including any body purporting to act under the authority of the Government of the Republic of South Africa or the

²¹⁴Ibid., para. 86.

²¹⁵G A (33), Suppl. No. 24, vol. I, para. 44.

²¹⁶See, for example, G A (29), Suppl. No. 24, vol. I, paras. 177-179, for a description of specialized agencies' assistance to refugees, and G A (32), Suppl. No. 24, vol. I, para. 155.

²¹⁷G A (24), Suppl. No. 24, para. 69.

²¹⁸G A (28), Suppl. No. 24, para. 57.

²¹⁹Document A/9624/Add.1, para. 84.

'Administration of South West Africa' or their predecessors, is null, void and of no force and effect;

"3. No animal resource, mineral or other natural resource produced in or emanating from the Territory of Namibia may be taken from the said Territory by any means whatsoever to any place whatsoever outside the territorial limits of Namibia by any person or body, whether corporate or unincorporated, without the consent and permission of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council;

"4. Any animal, mineral or other natural resource produced in or emanating from the Territory of Namibia, which shall be taken from the said Territory without the consent and written authority of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council, may be seized and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

"5. Any vehicle, ship or container found to be carrying animal, mineral or other natural resources produced in or emanating from the Territory of Namibia shall also be subject to seizure and forfeiture by or on behalf of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

"6. Any person, entity or corporation which contravenes the present decree in respect of Namibia may be held liable for damages by the future Government of an independent Namibia;

"7. For the purposes of paragraphs 1 to 5 above and in order to give effect to this decree, the United Nations Council for Namibia hereby authorizes the United Nations Commissioner for Namibia, in accordance with General Assembly resolution 2248 (S-V), to take the necessary steps after consultations with the President."

153. The Decree was considered by the Fourth Committee during the twenty-ninth session of the General Assembly. It was endorsed by many delegations as an important measure for the attainment of independence by Namibia.²²⁰ The representative of Singapore supported the Decree on the grounds that the people of Namibia had no government to regulate the activities of foreign companies and that the pillaging of Namibia by those companies, which extracted one third of the Territory's gross domestic product, made it possibly the most exploited colony in history.²²¹ At the same time, various delegations questioned the measure in their explanation of vote. Several delegations abstained from voting because they did not have adequate time to examine

²²⁰For example, G A (29), 4th Comm., 2103rd mtg., Finland, para. 27; Bangladesh, para. 44; German Democratic Republic, para. 50; Jamaica, para. 73; and *ibid.*, 2105th mtg., Brazil, para. 3; Indonesia, para. 13.

²²¹*Ibid.*, 2102nd mtg., para. 15.

the financial and legal consequences.²²² Others doubted the competence of the Council to issue binding legislation in the manner of the Decree.²²³ In a typical formulation of this argument, one delegate explained that the Council could not enact binding resolutions since it did not have territorial sovereignty, and therefore the Decree on the Natural Resources of Namibia could not be legally valid.²²⁴

Decision

154. By section IV of its resolution 3295 (XXIX) of 13 December 1974, adopted by 112 votes to none, with 15 abstentions, the General Assembly requested all Member States to take all appropriate measures to ensure the full application of the provisions of Decree No. 1 for the Protection of the Natural Resources of Namibia. By its resolution 3399 (XXX) of 26 November 1975, the Assembly decided to make adequate budgetary provision, on the proposal of the Council, for the implementation of the Decree. The Decree was further reaffirmed by the Assembly in its resolutions 31/148, 32/9 G, S-9/2 and 33/182 A.

(ii) *Hearings regarding the exploitation and purchase of Namibian uranium*

155. In 1976, as part of an effort to implement the provisions of the Decree, the Office of the United Nations Commissioner for Namibia undertook research to provide a preliminary analysis of the political, economic and strategic implications of the development of a uranium mine in Namibia. The research included the investigation and identification of the principal purchasers of ore from the mine and the policies of the Governments of the Member States concerned.²²⁵ During the thirty-first session of the General Assembly, a draft resolution²²⁶ was submitted to the Fourth Committee in which the Assembly would, *inter alia*, request all Member States to take all appropriate measures to ensure the full application of, and compliance with, the provisions of Decree No. 1 for the Protection of the Natural Resources of Namibia. Moreover, it would authorize the United Nations Council for Namibia to hold hearings and to continue to seek information regarding the exploitation and purchase of Namibian uranium and to report on the matter to the General Assembly at the next session. Despite a reservation²²⁷ from one Government that the Decree, though couched in mandatory language, was not legally binding, the draft resolution was adopted by the Fourth Committee. The General Assembly subsequently adopted the draft as resolution 31/148.

156. The Council for Namibia, at its 260th meeting, established an Ad Hoc Committee on Uranium Hearings

²²²*Ibid.*, Nigeria, para. 31; *ibid.*, 2123rd mtg., Japan, para. 8; New Zealand, para. 24; Denmark, para. 42; Canada, para. 46; Ireland, para. 49.

²²³*Ibid.*, 2123rd mtg., Norway, para. 31; Italy, para. 38; Belgium, para. 40.

²²⁴*Ibid.*, Federal Republic of Germany, para. 22.

²²⁵G A (32), Suppl. No. 24, vol. I, paras. 137 and 138.

²²⁶A/C.4/31/L.32.

²²⁷G A (31), 4th Comm., 44th mtg., Sweden, para. 15.

charged with preparing guidelines for the hearings called for by the General Assembly in resolution 31/148. At its 263rd meeting, the Council approved the report of the Ad Hoc Committee and decided that the hearings should be considered as a matter of urgency and should be held in early 1978. The purpose of the hearings would be, inter alia, (a) to discourage States and others from engaging in illegal exploitation of Namibian uranium, in contravention of Decree No. 1 for the Protection of the Natural Resources of Namibia; (b) to develop technical information on Namibian uranium; and (c) to assess the financial and economic deprivations suffered by Namibians as a result of the illegal exploitation of uranium, bearing in mind that any future government of an independent Namibia would be justified in seeking compensation for those deprivations from the companies that had illegally been exploiting Namibia since 1966. The Council decided that it would invite experts from the United Nations and its specialized agencies, representatives of companies engaged in mining and exploiting Namibian uranium, and other relevant organizations and individuals to participate in the hearings.²²⁸

157. By its resolution 32/9 G, the General Assembly took note of the progress report²²⁹ of the United Nations Council for Namibia on the hearings regarding the exploitation and purchase of Namibian uranium and authorized the necessary budgetary allocations for its full implementation during 1978. It authorized the Council to notify the Governments of States whose corporations operated in Namibia of the illegality of such operations, and to contact administering and managing bodies of foreign corporations operating in Namibia to warn them of the illegal basis on which they were operating. By its resolution 32/9 A, the General Assembly requested the International Atomic Energy Agency (see para. 101 above) to take urgent measures to ensure that South Africa did not in any way represent Namibia in the Agency and to provide assistance to the United Nations Council for Namibia in its hearings, in 1978, on the question of the exploitation and commercialization of Namibian uranium.

158. The hearings on the exploitation and purchase of Namibian uranium were not, however, held in 1978 as had been anticipated, nor were they held before the end of the period under review.

159. In April and May 1978, the General Assembly held its ninth special session, on the question of Namibia, at the conclusion of which it adopted resolution S-9/2 by 119 votes to none, with 21 abstentions. In paragraph 8 of the resolution, the Assembly strongly condemned South Africa for exploiting the uranium resources of Namibia and for pursuing policies of nuclear adventurism.

²²⁸G A (32), Suppl. No. 24, vol. II, annex XII.

²²⁹G A (32), Suppl. No. 24, vol. I, paras. 128-133.

B. The illegal presence of South Africa in Namibia

1. THE 1971 ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE

160. Questions related to the illegal presence of South Africa in Namibia were significantly affected by the 1971 ICJ advisory opinion on Namibia.

161. There had been five prior ICJ advisory opinions on questions related to Namibia: in 1950, 1955, 1956, 1960 and 1966 (the 1955 and 1956 opinions being clarifications of questions that had arisen from the 1950 opinion).

162. In 1970, the Security Council adopted resolution 284 (1970)²³⁰ by which it reaffirmed its resolution 276 (1970),²³¹ stating that the continued presence of South African authorities in Namibia was illegal, and requested the International Court of Justice to provide an advisory opinion on the following question: "What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"

163. After receiving written information and oral arguments from, inter alia, the Secretary-General of the United Nations, the Government of South Africa and the Organization of African Unity, and after ruling against the contention by South Africa that the Court had no competence to issue an opinion on the question, the Court arrived at the following opinions: it decided by 13 votes to 2, that, "the continued presence of South Africa in Namibia being illegal, South Africa is under the obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory"; and, by 11 votes to 4, that "States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration".²³²

164. In elaborating its advisory opinion, the Court also presented some more specific measures regarding obligations of Member States. Regarding the obligation of South Africa, which it said incurred international responsibilities arising from its continued violation of an international obligation, the Court stated: "The fact that South Africa no longer has any title to administer the Territory does not release it from its obligations and responsibilities under international law towards other States in respect of the exercise of its powers in relation to this Territory. Physical control of a territory, and not sovereignty

²³⁰*Repertoire of the Practice of the Security Council, Supplement 1969-1971*, pp. 103-105.

²³¹*Ibid.*, pp. 102-103.

²³²*I.C.J. Reports 1971*, p. 58.

or legitimacy of title, is the basis of State liability for acts affecting other States".²³³ Moreover, South Africa's violation of its international obligation entailed consequences for other Member States which, the Court said, "are under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia".²³⁴ Member States were also under the obligation to abstain from maintaining a consular presence in the Territory of Namibia and from entering into economic or other dealings with South Africa on behalf of or concerning Namibia which might entrench its authority over the Territory. As a general consequence of South Africa's illegal presence in Namibia, the Court said that "all States should bear in mind that the injured entity is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted".²³⁵

165. In a preambular paragraph of its resolution 2871 (XXVI), the General Assembly noted with satisfaction the advisory opinion of the Court.²³⁶

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

(a) *The question of the competence of the General Assembly to recommend Chapter VII actions to the Security Council*

166. During the period under review, the Government of South Africa continued to refuse to withdraw from the Territory of Namibia, despite repeated calls by the General Assembly to do so.²³⁷ At the twenty-fifth session, the General Assembly debated a draft resolution²³⁸ inviting the Security Council to consider "taking effective measures, including those provided for under Chapter VII of the Charter of the United Nations", against South Africa.²³⁹

167. This measure was opposed by several delegations, which considered such a recommendation to be beyond the competence of the General Assembly.²⁴⁰ One delegate noted that the Security Council had never come close to pronouncing that the situation in Namibia constituted a danger to international peace and security, and that the Assembly had no competence to make that judgement on its behalf.²⁴¹

²³³Ibid., p. 54.

²³⁴Ibid., p. 55.

²³⁵Ibid., p. 56.

²³⁶For reactions of other bodies to the ICJ advisory opinion, see G A (26), Suppl. No. 24, paras. 181-195.

²³⁷*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 127-135.

²³⁸A/C.4/L.964/Rev.1.

²³⁹See also *Repertory, Supplement No. 4*, vol. II, under Article 73, para. 30, and the present *Supplement*, vol. II, under Article 73.

²⁴⁰G A (25), 4th Comm., 1898th mtg., United States, para. 12; Spain, para. 15; Argentina, para. 18; United Kingdom, para. 34; Mexico, para. 36.

²⁴¹Ibid., 1897th mtg., Sweden, para. 4. See also *Repertory, Supplement No. 4*, vol. II, under Article 73, para. 26, and the present *Supplement*, vol. II, under Article 73.

168. Following the 1971 advisory opinion of the International Court of Justice, which confirmed the illegality of South Africa's occupation and which affirmed the obligation of States to refrain from abetting South Africa's illegal presence in Namibia, the President of the Council for Namibia stated at a meeting of the Security Council that, in the light of the opinion of the Court, it was imperative to order South Africa to obey the verdict of the judges at The Hague, because any complacency towards Pretoria would cause serious damage to the Organization.²⁴²

169. Among its recommendations to the General Assembly at the twenty-ninth session, the Council of Namibia included a draft resolution²⁴³ with a preambular paragraph in which the Assembly would recognize that South Africa's illegal occupation of Namibia constituted "a threat to international peace and security".²⁴⁴ The inclusion of this measure was opposed by several delegations, many on the grounds that it intruded upon the competence of the Security Council.²⁴⁵ Another delegate supported the draft resolution because his Government believed that Namibia should be permitted to exercise its right to self-defence as soon as possible, and argued that the inclusion of the phrase should not be construed as an infringement on the competence of the Security Council.²⁴⁶

Decision

170. By its resolution 2678 (XXV), the General Assembly invited the Security Council to "consider taking effective measures, including those provided for under Chapter VII of the Charter of the United Nations", to comply with earlier Security Council resolutions²⁴⁷ opposing South Africa's illegal occupation of the Territory. In its resolutions 2871 (XXVI), 3111 (XXVIII) and 3295 (XXIX) the Assembly invited the Security Council to take "effective measures" but did not mention Chapter VII.

171. The General Assembly included in its resolution 3295 (XXIX) a preambular paragraph "recognizing that this situation constitutes a threat to international peace and security". It further urged the Security Council to convene urgently in order to take without delay effective measures, in accordance with the relevant Chapters of the Charter and subsequent United Nations resolutions, to put an end to South Africa's illegal occupation of Namibia. By its resolution 3399 (XXX), the Assembly urged the Security Council to take up the question of Namibia, and by its resolution 31/146 it urged the Security Council, in view of South Africa's failure to comply with Council resolution 385

²⁴²S/PV.1584, para. 65.

²⁴³A/C.4/L.1072/Rev.1.

²⁴⁴See also the Lusaka Declaration of 14 June 1973, para. 4: "The United Nations Council [for Namibia] has come to the conclusion that the time has come for the international community to recognize that South Africa's illegal occupation of Namibia cannot continue without serious danger to international peace and security." See G A (28), Suppl. No. 24, pp. 36-38, for the full document.

²⁴⁵G A (29), 4th Comm., 2123rd mtg., Federal Republic of Germany, para. 19; United Kingdom, para. 26; Norway, para. 32; United States, para. 45; France, para. 47.

²⁴⁶Ibid., Greece, para. 36.

²⁴⁷S C resolutions 264 (1969) and 269 (1969).

(1976), to impose a mandatory arms embargo against South Africa. By its resolutions 32/9 D and 33/182 A, the Assembly reiterated that the illegal occupation of Namibia and the war of repression waged there, as well as attacks on neighbouring States from bases there, constituted "a serious threat to international peace and security". By its resolution S-9/2, the Assembly reiterated that South Africa's illegal occupation of Namibia constituted an act of aggression and that "its attempts to destroy the national unity and territorial integrity of Namibia and its acts of aggression against neighbouring independent African States clearly constitute a serious threat to peace and security in the region and to international peace and security".

172. The General Assembly, by its resolution 33/182 B, requested the Security Council to "consider as a matter of urgency further appropriate action under the Charter, including Chapter VII thereof, in order to secure South Africa's compliance with its relevant resolutions", and decided that "if the Security Council should be unable to act effectively, to consider the situation further", the Assembly should "take all necessary measures in conformity with its relevant resolutions and the Charter for the purpose of dealing with this threat to international peace and security". In its resolution S-9/2, the Assembly decided that, "in the event of the Security Council's inability to adopt concrete measures to compel South Africa to end its illegal occupation by withdrawing from Namibia, it will urgently consider necessary action in accordance with the Charter of the United Nations, cognizant of the fact that this is a unique instance in which the United Nations has assumed direct responsibility for promoting self-determination, freedom and national independence for Namibia".

(b) *The question of the competence of the General Assembly to request the Security Council to terminate contacts between the Secretary-General and the Government of South Africa*

173. The Security Council in its resolution 309 (1972)²⁴⁸ had requested the Secretary-General to initiate talks with South Africa with a view to establishing conditions that would allow the people of Namibia to enjoy their right to self-determination. By its resolutions 319 (1972) and 323 (1972),²⁴⁹ the Council had requested that those talks be continued. In its report to the General Assembly at its twenty-eighth session, the Council for Namibia recommended that the Assembly should request the Security Council to terminate contacts between the Secretary-General and the Government of South Africa under the terms of Security Council resolution 323 (1972), as it considered them to be detrimental to the interests of the Namibian people. The Council for Namibia noted the lack of encouraging results from the talks and claimed that the maintenance of contacts with South Africa would be regarded by South Africa as an acceptance by the United Nations of its colonial policy in Namibia.²⁵⁰ Several delegations opposed this recommendation, either on the

²⁴⁸ *Repertoire of the Practice of the Security Council, Supplement 1972-1974*, pp. 100-101.

²⁴⁹ *Ibid.*, pp. 159-163.

²⁵⁰ G A (28), Suppl. No. 24, para. 177.

grounds that it was not within the competence of the Council for Namibia to terminate talks which the Security Council had initiated,²⁵¹ or because they regarded the actions of the Security Council as a worthwhile complement to other measures being taken by other parts of the Organization.²⁵²

Decision

174. The General Assembly, by its resolution 3111 (XXVIII), considered that the contacts between the Secretary-General and the Government of South Africa under the terms of Security Council resolution 323 (1972) should be terminated as being detrimental to the interests of the Namibian people. On 11 September 1973, the Security Council adopted resolution 342 (1973), by which it decided to discontinue further efforts on the basis of its resolution 309 (1972).²⁵³ The Secretary-General accordingly ceased his talks with the Government of South Africa on the question of Namibia.

(c) *The question of the use of armed struggle by the people of Namibia to achieve independence and national unity*²⁵⁴

175. At the twenty-sixth session of the General Assembly, the Council for Namibia recommended to the Fourth Committee a draft resolution²⁵⁵ in which the Assembly would, inter alia, reaffirm the inalienable right of the people of Namibia to self-determination and reaffirm "the legitimacy of their struggle by all means against the illegal occupation of their territory by South Africa". Several delegations questioned the appropriateness of the term "by all means", arguing that it constituted an endorsement of the use of force to attain political objectives, which was contrary to the Charter of an Organization dedicated to resolving conflicts in a peaceful manner.²⁵⁶

176. Another representative countered that such an implication, if correct, would indeed be contrary to the spirit of the Charter, but that the draft resolution submitted contained nothing which could be interpreted as grounds for the use of force.²⁵⁷

177. In an explanation of vote, one representative indicated that his Government had supported the draft resolution on the assumption that the meaning of the term "by all means" must be interpreted in accordance with the Charter.²⁵⁸

²⁵¹ G A (28), 4th Comm., 2075th mtg., United States, para. 90; Ireland, para. 109.

²⁵² *Ibid.*, Federal Republic of Germany, para. 77; Netherlands, para. 82; Canada, para. 88; Denmark, para. 108; Greece, para. 111.

²⁵³ See *Repertoire of the practice of the Security Council, Supplement 1972-1974*, pp. 163-166.

²⁵⁴ See also the present *Supplement*, Article 73, paras. 184-220, for the treatment of this question with regard to the legitimacy of the struggle for independence in general.

²⁵⁵ A/C.4/L.994.

²⁵⁶ G A (26), 4th Comm., 1969th mtg., Netherlands, para. 6; Argentina, para. 16; Greece, para. 26; United States, para. 48.

²⁵⁷ *Ibid.*, Brazil, para. 20.

²⁵⁸ *Ibid.*, Ireland, para. 10.

178. During the thirty-first session, ambiguities regarding whether the phrase "all means" encompassed the use of force were removed. The Fourth Committee considered a draft resolution²⁵⁹ in the first operative paragraph of which the General Assembly would reaffirm the legitimacy of the struggle by Namibians for their independence "by all means at their disposal", as had previously been established, but included a new operative paragraph by which the Assembly would "support the armed struggle of the Namibian people, led by the South West Africa People's Organization, to achieve self-determination, freedom and national independence in a united Namibia". In the operative paragraph which followed, the Assembly would appeal "to all Member States to grant all necessary support and assistance" to SWAPO.

179. The explicit reference in the draft to armed struggle raised considerable reservations among members of the Committee. One representative highlighted the difficulty posed by the provision by recalling her Government's previous reservations regarding the phrase "all means at their disposal", which it had never been able to support because it implied the use of force. The formulation in the draft under consideration, however, went far beyond implying the use of force. The representative noted that no draft resolution approved by the Committee had ever contained an outright pledge by the General Assembly to support armed struggle, and furthermore that this would hardly be appropriate for an Organization whose main responsibility was to seek and promote peaceful solutions to international conflicts. The representative also said that the appeal to Members for assistance to SWAPO, which now clearly implied the supply of arms, was a demand which the United Nations, in her Government's view, could not make on its Members. Therefore, her delegation would abstain from voting on the resolution.²⁶⁰

180. A number of other delegations, some of which voted for the resolution because they agreed with its general implications, made specific reservations with regard to the operative paragraph that expressed support for the armed struggle for Namibian independence; the representatives of those countries argued that the United Nations could not be asked to support armed struggle even in such a unique case as that of Namibia.²⁶¹

Decision

181. By its resolution 2871 (XXVI), adopted by 111 votes to 2, with 10 abstentions, the General Assembly affirmed the right of the people of Namibia to use "all means" in their struggle against South African occupation of their territory. That wording was reaffirmed in resolutions 3031 (XXVII), 3111 (XXVIII), 3295 (XXIX), 3399 (XXX), 31/146, 32/9 D and 33/182 A.

182. By its resolution 31/146, adopted by 107 votes to 6, with 12 abstentions, the General Assembly expressed its support for "the armed struggle of the Namibian people, led by the South West Africa People's Organization, in its struggle to achieve independence and national unity for Namibia", and called upon Member States to provide "all necessary support and assistance" to SWAPO in carrying out that struggle. The provision was reiterated by the Assembly in its resolution 32/9 D.

183. In its resolution S-9/2, the General Assembly expressed its "full support for the armed liberation struggle of the Namibian people" and "its conviction that the intensified armed liberation struggle by the Namibian people continues to be a decisive factor in the efforts to achieve self-determination, freedom and national independence in a united Namibia". In resolution 33/182 A, the Assembly called upon States to provide all necessary support and assistance to SWAPO, but omitted specific mention of support for the "armed struggle of the Namibian people".

3. SOUTH AFRICAN LAWS AND PRACTICES AFFECTING THE TERRITORY

(a) General

184. As reported in the previous *Repertory Supplement*,²⁶² the General Assembly, by its resolution 2285 (XXII) of 5 December 1967, had requested the Council for Namibia to prepare a digest of South African laws and practices affecting Namibia that were anathema to the Charter. The Council assigned to the Acting Commissioner for Namibia the responsibility of carrying out this task.²⁶³ Similarly, the Council requested its Standing Committee II, in compliance with General Assembly resolution 2547 A (XXIV) of 11 December 1969, to study how to abolish certain trade union laws promulgated by South Africa in the Territory that did not conform to international standards.

185. The Council reported to the General Assembly at its twenty-sixth session that the Acting Commissioner for Namibia had continued to prepare his report on "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",²⁶⁴ in accordance with General Assembly resolution 2285 (XXII). While the report was not yet complete, the Council noted the Commissioner's consideration that South Africa was continuing to reduce Namibia "functionally to a fifth province" by enacting such legislation.²⁶⁵

186. The 1971 advisory opinion of the International Court of Justice, in which the Court held the South African occupation of Namibia to be illegal (see paras. 160-165), compelled the conclusion that legislation enacted by South

²⁵⁹A/C.4/31/L.30.

²⁶⁰G A (31), 4th Comm., 44th mtg., Sweden, para. 10.

²⁶¹Ibid., Austria, para. 18; Canada, para. 20; Norway, para. 28; New Zealand, para. 30; Ivory Coast, para. 34; Brazil, para. 36; Colombia, para. 38; Costa Rica, para. 40; Netherlands (on behalf of the European Communities), para. 74; Austria, para. 82; and United States, para. 88.

²⁶²*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 154-168.

²⁶³G A (25), Suppl. No. 24, para. 93.

²⁶⁴G A (26), Suppl. No. 24, para. 73. Annex II to the report contains a digest of such laws.

²⁶⁵Ibid., para. 85.

Africa over the Territory was illegal and, moreover, that the Council should be able to enact legislation for Namibia.²⁶⁶

187. According to the Council for Namibia, the advisory opinion of the International Court of Justice and the subsequent mobilization of world opinion against South Africa had caused that country to modify the manner in which it enacted legislation pertaining to the Territory. In particular, the South African Parliament no longer referred specifically to "South West Africa" when describing the scope of its legislation, but to "any territory in respect of which Parliament is competent to legislate", a definition which clearly included Namibia without explicitly mentioning it.²⁶⁷ The Council noted in its report to the General Assembly at its thirtieth session that less and less South African legislation was being applied to the Territory, but that laws which already applied to South Africa were being consolidated and subtly extended to the Territory. The Council also noted that claims by South Africa to have repealed some offensive legislation, such as "pass laws", were misleading for the same reason.²⁶⁸

188. Throughout the period under review, the Council continued to report²⁶⁹ on South African legislative practices as they applied to the Territory and to recommend that the General Assembly condemn those practices.

Decision

189. By its resolution 2678 (XXV), the General Assembly condemned South Africa for extending its internationally deplored system of apartheid to Namibia and for establishing divisive policies, such as the creation of so-called separate "homelands", to consolidate its illegal occupation of the Territory. The relevant provisions were reiterated by the Assembly in its resolutions 2871 (XXVI), 3031 (XXVII), 3111 (XXVIII), 3295 (XXIX), 3399 (XXX), 31/146, 32/9 D and 33/182 A.

(b) *Walvis Bay Administration Proclamation*

190. On 31 August 1977, the Government of South Africa issued a proclamation purporting to detach Walvis Bay from Namibia and place it under the administration of South Africa's Cape Province. It was noted in the annual working paper on Namibia prepared by the Secretariat that Walvis Bay was the location of a military base from which South Africa could launch attacks against an independent Namibian Government in the future. It also contained a port which handled the bulk of Namibia's export traffic.²⁷⁰

191. The Council for Namibia, on 7 September 1977, adopted a statement in which it strongly condemned South Africa's decision to separate Walvis Bay from the rest of the Territory; characterized the decision as constituting an

increasing threat to international peace; considered that the proclamation amounted to an attempt to annex Walvis Bay; and noted its expectation that the Security Council would take appropriate and adequate measures to ensure that Walvis Bay remained an integral part of Namibia.²⁷¹

192. The question of Namibia was discussed in the plenary meetings of the General Assembly at its thirty-second session, without reference to a Main Committee. In his statement to the plenary, the President of the South West Africa People's Organization refuted the contention by South Africa, set out in the Walvis Bay proclamation, to the effect that the enclave of Walvis Bay was legally a part of the Republic of South Africa, and did not form part of the original mandate for South West Africa. The President of SWAPO said that South African claims were based on antiquated, arbitrary, illogical and unjust colonial agreements. He appealed to the world community to clearly and categorically reject South Africa's aggressive violations of Namibia's territorial integrity with respect to Walvis Bay.²⁷²

Decision

193. On 4 November 1977, the General Assembly adopted resolution 32/9, in section D of which it declared that the decision of South Africa to annex Walvis Bay was "an act of colonial expansion in violation of the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV) of 14 December 1960 and that such annexation is illegal, null and void"; declared that Walvis Bay was an integral part of Namibia, "inextricably linked by geographical, historical, economic, cultural and ethnic bonds"; and categorically condemned South Africa for "attempting to undermine the territorial integrity and unity of Namibia". In section F of the resolution, the Assembly requested the United Nations Council for Namibia to "protect the territorial integrity of Namibia, in particular by carrying out all possible activities denouncing the attempts of South Africa to annex Walvis Bay".

194. By its resolution S-9/2, the General Assembly adopted the Declaration on Namibia, which included the following paragraph on Walvis Bay:

"The General Assembly reiterates that Walvis Bay is an integral part of Namibia and condemns South Africa in the strongest possible terms for its decision to annex Walvis Bay, thus violating the principle of territorial integrity of Namibia, which is embodied in relevant resolutions of the Assembly and the Security Council, including Council resolution 385 (1976) of 30 January 1976. It further reiterates that this decision is illegal, null and void and that it is an act of aggression against the Namibian people. The existence of South African military bases in Walvis Bay is a threat to the national security of Namibia. The illegal annexation of Walvis Bay, the main port and vital economic avenue of Namibia, is a deliberate attempt to undermine the territorial integrity,

²⁶⁶Ibid., paras. 95-101.

²⁶⁷G A (27), Suppl. No. 24, para. 102.

²⁶⁸G A (30), Suppl. No. 24, para. 177.

²⁶⁹G A (25), Suppl. No. 24, paras. 92-111; G A (26), Suppl. No. 24, paras. 73-101; G A (27), Suppl. No. 24, vol. I, paras. 92-104; G A (29), Suppl. No. 24, vol. I, paras. 135-155; G A (30), Suppl. No. 24, vol. I, paras. 168-181, and vol. II, annex III.

²⁷⁰G A (33), Suppl. No. 24, vol. II, chap. VIII, annex, paras. 68-69.

²⁷¹G A (32), Suppl. No. 24, vol. I, para. 316 (3).

²⁷²G A (32), Plen., 35th mtg., paras. 65 and 66.

economic independence and national security of Namibia.”

195. By its resolution 33/182 A, the General Assembly once again condemned the South African decision to annex Walvis Bay and reaffirmed the “inalienable right of Namibians to self-determination, freedom, and national independence in a united Namibia, including Walvis Bay”.

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

196. As reported in the previous *Repertory Supplement*, the United Nations had established the practice of monitoring South Africa’s use of illegal arrests and trials in Namibia.²⁷³ In view of the continuation of these practices in the Territory during the present period under review, the Council for Namibia continued to monitor them. In particular, the Council noted in its reports that South Africa’s Terrorism Act, promulgated on 22 June 1967, remained in effect. That act, which was applied retroactively to Namibians arrested in the Territory the previous year, was deemed to be both a flagrant violation of the Territory’s international status and a clear violation of fundamental human rights.²⁷⁴

197. The Council continued to report on the trials and arrests of Namibians under the Terrorism Act, and of other judicial abuses by the South African Government (see also paras. 184-189).²⁷⁵ The Council also recommended that the General Assembly should call upon South Africa to treat Namibians captured in their struggle for independence

²⁷³*Repertory, Supplement No. 4*, vol. II, under Article 81, paras. 136-145.

²⁷⁴G A (29), Suppl. No. 24, vol. I, paras. 28-33.

²⁷⁵G A (25), Suppl. No. 24, paras. 119-121; G A (28), Suppl. No. 24, paras. 34-41; G A (29), Suppl. No. 24, vol. I, paras. 18-54 and vol. II, annex IV; G A (30), Suppl. No. 24, vol. I, paras. 49-50; G A (31), Suppl. No. 24, vol. I, paras. 303-325.

according to the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. The Council considered the endorsement of that recommendation to be of great juridical importance, since the liberation struggle in Namibia was recognized as vindicating the rights not only of Namibians, but also of the international community, which was directly responsible for the Territory.²⁷⁶

Decision

198. The General Assembly, by its resolution 2678 (XXV), called upon South Africa to treat Namibians captured during their struggle for freedom as prisoners of war in accordance with the Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War. The Assembly reiterated this request in its resolution 2871 (XXVI). By its resolution 31/146, the Assembly demanded that South Africa release all Namibian political prisoners, including all those imprisoned or detained in connection with offences under so-called internal security laws. This demand was reiterated in its resolutions 32/9 D and 33/182 A. More specifically, in its resolution S-9/2, the Assembly noted in its Declaration on Namibia that, “in complete defiance of continued demands by the international community, members of the South West Africa People’s Organization and its supporters continue to be constantly harassed, intimidated and humiliated. There has been an escalation of the arbitrary mass arrest, torture, detention and imprisonment of members of the South West Africa People’s Organization. Prolonged illegal and fraudulent trials of its members are being conducted to undermine it and drain its financial resources.” In the same resolution, the General Assembly expressed its grave concern at those developments.

²⁷⁶G A (25), Suppl. No. 24, para. 111.