

In 1977, it was reported that 18,000 Hereros, members of the Association for the Preservation of the Tjamuha-Maherero Royal House, opposed to Chief Kapuuo's leadership, had pledged their support to SWAPO 61/.

The curbing of African nationalist activities in Namibia exemplified by the 1963 ban on public meetings and the extension of South Africa's repressive legislation to the Territory (see Section H above) made it apparent that the struggle for the liberation of Namibia would have to be carried out not solely by political means. SWAPO thus initiated a military training programme which culminated in the first reported armed clash with South African military forces in August 1966. Since then, the external wing of SWAPO and its military arm, the People's Liberation Army of Namibia (PLAN), have continued to expand their military activities.

Starting in the spring of 1975, SWAPO intensified its guerrilla campaign against the South African occupation forces through a series of attacks in East Caprivi, Kavangoland and Ovamboland and through increased military activities in the northern part of the Police Zone. The achievement of independence by Angola despite South Africa's military intervention has given added impetus to the liberation struggle, and has led to a South African military build-up in the Territory exemplified by the expansion of its military air base in Grootfontein into one of the largest of its kind in Africa at an estimated cost of R. 38 m. and by the building of a major air base at Mpacha in the Caprivi Strip. South Africa has also encouraged the creation since 1975 of homeland armies in Ovamboland and Kavangoland and has begun to train "volunteers" from other "ethnic" groups 62/. The seriousness with which South Africa now views the situation is also shown by a number of tough security measures together with the imposition of censorship on news reports of troop movements in the so-called operational zone on the northern border of the Territory.

In May 1976, the South African Minister of Defense, Mr. P. W. Botha, announced that the call-up instituted in connexion with the intervention in Angola would continue for an indefinite period. In November 1976, Mr. Botha appealed for volunteers to join the army in preparation of what he called the contingency of mobilization. According to reliable sources, the total strength of the South African Defence Force had been expanded in the course of 1976 to 225,000 men 63/ of whom only 2 per cent were non-white. In addition, the South African Minister of Finance in presenting its budget for 1977/1978 announced a 21 per cent increase in defence expenditure to a total of R. 1,654 million. It should be noted that the amount earmarked in the 1976 budget represented in turn a doubling of the figure for 1974/1975.

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61/ Foreign Report, 20 April 1977.

62/ Official Records of the General Assembly, Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1), chap. IX, annex, para. 123 and A/AC.109/L.1164.

63/ The Military Balance, 1976-1977 (London, The International Institute for Strategic Studies, 1976). The Defence Force was divided as follows: Permanent Force, 16,100; conscripts, 35,400; and reserves, 173,500.

Early in 1974, 10 SWAPO leaders were arrested under article 6 of the Terrorism Act, which allows for indefinite detention without trial. Two of them, Ezriel Taapopi and Josef Kashea, Acting Chairman and Acting Secretary respectively of the SWAPO Youth League, were tried in July 1974 and sentenced to five years' imprisonment (of which three were conditionally suspended) on charges of incitement to violence.

In March 1974, the Chairman of the SWAPO Youth League was tried under the Sabotage Act of 1962 and convicted on charges of having spoken of "bloodshed" and advocating violence at a SWAPO rally. He was sentenced to six years' imprisonment.

In May 1976, two members of SWAPO were sentenced to death and two women members were jailed for seven and five years respectively after being found guilty by the Supreme Court sitting in Swakopmund on charges under article 6 of the Terrorism Act. One of the men sentenced to death, Hendrik Shikongo, was found guilty of being involved in the assassination in August 1975 of Chief Filemon Elifas, Chief Minister of Ovamboland, by knowingly providing transportation to the assassins, none of whom had yet been arrested. The other man, Aaron Mushimba, was found guilty of buying a Land Rover and handing it over to another person to be used in an attack on a South African army patrol. The two women were convicted of donating money to people whose intention was to overthrow the State by force. The trial was turned by the prosecution into a political indictment of SWAPO, while the judge, in passing sentence, drew attention to 59 acts of "terrorism" which, according to the security police, had been carried out by SWAPO in Namibia in the previous 10 months. On appeal, the Appellate Division of South Africa's Supreme Court set the sentences aside on the ground that a police informer in the State-appointed defence lawyers' office had leaked information about the case to the security police.

The International Commission of Jurists described the trial as an "oppressive and highly unsatisfactory, judicial process". Both the trial and the original sentences drew strong condemnation from the international community, including the United Nations Council for Namibia 68/ and the OAU, both of which pointed out the illegality of the trial and demanded the immediate and unconditional release of the accused.

In May 1977 a Namibian nationalist, Filemon Nangolo, who had been paralysed from his waist down after being shot by the South African police during his arrest, was taken to the gallows in a wheelchair after being convicted as an accomplice in the killings of four whites during a raid in Northern Namibia. The execution took place despite appeals by the five Western members of the Security Council which were engaged in negotiations with South Africa regarding Namibia's constitutional future. The

hanging was condemned by SWAPO which, while not endorsing Mr. Nangolo's actions, called the execution murder given South Africa's illegal occupation of Namibia. An equally rigorous condemnation was issued by the United Nations Council for Namibia 69/.

No accurate information is available concerning the total number of Namibians who have been detained without trial. A report of the United Nations Council for Namibia 70/ indicated that hundreds had been detained at one time or another since the passing of the Terrorism Act. It is also known that a total of 303 people were detained in Ovamboland under Regulation R.17 alone during 1972, while another 200 were detained in late 1975 following the assassination of Chief Elifas, the Chief Minister of Ovamboland. 71/

As to the number of convicted political prisoners, a total of 44 Namibians were reported to be serving sentences for political offences at the end of 1976. 72/ Sixteen had been sentenced to life imprisonment. 73/ With two exceptions, all Namibian political prisoners are imprisoned in South Africa.

#### K. OTHER ACTS OF REPRESSION

Mass arrests have become increasingly commonplace in Namibia. In January 1974, for instance, the police raided the black township of Katutura and arrested 141 men and 45 women. A few days earlier the police, equipped with automatic weapons and accompanied by tracker dogs, arrested 127 Africans who were on their way from Windhoek to Rehoboth to attend a political meeting. In July, the police raided Windhoek's Ovambo hostel and arrested 119 Africans, 111 of whom were charged with being in Katutura without the proper papers. It should be recalled that thousands of people are arrested in Namibia every year for violation of the pass laws (see page 11 above).

Following the assassination of the Chief Minister of Ovamboland in August 1975, more than 200 members of SWAPO and the Namibia National Council (NNC) were arrested in Ovamboland, prompting a protest by Bishop Lukas de Unis, head of the Evangelical Lutheran Church, who accused the tribal police and the South African Army and police of acts of terror in the homeland.

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69/ A/AC.131/L.45

70/ Official Records of the General Assembly, Thirty-first Session, Supplement No. 24 (A/31/24), vol. I, para. 308.

71/ Amnesty International, Briefing on Namibia, April 1977.

72/ Ibid.

73/ It should be noted that no remission of sentence is granted to political prisoners.

In June 1976, in the course of a major security sweep in northern Namibia, known as "Operation Cobra", a total of 1,000 men were arrested by one South African battalion. According to the testimony of a member of the battalion before the United Nations Council for Namibia 74/, all the arrested men, including some boys aged 13 years, were beaten, tortured and interrogated and then taken to Ondangwa, in north-western Ovamboland. Some 40 men were subsequently held in detention under the Terrorism Act.

According to Amnesty International, 75/ the use of torture has become institutionalized in Namibia. It is employed almost on a routine basis by security police during the interrogation of political detainees, both to extract "confession" statements and to elicit information relating to political activities. Similarly, the South African forces operating in northern Namibia reportedly use torture on an extensive scale in order to gather information about the movement of nationalist guerrillas and generally to intimidate the local civilian population. The methods of torture include sleep deprivation, the application of electric shocks, severe beatings on the body with fists and sticks and burning with cigarettes. Torture victims are also hanged by the wrists and ankles for long periods, are immersed head first in barrels of water until unconscious and are subject to blindfolding, manacling and assassination threats.

In May 1977, a statement signed by Anglican, Lutheran and Roman Catholic church leaders of the territory charged that torture in the form of beatings, electric shock, deprivation of sleep, solitary confinement and burnings with cigarettes had become the "standard practice" in the interrogation of detainees in Namibia 76/.

After the proclamation of Ovamboland as a self-governing nation in May 1973, the new homeland authorities introduced a policy of systematic public flogging of suspected political opponents, including women and church leaders, in an effort to clamp down on all forms of opposition particularly from SWAPO. As a result of the international outcry provoked by such methods, the Ovambo Government agreed to suspend flogging of women and discontinued flogging in public.

In June 1975, the Windhoek municipal authorities passed an ordinance confining African and Coloured political activities to their respective townships.

In the same month, Bishop Richard J. Wood of Damaraland, the highest Anglican authority in Namibia, was served with a deportation order and expelled from Namibia. No official reason was given for the order, but Bishop Wood had shown strong sympathy for African rights and for an end to South Africa's illegal occupation of the Territory. Bishop Wood was the third Anglican bishop to be expelled from Namibia in seven years, his predecessor, Bishop Colin Winter, having been deported in 1972 and Bishop Robert Mize having been expelled in 1968.

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74/ A/AC.131/SR.237.

75/ Briefings on Namibia, April 1977.

76/ The Guardian, 28 May 1977.

In the same week, an expulsion order was also served on another churchman, Mr. Rolfe Friede, Director of the Christian Centre in Windhoek, an institution which provides social and legal assistance to Africans.

The expulsions prompted strong protests by the Archbishop of Canterbury, the South African Council of Churches and the General Secretary of the Lutheran World Federation.

#### L. TURNHALLE CONSTITUTIONAL CONFERENCE AT WINDHOEK

Confronted with increased international pressure and faced with further isolation as a result of the decolonization of Angola and Mozambique, the South African Government sought to buy time and to deflate international criticism by organizing a constitutional conference to decide the future status of Namibia. It should be noted at the outset that, given the illegality of South Africa's presence in the Territory, the Pretoria Government had no legal standing to organize any type of conference to discuss the future of a Territory over which it had long ceased to have a valid title.

The conference opened in Windhoek on 1 September 1975 and concluded its work on 19 March 1977. The meetings were held in the Turnhalle, a former German gymnasium.

The conference was composed of tribal representatives of Namibia's eight black groups, plus representatives of the white, Coloured and Baster populations, a total of 136 participants. It was decided at the outset by the Territory's all-white legislative Assembly to bar non-white political parties from participation in the talks. As a result, the Ovambos, Kavangos, East Caprivians and Rehoboth Basters were represented by their homeland governments, the unrepresentative character of which has already been noted (see pages 7 - 8 above). The Herero delegation consisted of some 40 headmen under hereditary Chief Clemens Kapuuo 77/, none of whom had been through an electoral process, while the members of the Damara delegation belonged to a splinter faction which was formed only after the Damara Tribal Executive Committee and the Damara Advisory Council, the traditional leaders of the group, had refused to participate in the conference. The Bushmen and other groups were appointed representatives by the South African Government. The conference agreed at the start to adopt its decisions by consensus, thus giving a veto power to each ethnic group and particularly to the white delegation, composed of the leaders of the National Party of South West Africa, which effectively succeeded in manipulating the conference.

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77/ Chief Kapuuo's right to the chieftaincy is challenged by a substantial segment of the Herero people who have formed the Association for the Preservation of the Tjamuha-Maherero Royal House.

The conference was condemned from the outset by SWAPO as yet another device by the South African Government to entrench the "bantustanization" of the Territory, as well as by SWANU, the Damara Tribal Executive Committee, the Nama People's Democratic Organization (NAPDO) and the Rehoboth Volkspartei. The United Nations General Assembly, 78/ as well as the United Nations Council for Namibia, the Special Committee on Decolonization and the OAU, condemned the talks as illegal and unrepresentative.

In September 1975, the conference issued a "declaration of intent" expressing the aims of the conference 79/. Subsequently, on 18 August 1976, the constitutional committee of the conference reaffirmed the declaration of intent and issued a statement 80/, outlining the more important points on which agreement had been reached. According to the statement, an interim Government would take over from the existing territorial authorities as soon as a constitutional foundation and other pending problems with South Africa, such as the status of Walvis Bay and security, had been agreed upon. The interim government would handle the transfer of government functions and establish a permanent government according to a constitution which would be "finalized" during the interim period. The announcement, timed to coincide with the deadline set by the Security Council in January 1976 (see annex VII below), added that the constitutional committee had agreed that 31 December 1978 could be set "with reasonable certainty" for the Territory's independence. The statement made no reference to elections.

At the conclusion of its work in March 1977, the conference submitted a petition requesting the South African Government to establish an interim government for the Territory and to approve an interim constitution which, according to Mr. A. H. du Plessis, the leader of the National Party of South West Africa, would become, "with only minor changes", the permanent constitution of an independent Namibia. Although the draft available lacked legal precision and contained many ambiguities, it left little doubt that, under the proposed constitution, Namibia would become a confederation of so-called self-governing homelands based on the 11 ethnic groups into which the Territory has been artificially divided by the illegal occupation régime. A three-tier system of government was envisaged consisting of a central authority, "representative" or second-tier authorities based on the existing ethnic authorities, and the local authorities.

The central executive was to consist of a President and a Ministers' Council consisting of a chief minister - or Prime Minister - and one minister for each of the 11 population groups into which Namibia is divided, except for the Ovambos who would have had 2. Decisions of the Council were to be adopted by consensus. The central legislature, to be known as the National Assembly, was to consist of 60 members designated by the 11 ethnic groups. Ordinarily decisions of the National

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78/ General Assembly resolutions 3399 (XXX) of 26 November 1975 and 31/146 of 20 December 1976.

79/ S/11948, pp. 11-12.

80/ S/12180, annex.

Assembly were to be taken by consensus of the 11 delegations 81/.

Neither the draft constitution nor any separate decision by the conference referred to any form of Territory-wide popular consultation. Instead the leaders of each ethnic delegation were to decide themselves whether and how to consult their people. The only group to announce plans for a referendum were the whites while the leaders of the so-called self-governing homelands - Ovamboland, Kavangoland and East Caprivi - apparently decided that no referendum would be necessary. By the time the white referendum was held on 18 May 1977 it had been rendered rather meaningless by the apparent South African decision to discard or at least to postpone implementation of the Turnhalle proposals following Western pressures to that effect. Nevertheless about 95 per cent of the white voters in a 62% turnout casted their vote in support of the proposals 82/. It might be noted that the 52,000 whites eligible to vote included those registered in Walvis Bay in spite of South Africa's claim that the enclave belongs to South Africa and of legislation pending at that time to have it reattached to the Cape.

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81/ For a more detailed analysis of the draft Turnhalle Constitution see the background paper on Namibia prepared for the Maputo International Conference in Support of the Peoples of Zimbabwe and Namibia (CRP/MAP/2, paragraphs 95-123).

82/ Both the ruling National Party and the opposition Federal Party campaigned for a "yes" vote with only the extreme right-wing Herstigte Nasionale Party calling for a negative vote.

M. DIPLOMATIC UNDERTAKINGS BY THE WESTERN POWERS

The Turnhalle constitutional proposals met with the outright opposition from the world community in general and from the African states in particular which saw in them an attempt by South Africa to set up a pseudo-independent Namibia based on the homelands principle. In the Declaration adopted in Maputo in May 1977 by the International Conference in Support of the Peoples of Zimbabwe and Namibia 83/, the participating States after condemning the Turnhalle proposals as an attempt to mislead world public opinion, called for non-recognition of any group which might be installed as a consequence of such proposals.

At the same time the five Western members of the Security Council - the three permanent members, France, the United Kingdom and the United States, together with the two non-permanent ones for 1977, Canada and the Federal Republic of Germany - undertook a concerted effort to contact South Africa to find a solution acceptable to all the parties involved. After informing the South African Government early in April that the Turnhalle constitutional proposals could not serve as a basis for a peaceful settlement of the problem, the five Western Ambassadors in Pretoria suggested that discussions be held to seek a solution consistent with Security Council resolution 385 (1976) 84/: That resolution, adopted unanimously in January 1976, "inter alia" called for the release of all Namibia political prisoners, the abolition of all racially discriminatory and politically repressive laws and practices, the return of all Namibian exiles, the withdrawal of South Africa's illegal administration in Namibia and the holding of free elections under United Nations "supervision and control".

Starting late April 1977 discussions took place between the "Western Contact Group" and the South African Government and subsequently between the five Powers and SWAPO. In May, the five Western representatives paid a brief visit to Windhoek for consultations with the Turnhalle Conference delegates as well as with other political, church and business leaders of the Territory.

Though the outcome of the discussions has not been officially divulged pending their completion, press reports 85/ indicate that the conversations between the Western Contact Group and the South African Government have centered on the following issues:

1. The setting aside of the Turnhalle formula and the holding of territory-wide elections for a constituent assembly which would draft the constitution for an independent Namibia. South Africa has reportedly agreed to elections on the basis of universal adult suffrage with the participation of all political groups including SWAPO.

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83/ See "Decolonization" No.8, July 1977.

84/ For the full text of the resolution see Annex VII below.

85/ See in this connection: "The New York Post" of 16 June 1977; The Guardian of 21 June 1977 and 13 and 17 August 1977; The Times of 2 July 1977; Africa Confidential of 22 July 1977 and of 19 August 1977; The Washington Post of 26 August 1977; The Financial Times of 31 August 1977; and Le Monde of 2 September 1977



2. The administration of the Territory in the transitional period. In June South Africa announced that it would appoint an Administrator-General to govern the Territory until independence. It was also reported that the United Nations Secretary-General would appoint a Special Representative. The responsibilities of these two officials and their relationship to each other have not been clarified.
3. The United Nations role in the constituent elections. This is still under discussion but it is reported that South Africa would accept a United Nations presence in the Territory both before and during the electoral process.
4. The return of all Namibian exiles and refugees and the release of Namibian detainees and political prisoners. South Africa has reportedly agreed, in principle, to the return of exiles but on the other hand claims to have no political prisoners in its gaols. As a result it has been suggested that disputes as to the status of Namibian exiles and prisoners would be decided by a commission of jurists composed of four members: two South Africans and two others appointed by the Secretary-General. The Commission would be presided over by one of the two non-South African jurists who would have a chairman's casting vote.
5. The withdrawal of South African troops from the Territory. This apparently remains the main stumbling point with South Africa reportedly refusing to agree to their withdrawal before the elections.

In the conversations held up to the end of September between the Western Contact Group and the leadership of SWAPO, SWAPO has reportedly taken the following position 86/:

1. It would agree to the principle of free elections but would insist that they be held under the "supervision and control" of the United Nations in accordance with numerous Security Council and General Assembly resolutions.
2. It has expressed doubts concerning the concept of an Administrator-General appointed by South Africa as legitimising South Africa's illegal presence in the Territory.
3. The return of the exiles and the release of Namibian political prisoners should be unconditional. Provision should also be made to allow the returnees sufficient time to establish themselves in the Territory prior to the elections.
4. The South African armed forces should totally withdraw prior to the elections and should be replaced by a United Nations force to maintain law and order during the elections. SWAPO considers that the Namibian people will not have freedom to decide their own future as long as South African troops remain in the Territory.

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86/ See The Times 2 July 1977; Africa Confidential 22 July 1977; The Guardian 13 and 17 August 1977.

#### N. RECENT DEVELOPMENTS

Early in July while discussions were in process between the Western Contact Group and South Africa, South Africa announced the appointment of Mr. Justice Marthinus Steyn, a Supreme Court judge from the Orange Free State, as Administrator-General of Namibia. The Administrator-General has been given full executive and legislative powers over the entire Territory and is taking over the functions previously exercised by the Administrator for South West Africa and by the Commissioner-General for the Indigenous Peoples of South West Africa. Mr. Steyn took office on 1 September 1977 before SWAPO or the United Nations had expressed their agreement to the formulae being worked out by the Western Powers. Mr. Steyn's appointment has been strongly denounced by SWAPO.

On 31 August 1977, South Africa issued a proclamation detaching Walvis Bay <sup>87/</sup> from Namibia and placing it under the administration of South Africa's Cape Province. The move was strongly condemned by the United Nations Council for Namibia and by SWAPO as an attempt to destroy the territorial integrity of Namibia and was also criticized by the Secretary-General of the United Nations and by the United States Government. Walvis Bay is important because with eight deepwater berths, it is not only Namibia's sole deep water harbour but the only port of any significance between Cape Town and Lobito in Angola. It is also the centre of Namibia's fishing industry and the terminus of Namibia's main railway line. As Le Monde noted in a dispatch: "To withdraw the enclave from the future independent state means to condemn it to continued dependence on South Africa for several dozens of years" <sup>88/</sup>. Mr. Vorster, the South African Prime Minister, has repeatedly stated South Africa's intention to retain control of Walvis Bay, where South Africa maintains a naval base, after Namibia becomes independent <sup>89/</sup>. He has also threatened to break off discussions with the Western Contact Group if the Security Council should dispute South Africa's ownership of Walvis Bay.

South Africa has also continued its policy of consolidating the bantustan structure of the Territory. Thus homeland elections have been set for the Rehoboth Gebiet despite strong opposition from the Baster population followed by the announcement that a Damara "Representative authority" was to be appointed by the totally unrepresentative Damara delegation to the Turnhalle. This step towards the establishment of a Damara homeland provoked hostile demonstrations amongst the Damaras who had long been amongst the most hostile groups to the bantustanization of Namibia <sup>90/</sup>. South Africa is also extending its military training programme to all the 11 ethnic groups in the Territory presumably with the intention of setting up separate homeland "armies" such as already exist in Ovamboland and Kavangoland.

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<sup>87/</sup> The enclave of Walvis Bay (1124 square kilometres) was annexed by Great Britain in 1878 and administered jointly with its Cape Colony until the establishment of the Union of South Africa in 1910 when it was included in the Union. Though not part of the original Mandate it had been administered as part of South West Africa since 1922.

<sup>88/</sup> Le Monde, 9 September 1977.

<sup>89/</sup> See for instance his statement to Parliament in Cape Town on 14 June 1977.

<sup>90/</sup> See page 8 above.

The SWAPO Central Committee held its annual meeting in Lubango, Southern Angola from 21 to 24 September 1977. In a declaration published at the conclusion of its deliberations 91/ the Central Committee resolved "inter alia" that the situation in Namibia had not changed for the better, pointing out that the balkanization of the country continued unabated and that South Africa's repressive machinery remained intact; denounced South Africa's violations of Namibia's territorial integrity in regard to Walvis Bay and the use of the Kalahari desert in Namibia as a testing ground for nuclear devices; rejected South Africa's manoeuvres "aimed at holding bogus elections under the armed forces with a view to installing a puppet, neo-colonial Turnhalle régime"; reaffirmed that a negotiated settlement regarding Namibia's independence could only be negotiated on the basis of complete withdrawal of South African armed forces from Namibia and stressed SWAPO's resolution to continue with and intensify the armed liberation struggle as the most effective means of compelling South Africa to end its illegal occupation of Namibia.

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91/. For the full text of the Declaration, see Appendix II.

II. HISTORY OF THE RELATIONS BETWEEN THE UNITED NATIONS AND SOUTH AFRICA CONCERNING NAMIBIA

A. DEVELOPMENTS PRIOR TO THE TERMINATION OF THE MANDATE, 1946-1966

From its inception, the United Nations has been confronted with South Africa's obstinate refusal to abide by its obligations under the Mandate, its refusal to bring South West Africa into the Trusteeship System and its determination to annex the Territory de jure or de facto.

As early as 1946, the General Assembly rejected South Africa's proposal to incorporate South West Africa into the Union and recommended that the Territory be placed under the international Trusteeship System. 92/ This recommendation was renewed in 1947 and in successive years. 93/

In 1949, South Africa, now under National Party rule, informed the United Nations that it would no longer transmit information on its administration of the Territory on the grounds, inter alia, that the Mandate had lapsed with the demise of the League.

The International Court of Justice in an advisory opinion handed down in 1950 in response to a request of the General Assembly 94/ found that South West Africa was still a Territory under international mandate, that South Africa continued to have international obligations under the League of Nations Covenant and Mandate, including the obligation to submit reports on, and transmit petitions from, the Territory. The Court further declared that the supervisory functions of the League were to be exercised by the United Nations, that the General Assembly was the organ legally qualified to exercise those functions previously entrusted to the Council of the League and that South Africa was bound to submit to the supervision and control of the Assembly. 95/

South Africa refused to accept the Court's opinion and continued to oppose any form of United Nations supervision over the Territory's affairs.

There followed a 15-year period in which the General Assembly, through its committees and by other means sought by negotiations to reach agreement with South Africa on the implementation of the 1950 advisory opinion.

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92/ Resolution 65 (I) of 14 December 1946.

93/ Resolutions 141 (II), 227 (III), 337 (IV), 449 B (V), 570 B (VI), 749 B (VIII), 852 (IX), 940 (X), 1055 (XI), 1141 (XII), 1246 (XIII) and 1360 (XIV), dating from 1947 to 1959.

94/ Resolution 338 (IV) of 6 December 1949.

95/ The 1950 advisory opinion was the subject of further interpretation by the Court in two subsequent opinions delivered in 1955 and 1956.

From 1951 to 1953, an ad hoc committee of the General Assembly met with representatives of South Africa without reaching an agreement. The Ad Hoc Committee reported that the main points of difference were: (a) a "fundamental" disagreement on how supervision of South Africa's administration of the Territory should be carried out; and (b) failure to agree on who should be the "second party" with whom South Africa would conclude a new instrument for the administration of the Territory. (South Africa proposed to conclude the agreement not with the United Nations but with the United Kingdom, France and the United States as the three remaining members of the Principal Allied and Associated Powers at the Versailles Conference.)

Following the failure of the Ad Hoc Committee, the General Assembly established 96/ in 1953 a Committee on South West Africa to assist in carrying out the supervisory responsibilities formerly exercised by the League, and to report to the General Assembly on conditions in the Territory. South Africa refused to co-operate with the Committee or to continue negotiations with it.

In 1956, the General Assembly requested 97/ the Secretary-General to explore ways and means of solving the question, and to take whatever steps he deemed necessary with a view to finding a satisfactory solution in line with the principles of the Charter of the United Nations and the 1950 advisory opinion of the Court. No positive results were accomplished, however.

In 1957, the General Assembly made a further attempt to reach a solution through negotiation; it established 98/ a Good Offices Committee, composed of the United Kingdom and the United States and a third member, Brazil, selected by the President of the General Assembly, "to discuss with the Government of the Union of South Africa a basis for an agreement which would continue to accord to the Territory of South West Africa an international status", and to report to the General Assembly.

The Good Offices Committee, under the chairmanship of Sir Charles Arden-Clarke, met with representatives of the South African Government at Pretoria in 1958. In its report to the General Assembly, the Committee stated that its own proposals, involving United Nations supervision over the whole Territory either under a modified mandate system or under the Trusteeship System, were unacceptable to South Africa.

The Committee reported, however, that if the General Assembly were willing to consider a solution based on the partition of the Territory, with the northern portion which contained a majority of the native population to be placed under Trusteeship and the balance of the Territory to be annexed to South Africa, the

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96/ Resolution 749 (VIII) of 28 November 1953.

97/ Resolution 1059 (XI) of 26 February 1957.

98/ Resolution 1143 (XII) of 25 October 1957.

latter would be willing to investigate the practicability of such a scheme and, if it proved practicable, would submit proposals to the United Nations for partitioning the Territory. The Committee expressed the hope that the General Assembly would encourage the South African Government to undertake such investigation.

The suggestions contained in the report of the Good Offices Committee, met with strong opposition from the majority of members in the General Assembly; the Assembly rejected the suggestions, but invited the Committee to renew discussions with South Africa to find a basis for an agreement which would continue to accord an international status to the mandated Territory "as a whole". 99/

In 1959, the Committee reported to the General Assembly that it had failed to find a basis for agreement under its terms of reference.

On 4 November 1960, Ethiopia and Liberia, both former members of the League of Nations, instituted contentious proceedings against South Africa in a case concerning the continued existence of the Mandate for South West Africa and the duties and performance of South Africa as mandatory Power, charging that South Africa had violated its obligations under the Mandate. In its judgement, delivered on 18 July 1966, 100/ the Court found that Ethiopia and Liberia could not be considered to have established any legal right or interest appertaining to them in the subject-matter of their claims and that it had accordingly decided to reject them. (The Court was divided equally on the matter, the decision being reached by the casting vote of the President.)

In the meantime, in October 1961, following hearings in Africa on the situation in the Territory, the Committee on South West Africa recommended to the General Assembly that, in the light of South Africa's refusal to modify her policies in the Territory, the administration of the Territory should be terminated and an immediate United Nations presence be instituted with a view to the ultimate independence of the Territory.

In May 1962, the Chairman and Vice-Chairman of the Special Committee for South West Africa which had replaced the Committee on South West Africa in 1961 by resolution 1702 (XVI) of the General Assembly, visited South Africa and South West Africa in response to an invitation of the South African Government. Reporting to the Committee on their discussions with representatives of the Government in Pretoria and their meetings with representative groups of the African, Coloured and European population in South West Africa, the Chairman and Vice-Chairman concluded that it was the overwhelming desire of the African population that the United Nations should assume direct administration of the Territory and take all preparatory steps to grant freedom to the indigenous population; they further concluded that there seemed to be no way of carrying out the tasks assigned to the Committee "short of the use of force or other compulsive measures within the purview of the Charter".

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99/ Resolution 1243 (XIII) of 30 October 1958.

100/ I.C.J. Reports, 1966.

In December 1962, the General Assembly 101/ decided to dissolve the Special Committee for South West Africa and assigned its functions, to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Assembly also requested the Secretary-General to appoint a United Nations Technical Assistance Resident Representative for South West Africa and to take all necessary steps to establish an effective United Nations presence in the Territory. In 1964, however, South Africa informed the Secretary-General that it had come to the conclusion that it would be neither necessary nor desirable to make use of any outside expert advice which might be offered by the United Nations.

During 1964, the South African Government endorsed in principle the recommendations made by the Odendaal Commission of Enquiry into South West African Affairs for the establishment of separate non-white homelands in the Territory on a tribal or ethnic basis, and a separate white area. The Special Committee viewed the situation with concern, and in 1964 called on South Africa to desist from implementing the Commission's recommendations, which it noted would result in the partition and disintegration of South West Africa and its absorption into South Africa. In 1965, the General Assembly declared 102/ that any attempt to partition the Territory or to take any unilateral action, directly or indirectly, preparatory thereto, constituted a violation of the Mandate for South West Africa and of the Declaration on the Granting of Independence to Colonial Countries and Peoples; it further considered that any attempt to annex a part or the whole of the Territory would constitute an act of aggression.

## B. DEVELOPMENTS FOLLOWING THE TERMINATION OF THE MANDATE, 1966-1977

### 1. Termination of the Mandate by the General Assembly

In 1966, following the negative results of the contentious proceedings instituted against South Africa by Ethiopia and Liberia in the International Court, and incensed by South Africa's decision to implement the recommendations of the Odendaal Commission, the General Assembly by an overwhelming vote 103/ decided by its resolution 2145 (XXI) to terminate South Africa's Mandate over South West Africa and to place the Territory under the direct responsibility of the United Nations in view of the fact that South Africa had failed to fulfil its obligations in respect of the administration of the Territory and to ensure the moral and material well-being of its indigenous inhabitants.

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101/ Resolution 1805 (XVII) of 14 December 1962.

102/ Resolution 2074 (XX) of 17 December 1965.

103/ The resolution was adopted by 114 votes to 2 (Portugal and South Africa) with 3 abstentions (France, Malawi and the United Kingdom). The full text of the resolution is reproduced in annex I below.

## 2. Establishment of the United Nations Council for Namibia

In 1967, the General Assembly, at its fifth special session, convened for the purpose of discussing the question of South West Africa, decided by its resolution 2248 (S-V), 103 bis/ to establish a United Nations Council for South West Africa to administer South West Africa until independence and to promulgate such laws, decrees and regulations as were necessary for the administration of the Territory until a legislative assembly was established on the basis of universal adult suffrage. The Assembly also decided that the Council should entrust such executive and administrative tasks as it deemed necessary to a United Nations Commissioner for Namibia who would be responsible to the Council and that the latter should be based in Namibia to contact the South Africa authorities in order to lay down procedures for the transfer of the administration of the Territory.

Later in 1967, the Council reported that it had been prevented from developing effectively its functions by the refusal of the South African Government to comply with the terms of the Assembly resolutions.

## 3. South West Africa renamed Namibia

By resolution 2372 (XXII) adopted in June 1968, the General Assembly proclaimed that, in accordance with the desire of the people of the Territory, South West Africa would henceforth be known as Namibia and the name of the Council for South West Africa would be changed accordingly. Furthermore, in view of South Africa's defiance, the resolution entrusted the Council to perform, as a matter of priority, the following functions: establishment of an emergency programme in co-ordination with the specialized agencies to render technical and financial assistance to Namibia; organization of a programme to develop a cadre of Namibian civil servants, and of technical and professional personnel; and finally, the issuing of travel and identity documents to Namibians to enable them to travel abroad.

## 4. Action by the Security Council

Early in 1969, the Security Council, in response to repeated requests from the General Assembly, adopted a resolution 104/ which recognized that the General Assembly had terminated South Africa's mandate over Namibia; considered that the action of South Africa, designed to destroy the national unity of Namibia through the establishment of "bantustans" was contrary to the Charter; called on the Government of South Africa to withdraw immediately its administration from the Territory; and decided that, in the event of the failure by South Africa to comply with the resolution, the Council would meet immediately to determine necessary steps or measures to be taken.

South Africa's response was to inform the Security Council that it did not recognize the legality of the Assembly's decision to terminate the Mandate and

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103 bis/    Reproduced in annex II below  
104/        Resolution 264 (1969) of 20 March 1969.



regarded as invalid all of the resolutions flowing therefrom, including the Security Council resolution.

The response of the Security Council has been to adopt a succession of resolutions each more severe but all falling short of enforcement action.

Thus, in August 1969, the Security Council 105/ specifically recognized the legitimacy of the struggle of the people of Namibia against the illegal presence of the South African authorities in the Territory; requested all States to increase their moral and material assistance to the people of Namibia in their struggle; and called on all States to refrain from all dealings with the Government of South Africa purporting to act on behalf of the Territory of Namibia.

In January 1970, the Security Council adopted a resolution 106/ reaffirming its previous resolutions on Namibia and explicitly declaring for the first time that "all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid".

In a resolution adopted a few months later, 107/ the Security Council called on all States to take a series of measures designed to end any trade or commercial dealings and investments by their nationals or companies of their nationality in Namibia.

5. 1971 advisory opinion of the International Court of Justice of 21 June 1971

In July 1970, the Security Council 108/ asked the International Court of Justice for an advisory opinion on the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970), adopted in January of that year.

In reply, 109/ the Court declared: (a) that the continued presence of South Africa was illegal and that therefore South Africa was under obligation to withdraw its administration from Namibia immediately; (b) that States Members of the United Nations were under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia and to refrain from any acts or dealings with the Government of South Africa implying recognition of the legality of such presence and administration; and (c) that it was incumbent on States not Members of the United Nations to co-operate in the action taken by the United Nations with regard to Namibia. (See also annex X below.)

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105/ Resolution 269 (1969) of 12 August 1969. See annex III below.

106/ Resolution 276 (1970) of 30 January 1970. See annex IV below.

107/ Resolution 283 (1970) of 29 July 1970. See annex V below.

108/ Resolution 284 (1970) of 29 July 1970.

109/ I.C.J. Reports, 1971, op. cit.

On 20 October 1971, the Security Council 110/ agreed with the Court's opinion, declared that any further refusal by South Africa to withdraw from Namibia could create conditions detrimental to the maintenance of peace and security in the region and called on States to take a series of measures designed to put an end to, or to avoid any recognition of, South Africa's control of the Territory.

6. Contacts between the Secretary-General and the Government of South Africa

At its special session in Addis Ababa in February 1972, the Security Council invited the Secretary-General, in consultation with a group of members of the Security Council composed of representatives of Argentina, Somalia and Yugoslavia, to establish contact as soon as possible "with all interested parties" with a view to establishing the necessary conditions to enable the Namibian people to exercise their right to self-determination and independence in accordance with the Charter. 111/ At the same time, the Council reiterated in a second resolution that the defiant attitude of South Africa undermined the authority of the United Nations; considered that the continued occupation of Namibia by the Government of South Africa created conditions detrimental to the maintenance of peace and security in the region; and called on South Africa to withdraw immediately from the Territory. 112/

In pursuance of the Security Council's mandate, the Secretary-General visited South Africa and Namibia from 6 to 10 March 1972 for talks with the Prime Minister and Minister of Foreign Affairs of South Africa. Further discussions between the South African Government and the Secretary-General, or his special representative Mr. Albert Escher, took place in the course of 1972 and in the early part of 1973, the Security Council having twice extended the Secretary-General's mandate in August and December 1972. 113/ In his report to the Security Council on 30 April 1973 the Secretary-General concluded that the position of the South African Government was still far from coinciding with that established by the resolutions of the United Nations concerning Namibia and that it did not provide "the complete and unequivocal clarification of South Africa's policy in regard to self-determination and independence for Namibia envisaged in resolution 323 (1972)". 114/

In its Lusaka Declaration of 14 June 1973 the United Nations Council for Namibia termed the results of the talks as laid down in the Secretary-General's report, not only unsatisfactory but counterproductive, and called for their

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110/ Resolution 301 (1971). Reproduced below in annex VI.

111/ Resolution 309 (1972) of 4 February 1972.

112/ Resolution 310 (1972) of 4 February 1972.

113/ Resolutions 319 (1972) of 1 August 1972 and 323 (1972) of 6 December 1972.

114/ Official Records of the Security Council, Twenty-eighth year, Supplement for April, May and June 1973, document S/10921.