

ARTICLE 81

CONTENTS

	<i>Paragraphs</i>
Text of Article 81	
Introductory note	1-4
I. General survey.	5-14
II. Analytical summary of practice.	15-169
A. Organization and operation of the United Nations administration in Namibia	15-107
1. Nature of the machinery.	15-17
2. Composition of the United Nations Council for Namibia and appointment of the United Nations Commissioner for Namibia	18-38
(a) The United Nations Council for Namibia.	18-34
(i) The tenure of the presidency	20-22
(ii) The establishment of standing committees.	23-32
(iii) Other committees and working groups.	33-34
(b) The United Nations Commissioner for Namibia.	35-38
3. Consideration of communications and requests for hearings.	39
4. Participation of the people of Namibia in the work of the Council for Namibia and other United Nations bodies	40-44
(a) Council for Namibia.	40-41
(b) Economic Commission for Africa.	42-43
(c) Representation in the specialized agencies.	44
5. Relationship of the Council for Namibia with the Organization of African Unity, United Nations bodies and the specialized agencies.	45-65
(a) Organization of African Unity	45-50
(b) United Nations bodies.	51-65
(i) The Special Committee on decolonization and the Special Committee against Apartheid.	51-52
(ii) Advisory Committee on the United Nations Educational and Training Programme for Southern Africa	53-54
(c) The specialized agencies and other organizations within the United Nations system	55-65
6. Assistance to Namibians outside the Territory	66-84
(a) Travel and identity documents.	66-68
(b) United Nations Fund for Namibia.	69-78
(i) Institute for Namibia.	70-75
(ii) Nationhood Programme for Namibia.	76-77
(iii) Educational, social and relief assistance.	78
(c) The specialized agencies and other organizations within the United Nations system	79-84
(i) Withholding of assistance from South Africa	79
(ii) Assistance to Namibians and to the South West Africa People's Organization	80-84

	<i>Paragraphs</i>
7. Action concerning foreign economic interests in Namibia	85-107
(a) Decree No. 1 for the Protection of the Natural Resources of Namibia	85-91
(b) Council for Namibia hearings on uranium	92-107
B. The illegal presence of South Africa in Namibia	108-169
1. Non-withdrawal of South Africa from the Territory	108-158
(a) Question of the competence of the General Assembly to recommend Chapter VII actions to the Security Council	108-148
(b) Question of the competence of the General Assembly to request Member States to take specific actions to isolate South Africa	149-155
(c) Question of the use of armed struggle by the people of Namibia to achieve independence and national unity	156-158
2. South African laws and practices affecting the Territory	159-165
3. Illegal arrests and trials of Namibians by South Africa	166-169

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* would normally deal with questions related to the terms of the Trusteeship Agreements and the role of the Administering Authorities, as stipulated in the text of the Article. However, no further Trusteeship Agreements had been proposed, and studies under the Article in previous *Supplements* have concentrated exclusively on the responsibilities of the United Nations over South West Africa (known since the adoption of General Assembly resolution 2372 (XXII) of 12 June 1968 as Namibia) in accordance with General Assembly resolution 2145 (XXI) of 27 October 1966. Given that no new Trusteeship Agreements were proposed in the period under review, the present *Supplement*, in keeping with the previous treatment of the question, deals solely with matters arising from the administration of Namibia by the United Nations and impediments to the effective carrying out of that responsibility posed by South Africa's continued illegal occupation of the Territory.

2. The study closely follows the structure and headings presented in *Supplement No. 5*, with some exceptions, as noted below.

3. The section dealing with the 1971 International Court of Justice ruling on Namibia in *Supplement No. 5* does not appear in the present *Supplement*. Other sub-headings concerning the non-withdrawal of South Africa from the Territory of Namibia have been slightly modified to reflect the evolving emphases of the General Assembly during the period under review.

4. It is appropriate to signal here that some questions considered under this Article, in particular the endorsement of armed struggle, the intervention of the General Assembly in matters of domestic jurisdiction and the competence of the General Assembly to adopt binding resolutions, are in fact matters that relate equally to other Articles of the Charter of the United Nations (Articles 2(3), 2(7) and 10 respectively).

They are included in the present study under Article 81 for two reasons, one structural and one substantive. Structurally, it is useful to have an integrated, complete consideration of all matters related to the question of Namibia as a unique Territory under the de jure administration of the United Nations mandated to achieve its decolonization. Substantively, there is a presumption that the General Assembly's treatment of all matters regarding the Territory were affected by the fact that Namibia was under direct United Nations administration, and that this unique condition enabled the General Assembly, as Administering Authority, to assume practices whose legitimacy was derived from its status as Administering Authority. In this sense, therefore, application of the precedents set by those practices may be restricted. The unique status of Namibia is affirmed in numerous resolutions concerning Namibia, and in particular the following provision of General Assembly resolution 35/227 J:

“[The General Assembly] decides 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, 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.”¹

The usefulness of including consideration of questions directly related to other Articles of the Charter may be gauged by comparing such issues with their treatment under the Articles that govern them directly.

¹Para. 14, emphasis added.

I. GENERAL SURVEY

5. During the period under review, the General Assembly, in particular through its subsidiary organ, the Council for Namibia, continued to act as the legal Administering Authority for Namibia. In that regard, an attempt was made by the Council for Namibia to ensure maximum participation by the people of Namibia in its work and to facilitate travel by Namibians residing outside the Territory. The Council continued to carry out the mandate given to it by the General Assembly in its resolution 2517 (XXIV) to represent the people of Namibia in the specialized agencies and other international organizations within the United Nations system. The Council also moved to strengthen its comprehensive assistance programme for the benefit of Namibians. The Assembly's efforts, however, continued to be frustrated by South Africa's refusal to comply with General Assembly and Security Council resolutions calling for it to withdraw from the Territory of Namibia. Faced with this intransigence, the General Assembly began urging the Security Council to adopt mandatory economic sanctions against South Africa under Chapter VII of the Charter of the United Nations.

6. The Council for Namibia continued to be the primary General Assembly organ entrusted with bringing Namibia to independence pursuant to General Assembly resolutions 2145 (XXI) and 2248 (S-V). There were few changes in the structure of the Council, its composition or its method of work.

7. As in the previous reporting period, the Council for Namibia continued to seek representation in the specialized agencies, bodies and programmes of the United Nations on behalf of the people of Namibia. During the current period under review, the Council was granted full membership in the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), the Executive Committee of the Programme of the United Nations High Commission for Refugees and the International Telecommunication Union (ITU). The Council for Namibia was also granted the right to become a party to a series of United Nations conventions. The International Monetary Fund (IMF) continued its non-compliance with the resolutions of the General Assembly with regard to Namibia and other Territories covered by the Declaration on the Granting of Independence to Colonial Countries and Peoples. The question of the non-compliance of the IMF is considered in detail in the present *Supplement* under Article 73, which deals with questions directly related to the Declaration on decolonization.

8. Mention is made in the present study of the activities of the Council for Namibia in the issuance of travel and

other identity documents to Namibians and the conclusion of agreements with various States towards the recognition and acceptance of such documents.

9. Cognizance has been taken of the continued participation by the Namibian people through their liberation movement, the South West Africa People's Organization (SWAPO), in the meetings of the Council and the missions of consultation of the Council.

10. In furtherance of the implementation of General Assembly resolutions 2671 F (XXV) of 8 December 1970, 2678 (XXV) of 9 December 1970 and 32/9 E of 4 November 1977, the Council continued to strengthen its cooperation with OAU by sending delegations to its meetings and by allowing OAU to participate in the meetings of the Council. In further implementation of these resolutions, the Council participated in the work of the specialized agencies in its capacity as legal Administering Authority for Namibia, and in the work of the Special Committee on decolonization and the Special Committee against Apartheid.

11. The study highlights once again the activities of foreign economic interests operating in Namibia, in violation of the Council's Decree No. 1 for the Protection of the Natural Resources of Namibia. An account is given of the efforts of the Council to mobilize international pressure against South Africa and those foreign interests. In that regard, reference is made to the hearings on Namibian uranium organized by the Council in New York in July 1980, the Seminar on Legal Issues concerning Namibia held at The Hague in 1981 and the Regional Symposium on International Efforts to Implement Decree No. 1 for the Protection of the Natural Resources of Namibia, held at Geneva in 1984.

12. An account is given of the laws purportedly applied to Namibia by South Africa during the period under review, and emphasis is placed on their invalidity in view of the ruling of the International Court of Justice of 21 June 1971, to the effect that all South African laws purportedly applied to Namibia since 1966 were invalid under international law and, as such, without legal effect in the Territory.

13. Mention is furthermore made of the continued enforcement of those laws against Namibians and the continued adoption by the General Assembly of resolutions condemning the laws and reaffirming the international status and territorial integrity of the Territory.

14. Finally, the study considers the illegal arrests and trials of Namibians and the General Assembly decisions condemning those arrests and calling for the immediate and unconditional release of all Namibian political prisoners.

II. ANALYTICAL SUMMARY OF PRACTICE

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

1. NATURE OF THE MACHINERY

15. As previously reported,² the General Assembly, by its resolution 2145 (XXI) of 27 October 1966, terminated South Africa's mandate over Namibia and assumed direct responsibility for the Territory; and by its resolution 2248 (S-V) of 19 May 1967, established the United Nations Council for Namibia as legal Administering Authority of the Territory with full responsibility for the Territory until its independence.

16. During the period under review, the General Assembly continued to adopt resolutions³ reaffirming the direct responsibility of the United Nations in regard to Namibia and its peoples and requesting the Council for Namibia to continue to perform the functions entrusted to it under resolution 2248 (S-V) of 19 May 1967.

17. Pursuant to those resolutions, the Council for Namibia continued to carry out its responsibilities with regard to the administration of Namibia and to report on its progress to the General Assembly.

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

(a) *The United Nations Council for Namibia*

18. As has been reported,⁴ the United Nations Council for Namibia at the thirty-third session of the General Assembly was composed of the following 31 members: Algeria, Angola, Australia, Bangladesh, Belgium, Botswana, Bulgaria, Burundi, Chile, China, Colombia, Cyprus, Egypt, Finland, Guyana, Haiti, India, Indonesia, Liberia, Mexico, Nigeria, Pakistan, Poland, Romania, Senegal, Turkey, Union of Soviet Socialist Republics, United Republic of Cameroon, Venezuela, Yugoslavia and Zambia.

19. There was no change in the composition of the Council during the period under review.

(i) *The tenure of the Presidency*

20. As previously reported,⁵ during the twenty-seventh session of the General Assembly, the Council for Namibia decided to elect its President for a term of one year. The Council maintained that procedure throughout the current period under review.

²*Repertory, Supplement No. 3*, vol. III, under Article 80, paras. 285-321.

³G A resolutions 34/92 A, 35/227 A, 36/121 A, 37/233 A, 38/36 A and 39/50 A.

⁴*Repertory, Supplement No. 5*, under Article 81, para. 24.

⁵Ibid., paras. 28 and 29.

21. As was further reported,⁶ during the thirty-first session of the General Assembly, the Council elected three Vice-Presidents, whose terms of office would be the same as that of the President of the Council. That arrangement was maintained during the current period under review until the thirty-fourth session.

22. On 26 December 1979, the Council decided⁷ to increase the number of vice-presidents to five. Algeria, India, Turkey, Venezuela and Yugoslavia were elected vice-presidents. That number was maintained during the rest of the period under review.

(ii) *The establishment of standing committees*

23. As has been reported,⁸ the Council established three committees, Standing Committee I, Standing Committee II and Standing Committee III, to carry out various functions that would improve its efficiency.

24. The Council reported⁹ to the General Assembly at its thirty-fourth session on the composition of its Standing Committees as follows:

Standing Committee I:

Algeria, Belgium, China, Colombia, Finland, Haiti, Indonesia, Nigeria, Poland, Senegal, Turkey, United Republic of Cameroon, USSR, Venezuela, Zambia;

Standing Committee II:

Angola, Australia, Bangladesh, Botswana, Bulgaria, Chile, Cyprus, Finland, Guyana, Liberia, Mexico, Pakistan, Romania, Zambia;

Standing Committee III:

Algeria, Angola, Australia, Belgium, Bulgaria, Burundi, Cyprus, Colombia, Egypt, India, Mexico, Nigeria, Pakistan, Romania, Venezuela, Yugoslavia, Zambia.

25. The Council made no changes in the composition of its standing committees during the period under review.¹⁰

26. With regard to the responsibilities of the three standing committees, during the thirty-fourth session, the Council, at its 297th meeting, on 17 April 1979, approved¹¹ the following terms of reference of its standing committees.

⁶Ibid., para. 26.

⁷A/AC.131/PV.315. See also G A (35), Suppl. No. 24, vol. I, para. 491; G A (36), Suppl. No. 24, para. 688; G A (37), Suppl. No. 24, para. 752; G A (38), Suppl. No. 24, para. 857; G A (39), Suppl. No. 24, para. 1083.

⁸*Repertory, Supplement No. 5*, vol. IV, under Article 81, paras. 30-32.

⁹G A (34), Suppl. No. 24, vol. II, para. 30.

¹⁰G A (35), Suppl. No. 24, vol. I, para. 497; G A (36), Suppl. No. 24, para. 629; G A (37), Suppl. No. 24, para. 757; G A (38), Suppl. No. 24, para. 862; G A (39), Suppl. No. 24, para. 1088.

¹¹G A (34), Suppl. No. 24, paras. 33, 35 and 37.

27. Standing Committee I was charged with the following responsibilities:

- To recommend the representation of Namibia in international organizations, conferences and on any other occasions as might be required;
- To consider recommendations relating to consultations with Governments of Member States;
- To consider recommendations relating to consultations with the Organization of African Unity, the Movement of Non-Aligned Countries and other regional or international political organizations interested in supporting the cause of the Namibian people for self-determination, freedom and national independence in a united Namibia;
- To carry out consultations with representatives of SWAPO in all matters under its consideration.

28. Standing Committee II was charged with the following responsibilities:

- To review the progress of the liberation struggle in Namibia in its political, military and social aspects and submit to the Council periodic reports related thereto;
- To consider the compliance of Member States with the relevant United Nations resolutions on Namibia, taking into account the advisory opinion of the International Court of Justice of 21 June 1971;
- To consider the activities of foreign economic interests operating in Namibia with a view to recommending appropriate policies to the Council in order to counter the support which those foreign economic interests gave to the illegal South African administration in Namibia;
- To consider all legal issues relating to the liberation struggle of the Namibian people for self-determination, freedom and national independence in a united Namibia and to the illegal South African administration in the Territory;
- To consider the nature and scale of South African military installations and operations in Namibia in order to recommend to the Council ways and means of taking action against and denouncing South African military adventurism in Namibia;
- To carry out consultations with representatives of SWAPO in all matters under its consideration.

29. Standing Committee III was charged with the following responsibilities:

- To consider ways and means of increasing the dissemination of information relating to Namibia and to recommend appropriate measures and policies to the Council;
- To consider, in consultation with the Department of Public Information of the Secretariat, ways and means of acquainting world public opinion with all aspects of the question of Namibia;

- To organize and coordinate contacts by delegations of the Council with leading opinion makers in the information media, educational institutions and other cultural institutions, as well as action and support groups concerning the liberation struggle of the Namibian people for self-determination, freedom and national independence in a united Namibia, and to recommend appropriate action to the Council; and to carry out consultations with representatives of SWAPO in all matters under its consideration.

30. There was no change in the terms of reference of Standing Committees I, II and III during the remainder of the period under review.¹²

31. As already reported,¹³ the Council for Namibia elected a Steering Committee comprising the President of the Council, the three Vice-Presidents, the Chairmen of the three standing committees and the Rapporteur of the Committee on the United Nations Fund for Namibia.

32. During the thirty-fourth session, the composition of the Steering Committee remained the same.¹⁴ At its 315th meeting, on 26 December 1979, the Council elected¹⁵ the representative of Turkey as a fourth Vice-President, in addition to the original three, the representatives of Algeria, India and Yugoslavia. Therefore, during the thirty-fifth session, the Steering Committee comprised¹⁶ the President of the Council, the four Vice-Presidents, the Chairmen of the three standing committees and the Vice-Chairman and Rapporteur of the Committee on the United Nations Fund for Namibia. At its 344th meeting, on 30 December 1980, the Council elected¹⁷ the representative of Guyana as Vice-President. Therefore, during the thirty-sixth session, the Steering Committee was composed of the President of the Council, the five Vice-Presidents, the Chairmen of the three standing committees and the Vice-Chairman and Rapporteur of the Committee on the United Nations Fund for Namibia.¹⁸ The composition of the Steering Committee remained the same during the thirty-seventh, thirty-eighth and thirty-ninth sessions of the General Assembly.¹⁹

(iii) Other committees and working groups

33. In accordance with its established practice, the Council appointed a Drafting Committee to prepare the annual report of the Council to the General Assembly. The

¹²G A (35), Suppl. No. 24, vol. I, para. 498; G A (36), Suppl. No. 24, para. 694; G A (37), Suppl. No. 24, para. 758; G A (38), Suppl. No. 24, para. 863; G A (39), Suppl. No. 24, para. 1089.

¹³Repertory, Supplement No. 5, vol. IV, under Article 81, para. 33.

¹⁴G A (34), Suppl. No. 24, vol. II, para. 27.

¹⁵G A (35), Suppl. No. 24, vol. I, para. 491.

¹⁶Ibid., para. 492.

¹⁷G A (36), Suppl. No. 24, para. 688.

¹⁸Ibid., para. 689.

¹⁹G A (37), Suppl. No. 24, para. 752; G A (38), Suppl. No. 24, para. 858; G A (39), Suppl. No. 24, para. 1089.

Council also appointed other working groups as required to fulfil the terms of its mandate.²⁰

34. During the period under review, there was no change in the composition of the Drafting Committee and the working groups.

(b) The United Nations Commissioner for Namibia

35. The General Assembly, in 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 should entrust such executive or administrative tasks as it deemed necessary to a United Nations Commissioner for South West Africa, who should be appointed by the General Assembly on the nomination of the Secretary-General.

36. At its thirty-third session, the General Assembly had approved the proposal of the Secretary-General of the extension of Marti Ahtisaari, who had been appointed during the thirty-second session, as Commissioner for Namibia for a further one-year term until 31 December 1979.²¹ During the period under review, the General Assembly, by subsequent decisions, extended Mr. Ahtisaari's appointment thereafter from year to year until the end of 1982.²²

37. At the thirty-seventh session, the Secretary-General communicated to the General Assembly a note to the effect that the necessary consultations in connection with the appointment of a Commissioner for Namibia had been completed. Accordingly, the Secretary-General proposed²³ to the Assembly the appointment of Mr. Brajesh Chandra Mishra as United Nations Commissioner for Namibia for one year beginning 1 January 1983, and the General Assembly accepted the proposal.²⁴

38. Mr. Mishra's appointment as Commissioner for Namibia was extended thereafter by subsequent decisions of the General Assembly for the remainder of the period under review.²⁵

3. CONSIDERATION OF COMMUNICATIONS AND REQUESTS FOR HEARINGS

39. Contrary to the practice of the Council for Namibia during the previous period under review, during the current review period the Council did not hear any petitioners, though SWAPO, declared by the General Assembly to be the sole and authentic representative of the Namibian people, participated in the meetings of the Council with observer status as it had during the previous reporting period (see para. 40 below). Other petitioners who wished to speak on

²⁰G A (34), Suppl. No. 24, vol. II, para. 46; G A (35), Suppl. No. 24, vol. I, para. 500; G A (36), Suppl. No. 24, para. 698; G A (37), Suppl. No. 24, para. 761; G A (38), Suppl. No. 24, para. 866; G A (39), Suppl. No. 24, para. 1092.

²¹Repertory, Supplement No. 5, vol. IV, under Article 81, para. 45.

²²A/34/326, A/35/323 and A/36/325.

²³A/37/772.

²⁴A/37/324.

²⁵G A resolutions 38/312 and 39/325.

the question of Namibia were heard by the Fourth Committee.²⁶

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

(a) Council for Namibia

40. During the period under review, the relationship between the Council for Namibia and the people of Namibia continued to be governed by General Assembly resolution 3111 (XXVIII), which declared that SWAPO was the "authentic" representative of the Namibian people, and General Assembly resolution 31/146, which recognized SWAPO as the "sole and authentic" representative of the Namibian people.²⁷ The Council continued to hold consultations with representatives and leaders of SWAPO. SWAPO in turn continued to participate fully in all meetings of the Council and to accompany the Council on its missions, to take part in meetings of consultations with representatives of other organizations, to take part in meetings of the Council away from Headquarters and to have its expenses defrayed by the Assembly whenever this was requested by the Council.²⁸

Decision

41. By its resolution 34/92 of 12 December 1979, the General Assembly decided that the United Nations Council for Namibia, in the discharge of its responsibilities as the legal Administering Authority for Namibia until independence, would continue to consult with SWAPO, as appropriate, in the formulation and implementation of its programme of work as well as in any matter of interest to the Namibian people. The provisions of the resolution were reiterated in resolutions 35/442 of 16 December 1980, 36/121 C of 10 December 1981, 37/233 C of 20 December 1982, 38/36 C of 2 December 1983, and 39/50 C of 12 December 1984 respectively, adopted during the period under review.

(b) Economic Commission for Africa

42. The Council for Namibia, in implementing resolutions of the General Assembly, continued²⁹ to allocate the necessary funds for the President of SWAPO to represent, in an associate member capacity, the people of Namibia in sessions of the Economic Commission for Africa.

²⁶A/34/696, A/35/617, A/37/619 and A/39/675.

²⁷Repertory, Supplement No. 5, vol. IV, under Article 81, paras. 67-85.

²⁸G A (34), Suppl. No. 24, vol. I, paras. 359-364; G A (35), Suppl. No. 24, vol. I, chap. IX, paras. 440-450; G A (36), Suppl. No. 24, paras. 639-657; G A (37), Suppl. No. 24, paras. 742-750; G A (38), Suppl. No. 24, paras. 846-855; G A (39), Suppl. No. 24, chap. X, paras. 1071-1081.

²⁹Repertory, Supplement No. 5, vol. IV, under Article 81, para. 84.

43. By its resolution 34/92 A of 12 December 1979, the General Assembly decided to continue to defray the expenses of representatives of SWAPO whenever the United Nations Council for Namibia so required. The provisions of the resolution were reiterated in resolutions 35/442 C of 16 December 1980, 36/121 C of 10 December 1981, 37/233 C of 20 December 1982, 38/36 C of 2 December 1983 and 39/50 C of 12 December 1984 respectively, adopted during the period under review.

(c) *Representation in the specialized agencies*³⁰

44. During the period under review, the Council continued to designate members of SWAPO to represent it in meetings of the specialized agencies and at regional and international conferences hosted by those agencies.³¹

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

(a) *Organization of African Unity*

45. During the period under review, the Council for Namibia maintained its efforts to strengthen cooperation with the Organization of African Unity.

46. In 1979, at the invitation of the Secretary-General of OAU, a delegation of the Council, headed by the President of the Council, attended the thirty-third ordinary session of the OAU Council of Ministers and the sixteenth ordinary session of the Assembly of Heads of State and Government of OAU, both held at Monrovia, from 6 to 20 July and from 17 to 20 July 1979 respectively.

47. In his address to the plenary meeting of the Council of Ministers,³² the President of the Council for Namibia acknowledged the work of OAU and its close cooperation with the Council in their joint efforts to bring about a legitimate government in Namibia. He expressed the hope that OAU would join in calling for measures against South Africa under Chapter VII of the Charter of the United Nations.

48. The OAU Council of Ministers adopted a resolution on Namibia,³³ in which it, inter alia, reaffirmed strong support for the United Nations Council for Namibia as the legal Administering Authority for Namibia until independence. Having regard to the need for closer cooperation in the current critical phase of the struggle for the liberation of Namibia, the Council of Ministers decided to grant permanent observer status in OAU to the Council for Namibia.

³⁰See also paras. 55-65 below.

³¹G A (34), Suppl. No. 24, vol. I, para. 362; G A (35), Suppl. No. 24, vol. I, para. 444; G A (36), Suppl. No. 24, para. 646; G A (37), Suppl. No. 24, para. 646; G A (37), Suppl. No. 24, para. 749; G A (38), Suppl. No. 24, para. 854; G A (39), Suppl. No. 24, para. 1079.

³²G A (34), Suppl. No. 24, vol. IV, annex XVII.

³³Ibid., vol. I, para. 172.

49. Cooperation between the Council and OAU was maintained during the period under review, with a delegation of the Council participating in the sessions of OAU held in Freetown in 1980;³⁴ in its sessions held in Addis Ababa and in Nairobi in 1981;³⁵ in those held in Addis Ababa and in Arusha in 1982;³⁶ in the sessions held in Arusha and in Addis Ababa in 1983;³⁷ and those held in Arusha and in Addis Ababa in 1984.³⁸

50. Cooperation between the Council and OAU was further strengthened by the extension of invitations by the Council for OAU to attend the extraordinary plenary meetings of the Council held away from United Nations Headquarters.³⁹

(b) *United Nations bodies*

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

51. In compliance with General Assembly resolution 2671 F (XXV) of 8 December 1970 on the question of the policies of apartheid of the Government of South Africa, the Council for Namibia, the Special Committee on decolonization and the Special Committee against Apartheid on 13 September 1971 had adopted a consensus whereby they agreed to cooperate among themselves, through the sharing of information, to hold regular meetings of the presiding officers of the three bodies and to arrange for the participation of some representatives of each body in the work of the others.⁴⁰

52. During the period under review, this cooperation between the Council, the Special Committee on decolonization and the Special Committee against Apartheid continued as previously.⁴¹

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

53. As reported previously,⁴² the United Nations Educational and Training Programme for Southern Africa (UNETPSA) had been established to provide scholarship assistance to southern African students, including Namibians, despite the creation of the United Nations Fund for Namibia, which was partly used for the same purpose. Throughout the period under review, the General Assembly,

³⁴G A (35), Suppl. No. 24, vol. I, paras. 111-128.

³⁵G A (36), Suppl. No. 24, paras. 47-68.

³⁶G A (37), Suppl. No. 24, paras. 102-117.

³⁷G A (38), Suppl. No. 24, paras. 181-188.

³⁸G A (39), Suppl. No. 24, paras. 119-134.

³⁹G A (35), Suppl. No. 24, vol. I, paras. 53 and 54; G A (36), Suppl. No. 24, para. 178; and G A (37), Suppl. No. 24, para. 146.

⁴⁰Repertory, Supplement No. 5, vol. IV, under Article 81, paras. 90 and 91.

⁴¹G A (34), Suppl. No. 24, vol. I, paras. 165-172; G A (35), Suppl. No. 24, vol. I, para. 110; G A (36), Suppl. No. 24, paras. 29-46; G A (37), Suppl. No. 24, paras. 88-100; G A (38), Suppl. No. 24, paras. 168-177; G A (39), Suppl. No. 24, paras. 100-117.

⁴²Repertory, Supplement No. 4, vol. II, under Article 81, paras. 89-101.

in its resolutions 34/92 E, 35/227 G, 36/121 F, 37/223 E, 38/36 F and 39/50, reaffirmed that Namibians should continue to receive assistance from UNETPSA, despite the existence of the Fund for Namibia.

54. UNETPSA was administered by the Secretary-General jointly with an Advisory Committee on UNETPSA. In order to coordinate the administration of scholarships and to avoid duplication of awards granted by UNETPSA, the United Nations Fund for Namibia and the Nationhood Programme for Namibia (see paras. 76-77 below), a representative of the Council for Namibia attended the meetings of the Advisory Committee in an observer capacity during the thirty-fourth session.⁴³ For the remainder of the period under review, a representative of the United Nations Commissioner for Namibia attended the meetings of the Advisory Committee in an observer capacity for the purposes of coordination and avoidance of duplication between the various programmes.⁴⁴ Following the thirty-seventh session, on the recommendation of the Advisory Committee, scholarships provided under the United Nations Fund for Namibia were administered by the Commissioner separately from UNETPSA scholarships, though a representative of the Commissioner continued to participate in the meetings of the Advisory Committee.

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

55. During the period under review, the General Assembly continued to seek the participation of the people of Namibia, represented by the Council for Namibia, as full members of the specialized agencies.⁴⁵ This campaign was based on General Assembly resolutions 31/149 and 32/9 E, requesting all specialized agencies to consider granting full membership to the Council for Namibia. As reported in the previous *Supplement*,⁴⁶ at the end of the earlier period under review, the Council for Namibia had been granted full membership in FAO and ILO and associate membership in UNESCO, WHO and WMO.

56. The Council for Namibia reported to the General Assembly at its thirty-fourth session that it had been granted full membership in UNESCO, in compliance with resolutions 31/149 and 32/9 E.⁴⁷

57. At the same session, the General Assembly adopted resolution 34/92 C, by which it reiterated its request for "all specialized agencies and other organizations and conferences within the United Nations system to grant full membership

to the United Nations Council for Namibia so that it may participate in that capacity as Administering Authority for Namibia in the work of those agencies, organizations and conferences". That wording was reiterated at the thirty-fifth session in resolution 35/227 D. And by its resolution 34/92 C, the General Assembly, in accordance with section I of its resolution 1995 (XIX) of 30 December 1964, by which it had established the United Nations Conference on Trade and Development (UNCTAD) as an organ of the General Assembly, decided to grant full membership in UNCTAD to Namibia as represented by the Council for Namibia. Similarly, in accordance with paragraph 8 (b) of its resolution 3067 (XXVIII) of 16 November 1973, by which it had convened the Third United Nations Conference on the Law of the Sea, the General Assembly decided to grant full membership in the Law of the Sea Conference to Namibia as represented by the Council for Namibia.

58. At the thirty-fifth session of the General Assembly, the Council of Namibia reported that it had been granted full membership in the United Nations Industrial Development Organization (UNIDO).⁴⁸

59. During the thirty-sixth session, the General Assembly considered a draft resolution⁴⁹ entitled "Programme of work of the United Nations Council for Namibia". In the draft, the Assembly would "decide", rather than "request" as in previous resolutions, that Namibia, represented by the Council for Namibia, should participate as a full member in all conferences and meetings organized by the United Nations to which all States — or in the case of regional conferences and meetings, all African States — were invited. The draft was adopted by 137 votes to none, with 10 abstentions, as General Assembly resolution 36/121 C. The above-mentioned provision was reiterated in General Assembly resolutions 37/233 C and 38/36 C.

60. Also at the thirty-sixth session, by its resolution 36/121 D, entitled "Action by intergovernmental and non-governmental organizations with respect to Namibia", the General Assembly requested the International Atomic Energy Agency (IAEA) to grant full membership to Namibia, as represented by the Council for Namibia. The Assembly also requested the Economic and Social Council to consider granting membership in the Executive Committee of the Programme of the United Nations High Commissioner for Refugees to Namibia, as represented by the Council for Namibia.

61. At the following session of the General Assembly, the Council of Namibia reported that it had been granted membership in the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, according to Economic and Social Council decision 1982/110.⁵⁰ At the 111th meeting of the Third United Nations Conference on the Law of the Sea, Namibia, represented by the Council for Namibia, was granted the right to become a party to the United Nations Convention on the Law of the Sea, adopted on 30 April 1982, and to join the

⁴³A/34/571, para. 23.

⁴⁴A/35/525, para. 26; A/36/147, para. 23; A/37/436, para. 11; A/38/469, para. 10; A/39/351, para. 10.

⁴⁵G A (34), Suppl. No. 24, vol. I, paras. 201-230; G A (35), Suppl. No. 24, vol. I, paras. 281-310; G A (36), Suppl. No. 24, paras. 403-434; G A (37), Suppl. No. 24, paras. 267-301; G A (38), Suppl. No. 24, paras. 352-395; G A (39), Suppl. No. 24, paras. 827-869.

⁴⁶Repertory, Supplement No. 5, vol. IV, under Article 81, paras. 94-114.

⁴⁷G A (34), Suppl. No. 24, vol. I, paras. 203-212, and vol. IV, annex VI.

⁴⁸G A (35), Suppl. No. 24, vol. I, para. 281.

⁴⁹A/36/L.25.

⁵⁰G A (37), Suppl. No. 24, para. 268.

Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea.⁵¹ The General Assembly, by its resolution 37/233 C, welcomed these developments, as well as the admission of Namibia, represented by the Council for Namibia, as a full member of the International Telecommunication Union. In the same resolution, the Assembly noted the accession by the United Nations Council for Namibia to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid, and requested the Council to accede to the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, and to such other international conventions as it might deem appropriate.

62. At the thirty-eighth session of the General Assembly, the Council for Namibia reported that it had been granted full membership in IAEA.⁵² By its resolution 38/36 C, the Assembly also noted the accession by the United Nations Council for Namibia, in its capacity as legal Administering Authority for Namibia, to the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, and took note of the signing by the Council of the Final Act of the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts.

63. At the same time, the Council for Namibia reported that the International Monetary Fund (IMF) and the World Bank continued to maintain links with South Africa and, especially in the case of the IMF, to assist the illegal racist regime financially in violation of General Assembly resolution 36/52, and that both agencies continued to refuse to give material assistance to SWAPO. According to the Council, those policies of IMF and the World Bank contributed to the maintenance of the illegal colonial domination of Namibia by South Africa.⁵³ The Council also reported that IMF had granted South Africa a loan of \$US 1.1 billion.⁵⁴

64. The General Assembly condemned such links and assistance, in resolutions adopted under the agenda item entitled "Question of Namibia", namely resolutions 37/233 A (para. 31), 38/36 A (para. 50) and 39/50 A (para. 62). The issue is taken up in more detail under Article 73, in the context of the implementation of the Declaration on decolonization.⁵⁵

65. During the period under review, beginning in the thirty-sixth session, the General Assembly also requested, in its resolutions 36/121 C, 37/233 C, 38/36 C and 39/50 C, all committees and subcommittees of the General Assembly to continue to invite a representative of the United Nations Council for Namibia to participate in their work whenever the rights and interests of Namibians were discussed, and to consult closely with the Council before submitting to the

Assembly any draft resolution which might involve the rights and interests of Namibians.

6. ASSISTANCE TO NAMIBIANS OUTSIDE THE TERRITORY

(a) Travel and identity documents

66. By its resolution 2372 (XXII) of 12 June 1968, the General Assembly had requested the United Nations Council for Namibia to continue, with a sense of urgency, its consultation on the issuing to Namibians of travel documents to enable them to travel abroad.

67. During the current period under review, the Council for Namibia continued to undertake negotiations and sign agreements with Governments regarding their acceptance of United Nations Council for Namibia travel documents issued by the Council to Namibians.

68. The Council continued to issue travel documents to Namibians and renew identity documents of Namibians throughout the period.⁵⁶

(b) United Nations Fund for Namibia

69. As previously reported,⁵⁷ the activities of the Fund had been streamlined to concentrate on three main programmes: (a) the Institute for Namibia; (b) the Nationhood Programme for Namibia; and (c) educational, social and relief assistance.

(i) Institute for Namibia

70. As already reported,⁵⁸ the General Assembly, by its resolution 3296 (XXIX), had endorsed a plan to establish an Institute for Namibia, under the aegis of the Council for Namibia, to undertake research, training, planning and related activities with special reference to the struggle for freedom of the Namibians and the establishment of an independent State of Namibia. The Institute was opened in August 1976 in Lusaka. Admission was granted to all persons of Namibian origin who fulfilled the requirements set by the Institute Senate. The Institute was financed by the Council for Namibia through the Fund for Namibia. Throughout the period under review, the Institute continued to carry out its mandate of providing skilled manpower for a future Namibia, and also conducted numerous studies on policy options for an independent Namibia.⁵⁹

⁵¹G A (34), Suppl. No. 24, vol. I, para. 354; G A (35), Suppl. No. 24, vol. I, para. 436; G A (36), Suppl. No. 24, para. 633; G A (37), Suppl. No. 24, paras. 736 and 739; G A (38), Suppl. No. 24, para. 833; G A (39), Suppl. No. 24, paras. 1057 and 1069.

⁵²Repertory, Supplement No. 5, vol. IV, under Article 81, paras. 120-143.

⁵³Ibid., paras. 141-143.

⁵⁴G A (34), Suppl. No. 24, vol. I, paras. 271-286; G A (35), Suppl. No. 24, vol. I, paras. 339-344; G A (36), Suppl. No. 24, paras. 471-478; G A (37), Suppl. No. 24, paras. 680-691; G A (38), Suppl. No. 24, paras. 762-774; G A (39), Suppl. No. 24, paras. 981-992.

⁵⁵See, in the present *Supplement*, under Article 73, paras. 133-150.

71. The General Assembly, by its resolution 33/182 C of 21 December 1978, had decided to review the question of the relations between the United Nations and the Institute for Namibia in order to enhance the effectiveness of the Institute.

72. In implementation of that resolution, a task force comprising the Chairman of the Council for Namibia, the Commissioner for Namibia, the Rapporteur of the Committee on the Fund, the Vice-President of SWAPO and the Director of the Institute had been set up by the Senate of the Institute to draw up recommendations on the future status and activities of the Institute.

73. The report of the task force, which contained a Draft Charter of the Institute, was considered by the Council at its 316th meeting, on 5 December 1979, at which the Council approved the Draft Charter of the United Nations Institute for Namibia.⁶⁰

Decision

74. By its resolution 34/92 A of 12 December 1979, the General Assembly took note of and approved the report of the United Nations Council for Namibia on the Fund for Namibia, which included the Draft Charter of the United Nations Institute for Namibia. The Assembly also decided that the United Nations Council for Namibia would provide broad guidelines and formulate the principles and policies for the United Nations Institute for Namibia at Lusaka.

75. The provisions of the resolution were reiterated in General Assembly resolutions 34/92 of 12 December 1979, 35/442 C of 16 December 1980, 36/121 C of 10 December 1981, 37/233 C of 20 December 1982, 38/36 C of 2 December 1983 and 39/50 C of 12 December 1984 respectively, adopted by the Assembly during the period under review.

(ii) Nationhood Programme for Namibia

76. At its thirty-fourth session, the General Assembly, by its resolution 34/92 D of 12 December 1979, reiterating its decisions of previous years, requested the United Nations Council for Namibia to continue to direct and coordinate, in consultation with SWAPO, the planning and implementation of the Nationhood Programme for Namibia, with the aim of consolidating all measures of assistance to Namibians by the specialized agencies and other organizations and bodies within the United Nations system into a comprehensive assistance programme of the United Nations system.

77. The provisions of the resolution were reiterated by the General Assembly in its resolutions 35/442 F of 16 December 1980, 36/121 F of 10 December 1981, 37/233 E of 20 December 1982, 38/36 E of 2 December 1983 and 39/50 E of 12 December 1984.

(iii) Educational, social and relief assistance

78. The assistance to Namibians envisaged under this item continued to expand during the period under review, to

include emergency medical treatment and other forms of humanitarian assistance.⁶¹

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

(i) Withholding of assistance from South Africa

79. As in the previous review period, the General Assembly continued to request specialized agencies not to provide assistance to South Africa due to that country's role in impeding the independence of colonial peoples in southern Africa and due to its own system of apartheid. The question was considered in the context of the Declaration on decolonization, as it pertained to various Non-Self-Governing Territories, including Namibia. During the current period under review, in resolutions adopted under the agenda item entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations", the General Assembly continued to adopt provisions urging the specialized agencies to withhold assistance from South Africa. As in the past, in the present *Supplement* this question is treated in more detail under Article 73, covering those questions related to the Declaration on decolonization. Mention of it is included here, however, to signal that resolutions adopted by the General Assembly during the review period explicitly called upon the specialized agencies to withhold assistance from South Africa until that Government restored to the people of Namibia their inalienable right to self-determination and independence. The relevant General Assembly resolutions were 35/29 of 11 November 1980, 36/52 of 24 November 1981, 37/32 of 23 November 1982, 38/51 of 7 December 1983 and 39/43 of 5 December 1984.

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

80. During the period under review, the General Assembly continued to call upon the specialized agencies and other organizations within the United Nations system to render assistance to Namibians and to SWAPO.

Decision

81. By its resolution 34/92 E of 12 December 1979, the General Assembly expressed its appreciation to the specialized agencies and other organizations within the United Nations system for their assistance to Namibians and requested them to give priority, in consultation with the United Nations Council for Namibia, to the allocation of funds for material assistance to the Namibian people. The provisions of the resolution were reiterated in resolutions 35/442 G of 16 December 1980 and 36/121 D of 10 December 1981.

⁶¹G A (34), Suppl. No. 24, vol. I, paras. 250-285; G A (35), Suppl. No. 24, vol. I; G A (36), Suppl. No. 24, paras. 618-625; G A (37), Suppl. No. 24, paras. 658-673; G A (38), Suppl. No. 24, paras. 725-761; G A (39), Suppl. No. 24, paras. 981-992.

⁶⁰A/AC.131/L.132.

Decision

82. By its resolution 36/121 F of 10 December 1981, the General Assembly urged those specialized agencies and other organizations of the United Nations system which had not done so to review with the United Nations Institute for Namibia ways and means of strengthening its programme of activities. The provisions of the resolution were reiterated in resolutions 37/233 E of 20 December 1982 and 38/36 E of 2 December 1983.

Decision

83. By its resolution 38/36 A of 2 December 1983, the General Assembly called upon Member States and the specialized agencies and other international organizations associated with the United Nations to render sustained and increased support as well as material, financial, military and other assistance to the South West Africa People's Organization, so as to enable it to intensify its struggle for the liberation of Namibia.

84. By the same resolution, the General Assembly urged all Governments and specialized agencies and other intergovernmental organizations to provide increased material assistance to the thousands of Namibian refugees who had been forced by the oppressive policies of the apartheid regime to flee Namibia, especially into the neighbouring front-line States.

7. ACTION CONCERNING FOREIGN ECONOMIC INTERESTS IN NAMIBIA

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

85. As reported in the previous *Supplement*,⁶² the General Assembly endorsed Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted by the United Nations Council for Namibia on 27 December 1974, according to which the exploitation of the natural resources of Namibia by foreign economic interests without the consent of the Council was deemed to be illegal.

Decision

86. In paragraph 3 of its resolution 34/92 of 12 December 1979, the General Assembly declared that the natural resources of Namibia were the birthright of the Namibian people and that the exploitation of those resources by foreign economic interests, under the protection of the repressive racist colonial administration, in violation of the Charter of the United Nations, the pertinent resolutions of the General Assembly, the Security Council and Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted by the United Nations Council for Namibia on 27 September 1974,⁶³ was illegal and

contributed to the maintenance of the illegal occupation regime.

87. In paragraph 8 of the same resolution, the General Assembly requested the United Nations Council for Namibia to continue its efforts to implement Decree No. 1 for the Protection of the Natural Resources of Namibia.

88. The General Assembly, in its resolutions 34/92 B, 35/227 A, E-S/8, 36/121 A, 37/233 A, 38/36 A and 39/50 A, continued to strongly condemn the activities of all foreign corporations operating in Namibia under the illegal South African administration and to demand that transnational corporations comply with all pertinent resolutions of the United Nations by immediately abstaining from any new investment in Namibia and by withdrawing from the Territory. Furthermore, in its resolutions 37/233 C, 38/36 C and 39/50 C, the General Assembly instructed the Council for Namibia to consider the activities of foreign economic interests operating in Namibia with a view to recommending appropriate policies to the General Assembly in order to counter the support which those interests lent to the illegal South African administration in Namibia.

Decision

89. In its resolution 34/92 B, entitled "Intensification and coordination of United Nations action in support of Namibia", the General Assembly requested the Council for Namibia and all Member States to take all appropriate measures to ensure the full application and compliance of the Decree, and further requested the Council for Namibia to notify the Governments of States whose corporations operated illegally in Namibia of the illegality of such operations, and to contact the managing bodies of those corporations in that regard. The General Assembly reiterated that request in its resolution 35/227 B, and furthermore requested the Secretary-General to prepare, in consultation with the Council for Namibia, an indexed handbook on transnational corporations operating in Namibia.

Decision

90. In its resolution 36/121 B, entitled "Action by Member States in support of Namibia" (see also paras. 156-162 below for further consideration of this resolution), the General Assembly continued to condemn the activities of foreign economic interests in Namibia, and requested all States to prevent investment in projects or corporations within their territory by corporations or individuals in illegally occupied Namibia, and also requested States to adopt legislation which would penalize corporations in illegally occupied Namibia, by the denial of tax relief and the imposition of fines exceeding the amount of profits derived from those dealings.

91. In its resolutions 36/121 B, 37/233 A and 38/36 A, the General Assembly continued to condemn the activities of all foreign economic interests operating in Namibia and to request Member States to take all appropriate measures, including legislation and enforcement action, to ensure the full application of and compliance with the provisions of the Decree on natural resources. The Assembly reiterated those provisions in its resolution 39/50, and furthermore declared

⁶²Repertory, Supplement No. 5, vol. IV, under Article 81, paras. 151-159.

⁶³G A (29), Suppl. No. 24, para. 84. The Decree was issued in final form in Namibia Gazette No. 1.

that all activities of foreign economic interests in Namibia were illegal under international law and that all the foreign economic interests operating in Namibia were liable to pay damages to the future lawful Government of an independent Namibia.

(b) *Council for Namibia hearings on uranium*

92. As described in the previous *Supplement*,⁶⁴ in an effort to implement the Decree on natural resources, the Council for Namibia established an Ad Hoc Committee to prepare guidelines for holding hearings, called for by the General Assembly in its resolution 31/148, on the exploitation of Namibian uranium. The hearings were not held in the previous review period, which ended with the thirty-third session, in 1978.

93. In paragraph 9 of its resolution 34/92 B, the General Assembly requested the United Nations Council for Namibia to continue to examine the exploitation of and trade in Namibian uranium by foreign economic interests and to report on its findings to the General Assembly at its thirty-fifth session.

94. Pursuant to the above requests, the Council for Namibia, during the thirty-fifth session of the General Assembly, held hearings on Namibian uranium in New York, from 7 to 11 July 1980. A panel appointed by the President of the Council on 27 June 1980 for the hearings comprised a Chairman, a Vice-Chairman, a Rapporteur and 10 members.

95. Twenty-six individuals appeared before the panel. The testimony of several of the speakers showed, *inter alia*, that several Western European States and their corporations were extensively involved in the extraction, processing, transport and sale of Namibian uranium, in violation of Council Decree No. 1 for the Protection of the Natural Resources of Namibia.

96. At its 242nd meeting, on 21 November 1980, the Council for Namibia approved⁶⁵ the recommendations of the Panel based on its findings with regard to the illegal exploitation of Namibian uranium.

97. A draft resolution⁶⁶ incorporating those recommendations was introduced in the plenary of the General Assembly. According to the draft, the General Assembly would, *inter alia*, request the Governments of States whose corporations were involved in Namibian uranium, in particular the Governments of Canada, the Federal Republic of Germany, France, Japan, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to take measures to prohibit their State-owned corporations and other corporations, together with their subsidiaries, from all dealings in Namibian uranium and all prospecting activities in Namibia. The Assembly would also strongly condemn the collusion of France, the Federal Republic of Germany, Israel and the United States of America with South Africa in the

nuclear field, and call upon all States to refrain from supplying the South African regime, directly or indirectly, with installations that might enable it to produce uranium, plutonium and other nuclear materials, reactors or military equipment.

Decision

98. The draft resolution was adopted as General Assembly resolution 35/227 I on 6 March 1981. A number of delegations expressed reservations regarding the specific mention of certain Member States. They stated that certain Members were arbitrarily singled out and condemned for activities which, in some cases, they had denied having carried out. Many delegations also considered that this practice was not helpful in the search for a peaceful solution to the question of Namibia.⁶⁷

99. In 1981, the Council gave effect to the implementation of the provisions of the General Assembly resolutions with regard to foreign economic interests operating in Namibia by holding a Seminar on Legal Issues concerning the Question of Namibia at The Hague from 22 to 24 June 1981.

100. During the discussions at the seminar, several participants emphasized⁶⁸ the need for the Council for Namibia and the Commissioner for Namibia to initiate legal action in a national court as a practical measure towards enforcement of the Decree. It was stated, in support of this view, that such action, particularly if undertaken simultaneously in various jurisdictions, irrespective of its outcome, would arouse concern among multinational corporations which might hesitate to enter into further contracts for the exploitation or purchase of Namibian resources.

101. In its report to the General Assembly at its thirty-sixth session, the Council for Namibia reviewed the observations and conclusions of the seminar and endorsed the recommendations thereof.⁶⁹

Decision

102. General Assembly resolution 36/121 C of 10 December 1981 incorporated the observations and conclusions of the seminar. By the resolution, the Assembly requested the Council for Namibia to continue to examine the exploitation of, and trade in, Namibian uranium by foreign economic interests and to report on its findings to the General Assembly at its thirty-seventh session. The Council was also requested to take all measures to ensure compliance with the provisions of Decree No. 1 for the Protection of the Natural Resources of Namibia, including consideration of

⁶⁴Repertory, Supplement No. 5, vol. IV, under Article 81, paras. 155-159.

⁶⁵G A (35), Suppl. No. 24, vol. III, paras. 234 and 235.

⁶⁶A/35/L.58.

⁶⁷G A (35), Plen., 110th mtg., Panama, para. 151; New Zealand, para. 163; and 111th mtg.; Finland (on behalf of the Nordic countries), para. 18; Uruguay, para. 22; Austria, para. 34; Japan, paras. 38 and 39; Turkey, para. 48; Fiji, para. 51; Australia, para. 64; Indonesia, para. 66; Ireland, para. 71; Netherlands, para. 85; Peru, para. 91; Suriname, para. 94; Togo, para. 95.

⁶⁸G A (36), Suppl. No. 24, paras. 224-281 and para. 708.

⁶⁹G A (37), Suppl. No. 24, paras. 303-344 and para. 786.

the institution of legal proceedings in the domestic courts of States and other appropriate bodies. The Council was further requested to contact administering and managing bodies of foreign corporations operating in Namibia regarding the illegal basis on which they were operating in Namibia.

103. The Council took action pursuant to those decisions and submitted its report⁷⁰ to the General Assembly at its thirty-seventh session.

104. Having considered the report, the General Assembly adopted resolution 37/233 on 20 December 1982, whereby it reiterated the relevant provisions of resolution 36/121 C. Those provisions were further reiterated by the Assembly in its resolution 38/36 C, adopted on 1 December 1983 at its thirty-eighth session.

105. The implementation of Decree No.1 was further pursued by the Council for Namibia during the thirty-ninth session of the General Assembly. A Regional Symposium on International Efforts to Implement Decree No. 1 for the Protection of the Natural Resources of Namibia was organized by the Council in Geneva from 27 to 31 August 1984. The symposium was attended by representatives of 13 Member States and 40 other participants from non-governmental organizations, lawyers, trade unionists, parliamentarians and other prominent individuals.

106. During the discussion in the General Assembly on the report of the Council⁷¹ incorporating the recommendations of the symposium, the majority of delegations agreed⁷² that the ruthless exploitation of the human and natural resources of Namibia by South Africa and by transnational corporations constituted a flagrant violation of the rights of Namibians to freely dispose of their natural and economic potential. This, they stated, was contrary to the United Nations decisions, in particular Decree No. 1 of the United Nations Council for Namibia. The delegations strongly denounced such continued exploitation of Namibia's resources.

Decision

107. Pursuant to the recommendations of the Council for Namibia contained in its report, the General Assembly adopted resolution 39/50 C on 12 December 1984. In the resolution, the Assembly reiterated the relevant provisions of resolutions 37/223 C and 38/36 C.

⁷⁰Ibid., paras. 302-344.

⁷¹G A (39), Suppl. No. 24, paras. 562-579.

⁷²Ibid., Plen., 78th mtg., Yugoslavia, paras. 145-175; 79th mtg., Venezuela, paras. 15-45; Democratic Yemen, paras. 118-133; 80th mtg., Czechoslovakia, paras. 1-10; 81st mtg., Congo, paras. 246-275; 82nd mtg., Bangladesh, paras. 33-53.

B. The illegal presence of South Africa in Namibia

1. NON-WITHDRAWAL OF SOUTH AFRICA FROM THE TERRITORY

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

108. United Nations efforts to obtain South Africa's withdrawal of its illegal occupation from Namibia and thus enable the people of that Territory to exercise their right to self-determination and independence continued during the period under review.

109. During the previous review period, the Secretary-General had submitted a report⁷³ to the Security Council containing recommendations for a settlement of the Namibian question. Those recommendations had been approved by the Council in its resolution 435 (1978) of 29 September 1978, in which the Council had decided to establish under its authority a United Nations Transition Assistance Group (UNTAG) for a period of up to 12 months in order to assist the Special Representative of the Secretary-General in carrying out the mandate conferred upon him by Security Council resolution 431 (1978), namely to ensure the early independence of Namibia through free elections under the supervision and control of the United Nations. The Council also called upon South Africa to cooperate with the Secretary-General in the implementation of resolution 435 (1978).

110. When the question of Namibia was considered in the plenary meetings of the General Assembly at its thirty-fourth session, the majority of delegations⁷⁴ reaffirmed their support for Security Council resolution 435 (1978) and underlined the fact that the resolution had still not been implemented due to South Africa's intransigence and failure to cooperate in the implementation process. They strongly condemned the South African regime for its continued illegal occupation of Namibia and insisted that a definite date be set by which South Africa should implement the resolution.

Decision

111. By its resolution 34/92 G of 12 December 1979, entitled "Situation in Namibia resulting from the illegal occupation of the Territory by South Africa", the General Assembly, *inter alia*, declared that the continued illegal occupation of Namibia by South Africa constituted an act of

⁷³SC (33), *Supplement for July, August and September 1978*, S/12827.

⁷⁴G A (34), Plen., 91st mtg., Pakistan, paras. 74-84; Finland, paras. 115-125; 92nd mtg., Romania, paras. 298-319; Bangladesh, paras. 336-350; 93rd mtg., Nepal, paras. 37-42; 94th mtg., Venezuela, paras. 48-59.

aggression against the Namibian people and their national liberation movement, as well as against the United Nations, which had direct responsibility over the Territory until independence. The Assembly strongly condemned South Africa for "obstructing the implementation of Security Council resolutions 385 (1976), 435 (1978) and 439 (1978), and its manoeuvres in contravention of those resolutions, designed to consolidate its colonial and neo-colonial interests at the expense of the legitimate aspirations of the Namibian people for genuine self-determination, freedom and independence in a united Namibia".

112. By the same resolution, the General Assembly called once again upon the Security Council to convene urgently to impose comprehensive and mandatory sanctions against South Africa, as provided for under Chapter VII of the Charter of the United Nations, in order to ensure South Africa's immediate compliance with the resolutions and decisions of the United Nations relating to Namibia.

113. During 1980, the Secretary-General held extensive consultations with the two parties concerned, South Africa and SWAPO, in an effort to find a solution to the Namibian question.⁷⁵

114. In the light of those consultations, the Secretary-General recommended⁷⁶ that 1981 be set aside as the date for achieving Namibian independence in accordance with Security Council resolution 435 (1978). He proposed that a date for the ceasefire be set in the early part of 1981 and, to that end, that a pre-implementation multi-party meeting be held in January 1981, under the auspices of his office.

115. Having taken note of those recommendations, the General Assembly decided to postpone the debate on the question of Namibia until early 1981, so that it could consider the outcome of the pre-implementation meeting.⁷⁷

116. In January 1981, a pre-implementation meeting between SWAPO and South Africa was held at Geneva under the auspices of the United Nations to discuss with the representatives of the Secretary-General administrative arrangements for the implementation of Security Council resolution 435 (1978). The meeting was also attended, in an observer capacity, by representatives of the front-line States and Nigeria, as well as by representatives of the five Western countries composing the Contact Group that had been formed in July 1982.⁷⁸

117. Reporting⁷⁹ to the Security Council after the meeting, the Secretary-General said that during the course of the meeting it had become clear that the Government of

⁷⁵S C (35), *Supplement for October, November and December 1980*, S/14266.

⁷⁶Ibid., paras. 18-24.

⁷⁷G A (35), Plen., 100th mtg., para. 2.

⁷⁸Canada, France, Germany, Federal Republic of, United Kingdom of Great Britain and Northern Ireland, United States of America. The Contact Group was formed in July 1982 with the objective of consulting with the parties involved on the basis of new proposals to implement Security Council resolution 435 (1978). See S/15776, paras. 4-9.

⁷⁹S C (35), *Supplement for October, November and December 1980*, S/14333; S/PV.2263, pp. 6-8.

South Africa was not yet prepared to sign a ceasefire agreement and to proceed with the implementation of resolution 435 (1978).

118. The General Assembly reconvened at its resumed thirty-sixth session, from 2 to 6 March 1981, to consider the question of Namibia in the light of the failure of the Geneva pre-implementation meeting.

119. The majority of delegations that spoke deplored⁸⁰ the failure of the Geneva pre-implementation talks due to South Africa's intransigence, as those talks could have paved the way towards democratic elections and the peaceful transition of Namibia from colonial domination to freedom.

120. Almost all of the delegations that spoke demanded⁸¹ the immediate exercise by the Namibian people of their right to self-determination and independence and the imposition of mandatory sanctions against South Africa in order to force its withdrawal from the illegally occupied Territory. They urged the Contact Group to exert immediately all pressure on Pretoria to cooperate with the United Nations plan for the independence of Namibia.

121. A draft resolution entitled "Situation in Namibia resulting from the illegal occupation of the Territory by South Africa" was introduced, by which the General Assembly would, inter alia, call upon the Security Council to convene urgently to impose comprehensive mandatory sanctions against South Africa, as provided for under Chapter VII of the Charter of the United Nations, in order to ensure South Africa's immediate compliance with the resolutions and decisions of the United Nations relating to Namibia.

122. As in the past, a number of delegations expressed reservations regarding the competence of the General Assembly to prejudge the actions of the Security Council or infringe upon its special competence (see also paras. 151-155 below).⁸²

Decision

123. The draft resolution was adopted by 114 votes to none, with 22 abstentions, as General Assembly resolution 35/227 A of 6 March 1981. The Assembly, reiterating the provisions of its resolution 34/92 B of 12 December 1979, solemnly called upon the Security Council to convene urgently to impose comprehensive mandatory sanctions against South Africa, as provided for under Chapter VII of the Charter of the United Nations, in order to ensure South

⁸⁰G A (35), Plen., 103rd mtg., Panama, paras. 173-215; 104th mtg., Japan, paras. 64-83; Bangladesh, paras. 84-92; 105th mtg., Ghana, paras. 13-27; Austria, paras. 81-89; 107th mtg., China, paras. 37-48; 108th mtg., Bhutan, paras. 82-91.

⁸¹See, for example, G A (35), Plen., 104th mtg., Algeria, paras. 3-53; Union of Soviet Socialist Republics, paras. 93-118; 105th mtg., German Democratic Republic, paras. 156-174; 106th mtg., Pakistan, paras. 1-18; Libyan Arab Jamahiriya, paras. 56-73; 107th mtg., United Republic of Cameroon, paras. 110-127; Democratic Yemen, paras. 186-194; 108th mtg., Kuwait, paras. 146-158.

⁸²G A (35), Plen., 111th mtg., Finland (on behalf of the Nordic countries), para. 17; Austria, para. 35; Greece, para. 45; Australia, para. 63; Ireland, para. 75.

Africa's immediate compliance with the resolutions and decisions of the United Nations relating to Namibia.

124. In accordance with that resolution, and upon the request of the Chairman of the Group of African States at the United Nations,⁸³ the Security Council held a series of meetings from 21 to 30 April 1981 to consider the situation in Namibia.⁸⁴

125. The Security Council had before it five draft resolutions,⁸⁵ four of which provided for the imposition of mandatory sanctions against South Africa. The fifth draft resolution set out procedures for monitoring the implementation of the sanctions. None of the draft resolutions were adopted due to the negative votes of the Western permanent members of the Security Council.

126. In June 1981, the Council for Namibia held its extraordinary plenary meetings in Panama to focus attention on the deteriorating situation arising from South Africa's increasingly repressive actions, its repeated and systematic acts of aggression against the people of Namibia and the blatant manner in which it had caused the collapse of the pre-implementation meeting held at Geneva in January 1981.

127. In the Declaration and Programme of Action adopted⁸⁶ at the Panama meetings, the Council for Namibia reiterated the provisions of General Assembly resolution 35/227 A of 6 March 1981.

128. Moreover, during its thirty-sixth session, the General Assembly, at the request of the Council for Namibia, convened its eighth emergency special session in September 1981 to consider once again the situation in Namibia resulting from the continuing illegal occupation of the Territory by South Africa.⁸⁷

Decision

129. At the twelfth plenary meeting of the emergency special session, on 14 September 1981, the General Assembly adopted resolution ES-8/2 by a recorded vote of 117 to none, with 25 abstentions. By the resolution, the Assembly strongly condemned South Africa for its continued illegal occupation of Namibia and its persistent refusal to comply with the resolutions and decisions of the General Assembly and the Security Council, as well as for its increased oppression of the Namibian people, for the massive militarization of Namibia and for its armed attacks against neighbouring States, particularly Angola.

130. The General Assembly also firmly rejected "the latest manoeuvres by certain members of the Western Contact Group aimed at undermining the international consensus embodied in Security Council resolution 435 (1978)", and demanded the immediate commencement of the unconditional implementation of that resolution "without

any prevarication, qualification or modification". Furthermore, it strongly urged the Security Council, in the light of the serious threat to international peace and security posed by South Africa, to respond positively to the overwhelming demand of the international community by immediately imposing comprehensive mandatory sanctions against South Africa, as provided for in Chapter VII of the Charter of the United Nations. The Assembly also called upon all States to cease forthwith, individually and collectively, all dealings with South Africa in order to totally isolate it politically, economically, militarily and culturally (see also paras. 156-162 below).

Decision

131. Also, at its thirty-sixth session, the General Assembly adopted resolution 36/121 A of 10 December 1981, entitled "Situation in Namibia resulting from the illegal occupation of the Territory by South Africa". In a preambular paragraph the Assembly strongly condemned France, the United Kingdom and the United States "for their collusion with South African racists as manifested in the triple vetoes in the Security Council, where the majority of the world body demonstrated its determination to adopt concrete political and economic measures aimed at isolating terrorist South Africa in order to compel it to vacate Namibia". And in an operative paragraph it strongly urged the Security Council to "act decisively against any dilatory manoeuvres and fraudulent schemes of the illegal occupation regime aimed at frustrating the legitimate struggle of the Namibian people, under the leadership of the South West Africa People's Organization, for self-determination and national liberation, as well as at negating the achievements of their just struggle". The Assembly also strongly urged the Security Council to immediately impose comprehensive mandatory sanctions against South Africa, as provided for in Chapter VII of the Charter of the United Nations.

132. Discussion of the question of Namibia at the thirty-seventh session of the General Assembly centred around the issue of "linkage". In his report to the Security Council in 1982, the Secretary-General said that it had become increasingly clear that issues that were outside the scope of resolution 435 (1978), and that had not been previously raised, were becoming a factor in negotiations on Namibia. In particular, it had been publicly indicated that there could be no implementation of resolution 435 (1978) without parallel progress on the withdrawal of Cuban troops from Angola. That condition had later been reaffirmed by the Government of South Africa.⁸⁸ This "linkage" was also reported on by the Council for Namibia in its report to the General Assembly at its thirty-seventh session, in 1982.⁸⁹

133. During the debate on the question of Namibia in the plenary meetings of the General Assembly, some delegations

⁸³S C (36), *Supplement for April, May and June 1981*, S/14434.

⁸⁴Repertoire of the Practice of the Security Council, *Supplement 1981-1984*, pp. 114-122.

⁸⁵S C (36), *Supplement for April, May and June 1981*, S/14459-S/14463.

⁸⁶G A (36), Suppl. No. 24, paras. 169 and 222.

⁸⁷G A (38), Suppl. No. 24, paras. 30-54.

⁸⁸S C (38), *Supplement for April, May and June 1983*, S/15776, para. 11.

⁸⁹G A (37), Suppl. No. 24, para. 9; ibid., Plen., 101st mtg., paras. 117 and 118.

rejected the attempt⁹⁰ by the United States Administration and the South African regime to link the withdrawal of Cuban forces from Angola with the decolonization process of Namibia. They claimed that the Cuban forces were in Angola at the invitation of the sovereign Government of that country and that the attempt to link that situation with Namibian independence was irrelevant and extraneous. They were of the opinion that such issues should not be allowed to obstruct the implementation of the plan already approved by the Security Council.

134. At its 113th plenary meeting, on 20 December 1982, the General Assembly adopted five resolutions on the question of Namibia, among them a resolution entitled "Situation in Namibia resulting from the illegal occupation of the Territory by South Africa" and another entitled "Implementation of Security Council resolution 435 (1978)".

Decision

135. By its resolution 37/233 A of 20 December 1982, the General Assembly, reiterating the provisions of its previous resolution, strongly condemned the South African regime for its continued illegal occupation of Namibia in defiance of the resolutions of the United Nations relating to Namibia. The Assembly also reaffirmed that Security Council resolution 435 (1978), together with Council resolution 385 (1976), was the only basis for a peaceful settlement of the question of Namibia, and called for its "immediate and unconditional implementation without qualification or modification". Furthermore, the Assembly requested the Secretary-General to report to it at its thirty-eighth session on the implementation of the resolution.

136. By its resolution 37/233 B of 20 December 1982, entitled "Implementation of Security Council resolution 435 (1978)", the General Assembly condemned the attempts to link the independence of Namibia with totally extraneous issues, in particular the withdrawal of Cuban troops from Angola, an issue which fell within the exclusive domestic jurisdiction of a sovereign Member State; firmly rejected the persistent attempts by the United States of America and South Africa to establish any linkage or parallelism between the independence of Namibia and any extraneous issues; and emphasized unequivocally that the persistence of such attempts would only retard the decolonization process in Namibia as well as constitute interference in the internal affairs of Angola.

137. In the same resolution the General Assembly requested the Security Council to exercise its authority for the implementation of resolution 435 (1978) so as to bring about the independence of Namibia without further delay.

138. The Security Council held meetings between 23 May and 1 June 1983 to consider the question of Namibia.⁹¹

⁹⁰Ibid., Plen., 102nd mtg., India, paras. 47-61; Bhutan, paras. 97-105; Norway, paras. 150-156; 103rd mtg., Hungary, paras. 15-29; China, paras. 47-55; Madagascar, paras. 84-105; 104th mtg., Mexico, paras. 27-46; Union of Soviet Socialist Republics, paras. 66-95.

⁹¹See S C (38), *Supplement for April, May and June 1983*.

139. By its resolution 532 (1983) of 31 May 1983, the Security Council condemned South Africa's continued illegal occupation of Namibia in flagrant defiance of resolutions of the General Assembly and other resolutions of the Security Council itself.⁹² It called upon South Africa to make a firm commitment as to its readiness to comply with Security Council resolution 435 (1978) for the independence of Namibia and to cooperate forthwith and fully with the Secretary-General in order to expedite the implementation of resolution 435 (1978) for the early independence of Namibia. The Council furthermore mandated the Secretary-General to undertake consultations with the parties to the proposed ceasefire, with a view to securing the speedy implementation of resolution 435 (1978), and requested the Secretary-General to report to it on the results of those consultations as soon as possible, and not later than 31 August 1983.

140. At its 2492nd meeting, on 28 October 1983, the Security Council adopted resolution 539 (1983),⁹³ by which it condemned South Africa for its continued illegal occupation of Namibia in flagrant defiance of resolutions of the General Assembly and decisions of the Security Council, and for its obstruction of the implementation of Security Council resolution 435 (1978) by insisting on conditions contrary to the provisions of the United Nations plan for the independence of Namibia.

141. Moreover, the Security Council rejected South Africa's insistence on linking the independence of Namibia to irrelevant and extraneous issues as incompatible with resolution 435 (1978), other decisions of the Security Council and the resolutions of the General Assembly on Namibia, including General Assembly resolution 1514 (XV) of 14 December 1960, and declared that the independence of Namibia could not be held hostage to the resolution of issues that were alien to Security Council resolution 435 (1978).

142. The Security Council also reiterated that resolution 435 (1978), embodying the United Nations plan for the independence of Namibia, was the only basis for a peaceful settlement of the Namibian problems and called upon South Africa to cooperate with the Secretary-General forthwith and to communicate to him its choice of electoral system, in order to facilitate the immediate and unconditional implementation of the United Nations plan embodied in resolution 435 (1978).

143. Finally, the Security Council requested the Secretary-General to report to it on the implementation of the resolution as soon as possible, and not later than 31 December 1983, and decided to remain actively seized of the matter and to meet as soon as possible, following the Secretary-General's report for the purpose of reviewing progress in the implementation of resolution 435 (1978), and, in the event of continued obstruction by South Africa, to consider the adoption of appropriate measures under the Charter of the United Nations.

⁹²*Repertoire of the Practice of the Security Council, Supplement 1981-1984*, pp. 125-126.

⁹³Ibid., pp. 126-129.

144. In pursuance of resolution 532 (1983), the Secretary-General submitted a further report to the Security Council,⁹⁴ dated 29 December 1983. In the report, he stated that South Africa had sent him a communication to the effect that the decision relating to the electoral system was a complex one and that it would involve consultations with the leaders of the Territory and a proper assessment of the relative advantage of each system. As of the date of his report, he had not yet received a definite response from the Government of South Africa. He expressed regret that he was not in a position to report any further progress in the recent discussions with South Africa. The Council remained seized of the matter.

145. In the report⁹⁵ it submitted to the General Assembly at its thirty-eighth session, the United Nations Council for Namibia indicated that there had been no progress on the issue of Namibian independence since the consideration of the question by the Assembly at the previous session. South Africa remained in illegal occupation of Namibia.

Decision

146. The General Assembly, by its resolutions 38/36 A and B of 1 December 1983, reiterated the provisions of its resolutions 37/233 A and B, adopted at the previous session. In resolution 38/36 B, it also expressed its dismay at the fact that the Security Council had been prevented by the three Western permanent members of the Council from adopting effective measures against South Africa in the discharge of its responsibilities for the maintenance of international peace and security, and considered that comprehensive and mandatory sanctions under Chapter VII of the Charter of the United Nations, if universally and effectively implemented, would ensure South Africa's compliance with the decisions of the United Nations.

147. During the thirty-ninth session of the General Assembly, there was no further progress on the situation in Namibia. South Africa remained in illegal occupation of the Territory and continued its insistence on the withdrawal of Cuban forces from Angola as a precondition for granting independence to Namibia. Delegations in their statements on the question continued to reject this "linkage" and to call for the imposition of comprehensive mandatory sanctions against South Africa.⁹⁶

148. By its resolution 39/50 A of 12 December 1984, the General Assembly, while reiterating the provisions of its resolution 38/36 A, also declared that comprehensive mandatory sanctions under Chapter VII of the Charter of the United Nations were the only effective measures to ensure South Africa's compliance with the resolutions and decisions of the United Nations. The Assembly furthermore urged the

⁹⁴S C (38), *Supplement for October, November and December 1983*, S/16237.

⁹⁵G A (38), Suppl. No. 24.

⁹⁶G A (39), Plen., 78th mtg., Yugoslavia, paras. 145-175; 79th mtg., China, paras. 67-76; 80th mtg., German Democratic Republic, paras. 21-34; Austria, paras. 35-44; Sudan, paras. 59-66; 81st mtg., Sweden, paras. 70-85; Indonesia, paras. 158-166; Malaysia, paras. 235-245; Afghanistan, paras. 298-321.

Security Council, in the light of the serious threat to international peace and security posed by South Africa, to respond positively to the overwhelming demand of the international community by immediately imposing comprehensive mandatory sanctions against that country, as provided for in Chapter VII of the Charter. It also requested the Secretary-General to report to it at its fortieth session on the implementation of the resolution.

(b) *Question of the competence of the General Assembly to request Member States to take specific actions to isolate South Africa*

149. During the thirty-sixth session of the General Assembly, a draft resolution⁹⁷ was proposed for the first time under the title "Action by Member States in support of Namibia". Under the terms of the draft, the Assembly would request "all States to take legislative, administrative and other measures, as appropriate, in order effectively to isolate South Africa politically, economically, militarily and culturally, in accordance with General Assembly resolution ES-8/2 of 14 September 1981". In contrast with resolution ES-8/2, in which the Assembly had "strongly urge[d] States" to cease "all dealings with South Africa in order totally to isolate it politically, economically, militarily and culturally", the current draft resolution contained numerous requests for States to take specific actions with regard to South Africa. The General Assembly would, *inter alia*, in addition to several measures that in sum constituted economic sanctions, would call upon all States to sever all diplomatic, consular and trade relations with South Africa (op. para. 2); to prevent the entry into their territory, save on exceptional humanitarian grounds, of any person travelling on a South African passport, regardless of its date of issue, or on a purported passport issued by or on behalf of the illegal administration of South Africa in Namibia (op. para. 5); to prohibit travel by their nationals to South Africa or occupied Namibia for any purpose, including tourism, sports and scientific and cultural exchanges (op. para. 6); to adopt legislation which would penalize corporations dealing with South Africa or with entities in illegally occupied Namibia by the denial of tax relief and the imposition of fines exceeding the amount of profits derived from those dealings (op. para. 13); and would request all States to report to the Secretary-General by the thirty-seventh session of the General Assembly on the measures taken by them to implement the resolution.

150. In introducing the draft resolution, the representative of Algeria said that it proposed a number of concrete measures whereby collective action against South Africa's defiance could be organized by the international community, faced in particular with South Africa's intransigence and its obstinate rejection of all United Nations appeals.⁹⁸

151. Numerous delegations, however, objected to the draft resolution. Their objections fell into three general categories: (i) the belief that isolating a State Member of the Organization would be counterproductive to the attempt by

⁹⁷A/36/L.24 and Add.1.

⁹⁸G A (36), Plen., 93rd mtg., paras. 163 and 164.

the Organization to seek the cooperation of that member;⁹⁹ (ii) the consideration that the enactment of mandatory sanctions was the exclusive preserve of the Security Council, not the General Assembly;¹⁰⁰ (iii) the consideration that the sanctions and restrictions proposed conflicted with the laws, constitutions and other obligations of Member States.¹⁰¹

152. A representative example of each argument is cited, as follows. In expressing the first argument, the representative of Portugal said that the isolation of South Africa would make it impossible for a dialogue to take place on which a peaceful solution to the problem of Namibia could be based.¹⁰² In expressing the second argument, the representative of Argentina said that the Charter of the United Nations had restricted competence in the application of comprehensive mandatory sanctions to the Security Council. Accordingly, appeals or requests for sanctions against a Member State except through the machinery strictly provided for in the Charter were unacceptable. Also unacceptable were the provisions in the draft whereby a control procedure was envisaged within the United Nations for the implementation of sanctions, since that implied, de facto and de jure, their imposition without regard for the relevant specific provisions of the Charter.¹⁰³ Finally, in expressing the third argument, the representative of Costa Rica said that his country could not participate in a vote on resolutions which implied, as did the draft under consideration, the obligation to impose on its own citizens sanctions and restrictions which his country's constitutional system and the covenants on human rights forbade.¹⁰⁴

153. In response to argument (i), the representative of Haiti said that South Africa had remained deaf to dialogue and felt that it could tighten its grip on Namibia and confront the world with a fait accompli by transferring power to illegitimate puppet groups. To avoid this, and the extreme measures it might cause the parties concerned to take, South Africa must be completely isolated, and certain Western countries that were in a position to induce it to temper its defiance must no longer encourage it in any way.¹⁰⁵

154. In response to argument (ii), the representative of the German Democratic Republic said that the implementation of the demands embodied in the draft were a prerequisite to the implementation of the Namibian people's right to self-determination and independence, as those demands were in line with the relevant decisions of the General Assembly and the Security Council.¹⁰⁶

⁹⁹Ibid., Spain, paras. 202 and 203; Portugal, para. 215; New Zealand, para. 256; Samoa, para. 276; Saint Lucia, para. 292; 94th mtg., Iceland, para. 18.

¹⁰⁰Ibid., 93rd mtg., Australia, para. 221; Ireland, para. 265; 94th mtg., Chile, para. 11; Iceland, para. 21; Argentina, para. 39. (See also *Repertory, Supplement No. 5*, vol. IV, under Article 81, paras. 166-172.)

¹⁰¹Ibid., 93rd mtg., Samoa, para. 276; 94th mtg., Costa Rica, paras. 69-72.

¹⁰²Ibid., para. 215.

¹⁰³Ibid., 94th mtg., para. 39.

¹⁰⁴Ibid., para. 70.

¹⁰⁵Ibid., 93rd mtg., paras. 237 and 238.

¹⁰⁶Ibid., 94th mtg., para. 53.

Decision

155. The draft resolution was adopted by 118 votes to none, with 29 abstentions, as General Assembly resolution 36/121 B of 10 December 1981.

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

156. As described in the previous *Supplement*,¹⁰⁷ the General Assembly had endorsed the "armed struggle" of the Namibian people in their quest for independence and national unity, though, as previously, there were significant reservations expressed with regard to the provision.

157. During the current period under review, the General Assembly consistently reaffirmed its "full support for the armed struggle of the Namibian people under the leadership of the South West Africa People's Organization", as well as "the legitimacy of their struggle by all means at their disposal, including armed struggle, against the illegal occupation of their Territory by South Africa", and supported 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 its resolutions 34/92 G, 35/227 A, 36/121 A, ES-8/2, 37/223 A, 38/36 A and 39/50 A. Reservations regarding the General Assembly's endorsement of the use of armed force continued to be expressed, as described in the previous *Repertory*.¹⁰⁸

158. At the thirty-seventh session, in its resolution 37/233 A of 20 December 1982, the General Assembly declared that South Africa's illegal occupation of Namibia constituted an act of aggression against the Namibian people in terms of the Definition of Aggression contained in General Assembly resolution 3314 (XXIX).¹⁰⁹ The Assembly reiterated this provision in its resolutions 38/36 A and 39/50 A as well as in the Paris Declaration on Namibia, adopted by 138 States, four liberation movements, and 59 NGOs at the International Conference in Support of the Struggle of the Namibian People for Independence, held in Paris from 25 to 29 April 1983.¹¹⁰

2. SOUTH AFRICAN LAWS AND PRACTICES AFFECTING THE TERRITORY

159. As already reported,¹¹¹ in its resolution 2288 (XXII) of 7 December 1967, the General Assembly had mandated the Council for Namibia to take "urgent and effective measures to put an end to laws and practices established in the Territory" of Namibia by the Government of South

¹⁰⁷*Repertory, Supplement No. 5*, vol. IV, under Article 81, paras. 175-183.

¹⁰⁸Ibid., paras. 175-180.

¹⁰⁹See *ibid.*, under Article 73, paras. 199-204, on the question of the legitimacy of the struggle for self-determination and the Definition of Aggression.

¹¹⁰G A (38), Suppl. No. 24, paras. 75-135.

¹¹¹*Repertory, Supplement No. 4*, vol. II, under Article 81, para. 165.

Africa which were contrary to the purposes and principles of the Charter of the United Nations.

160. During the current period under review, the Government of South Africa continued to enact and apply laws in Namibia. The Council for Namibia continued to bring to the attention of the General Assembly those laws and practices, and to make recommendations for their termination.

161. In 1979, the Council for Namibia reported¹¹² the proclamation by the South African Government of the Identification of Persons Act (Act No. 2) of 1979, which provided for the issuance of an identity document to individuals to indicate membership in a particular population group.

162. In April 1980, South Africa also enacted¹¹³ Proclamation No. AG.34 in Namibia. The proclamation, inter alia, restricted the driving of any vehicle in the security district of Raskoland without the consent of the officer commanding the South African Defence Force in that area, and the carrying out there of ordinary commercial business activity between the period from "one half hour after sunset on any day until one half hour before sunrise on the next day".

163. Furthermore, it was reported¹¹⁴ that in the same year, Proclamation No. AG.8 had been proclaimed in Namibia, whereby, inter alia, Namibian society was divided into 12 mutually exclusive groups on the basis of racial origin. It prohibited voting across ethnic or population group boundaries and created new categories of offences, such as threatening, obstructing or insulting the ethnic structures.

Decision

164. In its resolution 37/233 A of 20 December 1982,¹¹⁵ the General Assembly denounced all fraudulent constitutional and political schemes through which the illegal racist regime of South Africa might attempt to perpetuate its colonial domination in Namibia and, in particular, called upon the international community, especially all Member States, to continue to refrain from according any recognition or extending any cooperation to any regime which the illegal South African administration might impose upon the Namibian people in disregard of Security Council resolutions 385 (1976), 435 (1978) and 439 (1978) and of other relevant resolutions of the General Assembly and the Council.

¹¹²G A (35), Suppl. No. 24, vol. I, paras. 399-401.

¹¹³Ibid., paras. 397-398.

¹¹⁴Ibid., paras. 568-569.

¹¹⁵See also para. 158 above.

165. In the same resolution, the General Assembly declared that all so-called laws and proclamations issued by the illegal occupation regime in Namibia were illegal, null and void. The provisions of resolution 37/233 A were reiterated in resolutions 38/36 A of 2 December 1983 and 39/50 A of 12 December 1984.

3. ILLEGAL ARRESTS AND TRIALS OF NAMIBIANS BY SOUTH AFRICA

166. There was no change in South Africa's practice concerning what the United Nations deemed to be illegal arrests and trials in Namibia. The Terrorism Act, which had been promulgated in Namibia in 1967,¹¹⁶ continued to be strictly enforced against Namibians and resulted in illegal arrests, house arrests, detentions incommunicado for indefinite periods, deportations and trials.

167. During the period under review, the Council for Namibia continued to bring such arrests to the attention of the General Assembly and to make recommendations for their condemnation. The Council reported¹¹⁷ that in March 1982, some 200 people had been arrested for trespassing at the bachelors' quarters in Katutura, outside Windhoek, as they were not in possession of permits which officially allowed them to reside in those quarters.

168. The Council further reported that the South African army and police had conducted raids on workers' residences, allegedly to root out "illegal residents"; mass arrests, violent attacks on and killings of workers had also been carried out. It was stated that during police raids on Katutura, between June and August 1982, 447 "illegal residents" had been arrested.

Decision

169. By its resolution 34/92 G of 12 December 1979, the General Assembly demanded that South Africa immediately release all Namibian political prisoners, including all of those imprisoned or detained "in connection with 'offences' under the so-called internal security laws, martial law or any other arbitrary measures, whether such Namibians [had] been charged or tried or were being held without charge in Namibia or South Africa". The provisions of that resolution were reiterated in resolutions 35/442 A of 16 December 1980, 36/121 A of 10 December 1981, 37/233 A of 20 December 1982, 38/36 A of 2 December 1983 and 39/50 A of 12 December 1984.

¹¹⁶Repertory, Supplement No. 5, vol. IV, under Article 81, paras. 196-198.

¹¹⁷G A (38), Suppl. No. 24, paras. 637 and 645.