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CONTENTS

FIFTEEN HUNDRED AND EIGHTY-FIFTH MEETING

Held in New York on Tuesday, 28 September 1971, at 3 p.m.

President: Mr. Toru NAKAGAWA (Japan).

Present: The representatives of the following States: Argentina, Belgium, Burundi, China, France, Italy, Japan, Nicaragua, Poland, Sierra Leone, Somalia, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

Provisional agenda (S/Agenda/1585)

1. Adoption of the agenda.

2. The situation in Namibia:
   (a) Letter dated 17 September 1971 addressed to the President of the Security Council from the representatives of Algeria, Botswana, Burundi, Cameroon, the Central African Republic, Chad, the Congo (Democratic Republic of), Egypt, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Liberia, the Libyan Arab Republic, Madagascar, Mali, Mauritania, Mauritius, Morocco, the Niger, Nigeria, the People's Republic of the Congo, Rwanda, Senegal, Sierra Leone, Somalia, the Sudan, Swaziland, Togo, Tunisia, Uganda, the United Republic of Tanzania, the Upper Volta and Zambia (S/10326);
   (b) Report of the *Ad Hoc* Sub-Committee on Namibia (S/10330).

Adoption of the agenda

The agenda was adopted.

The situation in Namibia:

***(a)* Letter dated 17 September 1971 addressed to the President of the Security Council from the representatives of Algeria, Botswana, Burundi, Cameroon, the Central African Republic, Chad, the Congo (Democratic Republic of), Egypt, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Liberia, the Libyan Arab Republic, Madagascar, Mali, Mauritania, Mauritius, Morocco, the Niger, Nigeria, the People's Republic of the Congo, Rwanda, Senegal, Sierra Leone, Somalia, the Sudan, Swaziland, Togo, Tunisia, Uganda, the United Republic of Tanzania, the Upper Volta and Zambia (S/10326);**

***(b)* Report of the *Ad Hoc* Sub-Committee on Namibia (S/10330)**

1. The PRESIDENT: In accordance with the decisions taken yesterday I shall proceed to invite those participating in the debate to take their seats, with the Council's consent, in the places reserved for them.

2. I invite the representatives of Sudan and of Liberia to take seats at the Council table. I invite the representatives of Ethiopia, South Africa, Guyana, Chad and Nigeria to take the places reserved for them at the side of the Council chamber. I invite the President of the United Nations Council for Namibia to take a seat in the Council chamber.

At the invitation of the President, Mr. M. Khalid (Sudan) and Mr. J. R. Grimes (Liberia) took places at the Security Council table, and Mr. T. Makonnen (Ethiopia), Mr. H. Muller (South Africa), Mr. S. S. Ramphal (Guyana), Mr. B. Hassane (Chad), Mr. O. Arikpo (Nigeria) and Mr. E. O. Ogbu, President of the United Nations Council for Namibia took the places reserved for them in the Council chamber.

3. The PRESIDENT: The first speaker on the list for this afternoon is the distinguished Secretary of State of Liberia, to whom I now give the floor.

4. Mr. GRIMES (Liberia): May I express my appreciation for the invitation extended me to participate in this debate on the question of Namibia, which is not only of prime importance to the people of Africa but may also have a profound effect on the effectiveness of the Organization itself?

5. After listening yesterday to a real display of legal pyrotechnics during which we heard a rehash of all the arguments of the South African Government advanced by its Foreign Minister to becloud the issues in this matter and to shroud its blatant defiance of the United Nations, I am convinced that, more than ever before, there is a compelling need for a positive response by the United Nations to meet the challenge posed by South Africa's persistent and impudent disregard of the Organization's authority to supervise Namibia. The records abound with decisions taken both by the General Assembly and by the Security Council, all of which have been adamantly disobeyed and ignored by South Africa, the Mandatory of what was formerly South West Africa.

6. As far back as 9 February 1946, the General Assembly, by its resolution 9 (I), invited all States administering Territories held under mandate to submit trusteeship agreements so that Mandated Territories could be placed under the United Nations trusteeship system. All Mandatories except South Africa responded by concluding such agreements or by bringing the Territories to independence. Other decisions by the General Assembly, too many to

enumerate here and increasing in gravity according to the contemptuous attitude of the South African Government over a period of more than a quarter of a century, have been taken without success to assert the Organization's authority in respect of Namibia, a sacred trust of civilization.

7. As a result of South Africa's recalcitrance as well as its abject refusal to fulfil its obligations in respect of the administration of the Mandated Territory of South West Africa and to ensure the moral and material well-being and security of the indigenous inhabitants of the Territory, the General Assembly eventually decided, by its resolution 2145 (XXI), to terminate South Africa's Mandate over Namibia. Subsequently, the Security Council, in its resolution 276 (1970), reaffirmed General Assembly resolution 2145 (XXI) and its own previous resolution 264 (1969), in which it recognized the termination of the Mandate and called upon the Government of South Africa to withdraw immediately its administration from the Territory of South West Africa. The Security Council also declared the continued presence of the South African authorities in Namibia illegal and that consequently 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.

8. For most States having regard for the rule of law and respecting the will of the international community, such decisions made by the General Assembly as well as by the Security Council, would have had important repercussions in the matter at hand. This, unfortunately, has not been the case with the Government of South Africa. Its position with regard to Namibia remained unchanged, and it continues to apply its heinous policy of *apartheid* in Namibia, contrary to the obligations of the sacred trust of the Territory and its people. And, as if this situation was anticipated, the Security Council declared in its resolution 276 (1970) that the defiant attitude of the Government of South Africa towards the Council's decisions undermined the authority of the United Nations.

9. It cannot be doubted that the United Nations as successor to the League of Nations has the right to supervise and control the Mandate of Namibia, formerly South West Africa. Developments over the past years confirm this view regarding Mandates in general and Namibia in particular. Inherent in the establishment of the system of Mandates by the League was its power to supervise and control the Mandates as a sacred trust of civilization, and safeguards for the performance of this trust were embodied in the League's Covenant. Each agreement defined the obligations of the Mandatories. Thus the provisions of the Covenant and those of the respective Mandates themselves precluded any doubt as to the object of the Mandatory's obligations.

10. There is also no doubt in my mind that the power to supervise and control the Mandates of the League falls within the competence, functions and powers of the General Assembly.

11. The General Assembly, the Security Council and the International Court of Justice have all decided both in accordance with the intention of the parties and the provisions of the Charter that, due to the dissolution of the League, the United Nations is the appropriate forum for supervising the fulfilment of the obligations of the Mandate.

12. The intention of the League is no less clear. After attributing to itself the responsibilities of the Council by adoption of its resolution of 12 April 1946, the Assembly of the League, on 18 April 1946, adopted a resolution for the continuation of the Mandates and the Mandate System.

13. South Africa itself has admitted on several occasions—for example, on 9 April, 17 October, 4 November and 13 November 1946—that its obligations under the Mandate continued after the dissolution of the League.

14. This Government also recognized the competence of the General Assembly for the Mandate of South West Africa on 22 January 1946, even before the dissolution of the League, and later on 14 December 1946 during the second part of the first session of the General Assembly of the United Nations. In this connexion the Members of the United Nations are bound also to take into account the South African Government's letter to the Secretary-General of the United Nations, of 11 July 1949,[1] illegal in character though it is, in which that Government purported to withdraw its recognition of the supervisory authority of the United Nations in respect of the Mandate over South West Africa.

15. The history of developments over the past years in the General Assembly, as well as the decisions of the Security Council and the International Court of Justice on this matter, all support the United Nations succession to the League in respect of the Mandate, maintain the obligations of the Mandatory and justify the power of the United Nations to terminate the South African Mandate over Namibia.

16. It is therefore the obligation of this Organization and its Members, in accordance with the provisions of the Charter—for example, Article 2, paragraph 5—to take steps to compel South Africa to respect its international obligations with regard to Namibia.

17. Since 1949 South Africa has also introduced into and applied in Namibia its diabolical policy of *apartheid* contrary to the intention of the League and the United Nations and to the terms of the Mandate from which it derived its rights and assumed obligations with respect to the Territory and its people. The application of *apartheid* to the Territory is inconsistent with the obligations of the Mandate and its purposes. Article 22, paragraph 8, of the Covenant of the League provided, *inter alia*, that "The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the Council". No such agreement or definition exists to authorize the application of *apartheid* to the Territory. Thus this illegal act is repugnant to the

[1] See *Official Records of the Fourth Session of the General Assembly, Annex to the Fourth Committee*, document A/929.

principle on which the system was established. The International Court of Justice states in its 1950 Advisory Opinion[2] that:

> "The Mandate was created, in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object--a sacred trust of civilization."

18. The refusal of South Africa to perform its obligations under the Mandate, as well as its illegal application of its policy of *apartheid,* among other things, in the administration of the Territory constitute a fundamental breach of its obligations under the Mandate. In view of South Africa's breach of its obligations under the Mandate, the United Nations, by its resolution 2145 (XXI) decided that the Mandate was terminated and that South Africa had no other right to administer the Territory.

19. Subsequently, the Security Council adopted several resolutions, including resolution 276 (1970), reaffirming General Assembly resolution 2145 (XXI) which declared the continued presence of South Africa in Namibia to be illegal. Objections have been raised on several grounds to the power of the General Assembly to terminate South Africa's Mandate, objections which, in my opinion, are not supported either by law or by practice. Yesterday, the South African Foreign Minister dwelt at length on the lack of power to terminate the Mandate.

20. The Government of Liberia has never accepted the specious contention that the Covenant did not confer on the League--and that, therefore, the United Nations, as its successor, could not have acquired--the power to terminate the Mandate. It is a fundamental principle of law that to every right there is a corresponding duty, and the existence or continuation of the right depends on the performance of the corresponding duty. The general principle of international law to terminate a treaty cannot be presumed to be excluded, and it applies even if unexpressed in a treaty. This is confirmed in Article 60, paragraph 5, of the Vienna Convention. Moreover, a Mandate is inherently revocable, and the revocability of the Mandate was indeed envisaged by the proposal made concerning the system. It is interesting that the South African Foreign Minister should refer to *The League of Nations: A Practical Suggestion* by J. C. Smuts, published in 1918.[3]

21. The Government of South Africa has claimed that the General Assembly, as successor to the League, does not have the power to terminate the Mandate because the League did not have this power. Yet this same Government, as Mandatory, ascribed to itself the right unilaterally to terminate its obligation under the same Mandate, as can be seen from its letter of 11 July 1949 referred to above, as well as its subsequent refusal to submit reports on the Territory. In other words, this Government is arguing that among contractors the grantor may not terminate a given right of the grantee as a result of breach of obligations by the grantee without the latter's consent, but the grantee may terminate its obligations at will without an express provision of the contract granting that right. Such a contention is supported neither by international law, nor by the internal law of South Africa itself.

22. On the matter of unanimity in the League of Nations, arguing that the principle of unanimity would have prevented the League from revoking the Mandate would, in our opinion, postulate an impossibility. Therefore, the consent of the wrongdoer--in this case South Africa--could not have been required in the League for a revocation of the Mandate. It seems to me ridiculous, if not downright absurd, to argue that the League had authority to confer a Mandate by an agreement validly executed, but surrendered its power to revoke the agreement even if it reached the conclusion that the terms of the agreement had been violated by the other party.

23. I was really surprised by the assertion of the South African Foreign Minister yesterday that the General Assembly has only the power to discuss and the power to recommend, and that it cannot make binding decisions. Carried to its logical conclusion, this argument would mean that the General Assembly can only discuss and recommend admission of new Members, can only discuss and recommend a budget, can only discuss and recommend the apportionment of expenses among Members, but cannot decide any of these things. No one here would suggest that such an argument could be taken seriously. That any judge of the International Court could have stated in dissent that there was no satisfactory answer to such an argument raises serious doubts in my mind as to his objectivity on this matter.

24. These arguments of South Africa are only examples of the façade of legality behind which the Government of that country has been attempting to deceive the international community. In its resolution 264 (1969), the Security Council declared that as a result of the termination of the Mandate of South Africa over Namibia "the continued presence of South Africa in Namibia is illegal and contrary to the principles of the Charter and the previous decisions of the United Nations and is detrimental to the interests of the population of the Territory and those of the international community" and that "the Government of South Africa has no right to enact the 'South West Africa Affairs Bill' designed to destroy the national unity and territorial integrity of Namibia".

25. The Security Council also decided in its resolution 269 (1969) "that the continued occupation of the Territory of Namibia by the South African authorities constitutes an aggressive encroachment on the authority of the United Nations, a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia;".

26. Finally, in its resolution 276 (1970), the Council declared: "that the continued presence of the South African authorities in Namibia is illegal and that consequently 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;".

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2 *International Status of South West Africa, Advisory Opinion; I.C.J. Reports 1950,* p. 128.

3 Hodder and Stoughton, London.

27. In accordance with the request for an Opinion on this matter, the International Court of Justice had advised in paragraphs 122 to 125 of that opinion,[4] as being inconsistent with resolution 276 (1970) on dealings by States with South Africa as follows:

"Member States [of the United Nations] are under obligation [subject to paragraph 125] to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, Member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation. With respect to multilateral treaties, however, the same rule cannot be applied to certain general conventions such as those of a humanitarian character, the non-performance of which may adversely affect the people of Namibia. It will be for the competent international organs to take specific measures in this respect.

"Member States . . . are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations . . . does not imply any recognition of its authority with regard to Namibia.

"Member States [are under] obligation to abstain from entering into economic and other forms of relationship . . . with South Africa on behalf of or concerning Namibia which may entrench its authority over the territory.

"[However,] non-recognition . . . should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, the invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages."

28. I submit that this Advisory Opinion of the International Court provides the basis for action by this Organization to protect the interests of the population of Namibia and those of the international community in respect of the Territory which is a sacred trust of civilization.

29. The Court has submitted in response to the question, "What are the legal consequences of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)", the following Opinion, in paragraph 133:

"(1) that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;

"(2) that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration;

"(3) that it is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph (2) above, in the action which has been taken by the United Nations with regard to Namibia."

30. As indicated above, such decisions would be sufficient in the case of most States to correct the situation in Namibia, and for all other Mandatories this course of action was not required.

31. It is no secret that a variety of external influences, economic, political and other, has encouraged the South African Government in its defiant attitude towards, and contempt for, the world Organization. Equally significant is the fact that this encouragement comes chiefly from the major Powers—particularly those States that have been given primary responsibility for the maintenance of international peace and security.

32. In establishing the United Nations Organization the members of the international community agreed to confer on the Security Council the supreme and ultimate power to ensure faithful observance of the agreed code of conduct established among themselves. Under these rules, it was provided in Article 25 of the Charter that, in general: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

33. No doubt was left as to the identity of those States upon which final responsibility for the destiny of the world and its inhabitants would rest.

34. It is in this light and on these grounds that the Security Council must view the attitude of the Government of South Africa and its own future. The defiance of the South African Government undermines in like degree the authority of this Council and of the whole Organization, as the Council declared in its resolution 276 (1970), and the future of the international legal order. It cuts at the very roots of the system in the establishment of which so much time, money and effort have been expended and on which the destiny of man so much depends.

35. Yet it is inconsistent and paradoxical that the very Powers to which primary responsibility for international peace and security has been entrusted are those which seem to be indirectly supporting South Africa, through investment and trade, in defying the will of the international community.

4 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

36. Permit me to illustrate this point by reference to quotations from the magazine *Afrika*, vol. 12, No. 4, 1971, which shows that South Africa is actively assisted economically by the big Powers in its defiance of the decisions of this Council. It is reported, for example, that "total American private investments in countries south of the Sahara of about $1,500 million dollars include an estimated $700 million in South Africa alone." It goes on: "Although the State Department of the United States does not officially encourage investments in Namibia and supports the 1963 embargo on arms to Pretoria, it has always been opposed to economic sanctions." "This", it is added, "is understandable if [it is] borne in mind, for instance, that the American automobile industry controls 50 per cent of South African production." It is reported:

> "The Soviet Union, according to South African trade statistics, exported goods worth $500,000 to South Africa in the first six months of 1969. Moscow even supplied the South African army with auxiliary equipment such as instruments, electronic testing appliances, spare parts and explosives following the arms embargo of 1963".

In addition, the quotation continues:

> "Paris assailed the South African market and took over London's traditional position in arms deliveries for the South African army. By the end of 1969 alone, it had supplied raw material worth more than 3,000 million francs".

It is further shown that "French trade with Pretoria doubled between 1960 and 1969".

37. Reference is also made to the United Kingdom Government's call in March 1971 for a revision in the House of Commons of the embargo resolutions of 1963 and 1964 "with the intention to resume arms deliveries".

38. Finally, reference was also made to the People's Republic of China, not a Member of the United Nations but nevertheless bound by its decisions in accordance with the provisions of Article 2, paragraph 6, whose trade with Pretoria is reported to have reached in 1969 the value of $US15 million.

39. There is no lack of competence on the part of the Security Council to deal with the situation in Namibia, but the effectiveness of the Council is being undermined by the important Members of the United Nations, contrary to the provisions of the Charter and the sacred obligations of those countries. I submit that the obligation in Article 25 is binding independently of the obligation connected with specific decisions and actions made or taken by the Council under Chapter VII of the Charter, and any violation thereof is not only a breach of faith but also a breach of a fundamental contractual international obligation on the part of the Members of the United Nations.

40. It is all too clear how the arbitrary imposition by such external forces of limitations on the effectiveness of the Organization operates to the detriment of the Organization and of the international community.

41. As indicated above, the Security Council, on 3 January 1970, made an important decision against the continued illegal occupation of Namibia by the Government of South Africa, and imposed definite obligations on the members of the international community in an attempt to give effect to its decision. But the support of all Members of the United Nations—especially that of the big Powers—is indispensable for the effective implementation of this decision.

42. Non-compliance has been conveniently excused by some on the ground of respect for the rule of law in connexion with the jurisdiction of the United Nations in this matter, and that is why the Security Council decided, in its resolution 284 (1970), to request an advisory opinion in accordance with Article 96, paragraph 1, of the Charter.

43. It is important to note that, while the request made to the Court was not directed to the question of the validity of the General Assembly resolution and of the related Security Council resolutions and while, therefore, the Court did not presume to pronounce on that question, much of the text of this opinion, as well as of the earlier opinions, seems to bear out a clear inference in the affirmative. Equally important is the size of the majority of the Court in reaching this opinion.

44. Finally, to quote the representative of Finland in the Security Council debate on resolution 284 (1970), there is the effect the opinion can have of exposing the false front of legality which the South African administration has been using to neutralize hostile public opinion and cause a stagnation of initiatives among countries that are committed to respect the judicial process, or otherwise conveniently claim or pretend to do so.

45. On the other hand, it is also to be noted that the South African Government has already rejected the Advisory Opinion of the International Court of Justice and declared its intention to continue to administer the Territory of Namibia.

46. While, by its very nature, the Advisory Opinion of the Court is not mandatory or binding upon States, I must draw the attention of the Council to the wide degree of accord and support that the members of the judicial organ of the United Nations have given to the decisions taken by the General Assembly and the Security Council in their attempt to promote achievement of the objects and purposes of the Charter in respect of Namibia and its people.

47. Having regard to General Assembly resolution 2145 (XXI), Security Council resolutions 282 (1970) and 283 (1970), as well as the Court's Advisory Opinion of 21 June 1971, I call upon the Secretary-General to collect and circulate among States Members of the United Nations all data and information concerning foreign economic, financial and other interests operating in Namibia which benefit the South African Government and the investor Governments and companies and are detrimental to the interests of the population of Namibia. The free and open circulation of such information would focus attention on some of the sources from which the South African Government receives

support in its defiance of decisions of the General Assembly and the Security Council, and in the face of the Advisory Opinion of the International Court of Justice and world opinion as a whole.

48. This defiance shown by South Africa to pressure from all quarters of the international scene and South Africa's open determination to continue its illegal presence in Namibia constitute an act of aggression and must be regarded as satisfying one of the requirements of Article 39 of the Charter, by virtue of which the Security Council can take action to restore international peace and security. Such action could include those measures listed under Article 41 of the Charter.

49. This situation in Namibia also highlights the need to devise some means of ensuring respect for the decisions of the Organization, particularly those of the Security Council, when its permanent members are involved.

50. Africa calls upon the major Powers to respect their obligations under the Charter and to prove themselves deserving of the special stations that have been assigned to them under the terms of Articles 23 and 27 of the Charter for the protection and preservation of the international community against arbitrary violations of the principles and rules laid down in the Charter, including the principle of self-determination and the respect for fundamental human rights.

51. We, in Africa, are convinced that the cause of the people of Namibia is a just one and will prevail because it is right. The Security Council has the great opportunity to give immediate effect to the achievement of the rights of these people. There may be delays and there may be obstacles, but nothing can stop the ultimate achievement of these rights by the Namibian people.

52. Mr. President, in thanking you again for the opportunity given me to express an opinion on this burning issue on behalf of Africa, I wish to reserve the right to intervene further especially when a draft resolution on this matter is introduced.

53. Mr. PRATT (Sierra Leone): When the question of Namibia was extensively discussed in this Council last year and the illegal occupation of that Territory by South Africa exposed, the Council in paragraph 3 of its resolution 283 (1970) called upon all States:

> "... to terminate existing diplomatic and consular representation as far as they extend to Namibia, and to withdraw any diplomatic or consular mission or representative residing in the Territory".

54. It further decided in paragraph 1 of resolution 284 (1970) of the same day:

> "to submit, in accordance with Article 96, paragraph 1, of the Charter of the United Nations, the following question to the International Court of Justice, with the request for an advisory opinion which shall be transmitted to the Security Council at an early date:
>
> " 'What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)? '."

55. The Council now has before it the submission of the International Court of Justice on the status of the Territory as well as the report of the *Ad Hoc* Sub-Committee. It is no secret that the Court concluded that the Mandate was validly terminated and that South Africa's presence in Namibia is illegal and its acts on behalf of or concerning Namibia are illegal and invalid. It follows, therefore, that:

(a) South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;

(b) That States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality or of lending support of legality to such persons and administration;

(c) That it is incumbent upon States which are not Members of the United Nations to give assistance within the scope of *(b)* above in the action which has been taken by the United Nations in regard to Namibia.

56. We are here to discuss in detail the report of the Sub-Committee on Namibia together with whatever assistance we can get from the report of the International Court and not the provocative intervention of Mr. Muller of the racist régime of South Africa. However, since he made some outrageous claims yesterday, the Security Council will permit me to mention and deal with a few of the legal irrelevancies he tried to push down our throats.

57. First of all, we must by now have realized that the word "Namibia" is anathema to certain people. On page 68 of the Advisory Opinion, Justice Ammoun tells us something about Namibia:

> "Namibia, even at the periods when it had been reduced to the status of a German colony or was subject to the South African Mandate, possessed a legal personality which was denied to it only by the law now obsolete. It was considered by the Powers of the day as a merely geographical concept taking its name from its location in the South-West of the African Continent. It nevertheless constituted a subject of law that was distinct from the German State, possessing national sovereignty but lacking the exercise thereof."

58. Indeed, Justice Padilla Nervo goes a bit further still. In his own comments at the very end of page 114 of the report, Justice Padilla Nervo said:

> "Neither South Africa nor the United Nations has possessed rights in Namibia for any purpose other than to secure the rights and interests of the people of the Territory. For the Mandate did not confer ownership or sovereignty or permanent rights, but consisted only of a conditional grant of powers for the achievement of a purpose—not for the benefit of the grantee but for the benefit of a third party, the people and Territory of Namibia—which powers were to be relinquished as soon as the purpose was achieved."

And here I stress that there was no conferment of ownership. What we are hearing today is the argument that South Africa in practice possesses the Territory.

59. You will remember, Mr. President, that after some discussion yesterday, Mr. Muller of South Africa was invited to participate on the clear understanding by members that the letter of application was unfortunately worded and that the opportunity would, however, be offered us to hear something constructive about the situation in Namibia. We were to be disappointed.

60. At no time did Mr. Muller mention the word "Namibia"—at no time. He was always talking about South West Africa. What does this show? I shall not give the answer. The members can draw the conclusions themselves. Further, during his discourse, Mr. Muller sought to lay stress on the contents of a particular dissenting Opinion of the International Court of Justice. I have read through that Opinion, which extends over some 110 pages. The subject matter before the Court was Namibia. But how often did that word "Namibia" appear in those 110 pages? The Council would be surprised. On only four pages of that particular dissenting judgement—only four pages; whereas the term "South West Africa" appeared on no less than 86 pages. "What's in a name? " you may say. You can guess for yourselves.

61. Ever since 1945, nothing which the international world says about Namibia has been acceptable to the racist régime of South Africa—not the earlier resolutions of the United Nations, not the earlier decisions of the International Court of Justice, not the later resolutions of the United Nations, not the still later resolutions of the Security Council, nor, should we expect, the present Advisory Opinion of the International Court of Justice.

62. Mr. Muller's negative intervention is thus not a novelty. Again and again he reiterated that his Government did not at all accept the Opinion of the International Court of Justice. What else did we expect. Mr. Muller based his contentions of non-acceptability on three premises: firstly, that the powers of the General Assembly to adopt resolutions with binding or executive force did not exist, and that the General Assembly resolutions in relation to Namibia were of no validity; secondly, that the Security Council similarly had no such powers, and, worse still, that the Security Council purported to derive powers from an alleged invalid General Assembly resolution; and thirdly, that in any case the nature of the League of Nations Mandate in respect of South West Africa was such that it could not be validly terminated by the United Nations.

63. Mr. Muller then proceeded to find garments for these threadbare premises by raking up certain discarded arguments appearing in the dissenting judgement, arguments which have been effectively laid to rest by the binding decision of the majority.

64. It may perhaps be felt that dissenting Opinions of the International Court of Justice should be given some weight, particularly when those Opinions are expressed by judges of international standing. I would agree. But there are certain conditions which affect the force of dissenting opinions. Those opinions would receive weight if they were logical. They would become persuasive if they were objective. They might even be legally admissible as case law if they contained proper reasoning. But they must forever remain sterile if they are subjective and time-serving. It is not for me to suggest in what category the particular dissenting Opinion falls. Far be it from me to wish to bore this Council by an examination of legal principles when we are not seated as an appellate court of the International Court of Justice, and, indeed, we cannot be by virtue of Article 60 of the Statute of the International Court.

65. However, to correct the records of the Security Council, may I be permitted to show that the International Court examined all three arguments, and many more, put forward by Mr. Muller, and that the great majority of the Court's members demolished those arguments one by one. The first argument relates to the force and scope of the General Assembly resolutions. Mr. Muller submitted that the fundamental question in dispute before the International Court of Justice related to the basis of General Assembly resolution 2145 (XXI), and he went on, by means of an irrelevant quotation, to adumbrate that the Court did not advert itself to this question, but rather evaded the issue.

66. Mr. Muller said that the General Assembly's competence must be derived from the Charter, and then went on to ask: why did the Court not make reference to the appropriate Articles of the United Nations Charter? I have already stated that we are not sitting here as an appellate court. Nor are we here in the Security Council to question the International Court of Justice as to why it did not do this or did not do that. But lest members may harbour the erroneous idea that Mr. Muller's charges are founded, let me refer the Council to a few pages of the Court's decision. Let us turn to paragraph 89, which I shall quote:

> "The question of the validity or conformity with the Charter of General Assembly resolution 2145 (XXI) or of related Security Council resolutions does not form the subject of the request for advisory opinion. However, in the exercise of its judicial function and since objections have been advanced, the Court, in the course of its reasoning, will consider these objections before determining any legal consequences arising from those resolutions."

67. Therefore, we see here that the Court did refer to the resolution, and, further, if we were to examine the separate Opinions of the majority of the Judges, we would see that each of them dwelt further on the competence of General Assembly resolutions as regards Mandates. They all agreed that the resolutions of the General Assembly were not, in respect of Mandates, limited only to the form of recommendations—and they formed the majority Opinion.

68. Mr. Muller further contended that General Assembly resolution 2145 (XXI) did not complain about South Africa's refusal to render reports; nevertheless, that was the complaint on which the Court relied to base its findings.

69. A close and detailed reading of paragraphs 87 to 105 inclusive of the judgement fails to show any such lapse as

alleged. Rather it is in the dissenting judgement favoured by Mr. Muller, where, from paragraphs 11 to 61—that is to say, throughout some 36 pages, one finds profuse references to and arguments about what the dissenting Judge called "reporting" and "accountability".

70. Justice Petrén, while not completely accepting the reasoning of his brethren in the majority decision, was very clear about the scope of General Assembly resolution 2145 (XXI). He explains as follows on pages 132 and 133 of the report:

> "I therefore consider that in the present case the Court should have confined itself to the finding that resolution 2145 (XXI) is valid without examining the correctness of the assessment of the facts upon which that resolution is based. To embark upon such an enquiry, as the Court has done in the present Opinion, amounts to implying that the Court could possibly have reached conclusions different from those of the General Assembly and could therefore have declared the resolution invalid. But, in the light of the foregoing, I consider that to be out of the question."

71. The second argument of Mr. Muller related to the nature and scope of Security Council recommendations. As regards these, it appears that Mr. Muller was straining to adopt a reasoning in the dissenting opinion which he favoured, which reasoning is to be found on pages 291 to 295. The argument which Mr. Muller did not bother to give runs as follows. If the Security Council has any special role whatever in respect of mandates, it would be only for peace-keeping purposes—that argument will be found on pages 291 and 292—and not for a disguised exercise in "mandates supervision": "the various Security Council resolutions involved did not, on their language, purport to be in the exercise of the peace-keeping function." As a result, ran the argument, "They were not binding on the Mandatory"—that is, South Africa—"or on other member States of the United Nations."

72. The said dissenting Judge then based his reasoning on paragraphs 1 and 2 of Article 24 and on Article 25 of the United Nations Charter. But the majority judgement effectively exposed the fallacy of the aforementioned reasoning. I shall not read out paragraphs 107 to 116 of the majority judgement. Suffice it to cite the beginning of paragraph 109, which reads:

> "It emerges from the communications bringing the matter to the Security Council's attention, from the discussions held and particularly from the text of the resolutions themselves, that the Security Council, when it adopted these resolutions, was acting in the exercise of what it deemed to be its primary responsibility, the maintenance of peace and security, which, under the Charter, embraces situations which might lead to a breach of the peace. (Art. 1, para. 1.)"

73. South Africa rather wanted us to accept the thesis that the situation in Namibia does not constitute a threat to the peace. I cannot understand how Mr. Muller could reconcile this contention with the plea which South Africa itself made before the Court, as revealed by Sir Muhammad Zafrulla Khan. That plea, on page 64, reads as follows:

> "Towards the close of his oral presentation the representative of South Africa made a plea to the Court in the following terms:
>
> " 'In our submission, the general requirement placed by the Charter on all United Nations activities is that they must further peace, friendly relations, and co-operation between nations, and especially between member States. South Africa, as a member State, is under a duty to contribute towards those ends, and she desires to do so, although she has no intention of abdicating what she regards as her responsibilities on the sub-continent of southern Africa.
>
> " 'If there are to be genuine efforts at achieving a peaceful solution, they will have to satisfy certain criteria. They will have to respect the will of the self-determining peoples of South West Africa. They will have to take into account the facts of geography, of economics, of budgetary requirements, of the ethnic conditions and of the state of development.
>
> " 'If this Court, even in an opinion on legal questions, could indicate the road towards a peaceful and constructive solution along these lines, then the Court would have made a great contribution, in our respectful submission, to the cause of international peace and security . . .' "

[Those are not my words; those are the words of South Africa.]

> ". . . to the cause of international peace and security and, more, to the cause of friendly relations amongst not only the nations but amongst all men".

And how can Mr. Muller reconcile this plea with the statement that the Court was not seized of a matter which involved international peace and security?

74. The third argument of South Africa is a little more intricate and concerns the validity of the termination of South Africa's Mandate over Namibia. Here Mr. Muller dwelt at some length, postulating that the South African Government did not accept what it called "attempts" by one or two of the majority Judges to apply their opinion to South West Africa. He went near to charging the Court with bias, suggesting that the Court had exceeded its own jurisdiction, that the Court had relied on previous decisions which had been hostile to South Africa, ignoring those which supported the South African position. Indeed, the first dissenting judgement devoted no less than 72 pages to this contention.

75. We must realize that the Court dealt with this question at length in the decision and, effectively, in my opinion, demolished all the arguments in that particular dissenting judgement, appearing in paragraphs 42 to 69 of the report. I shall not be tempted by Mr. Muller to go through the arguments; they are there in paragraphs 42 to 69.

76. But let me analyse what the consequences of accepting South Africa's stance will be. South Africa, in effect, says

that it had a Mandate from the League of Nations. The League ceased to exist. The United Nations then came into being but did not enter into the League's shoes in so far as the Mandate was concerned. Even if the League had been in existence, according to South Africa, it had no power to terminate the Mandate and, in any case, so argues South Africa, the United Nations also has no power, either by the General Assembly or by the Security Council, to terminate the Mandate. This appears to be the reasoning of the dissenting decision favoured by South Africa. And it is interesting to look at that dissenting decision, particularly on page 232, where a table prepared by that dissenting Judge appears. The table shows a box in which appears "VIII. Aim:" which indicates that that Mandate did not aim at "Earliest possible bringing about of the independence of the Territory", which is the aim of the United Nations Trusteeship system, but at "Good administration of the mandated territory". The Mandate did not aim at granting independence; the Mandate merely aimed at good administration. In other words, South Africa is telling us that under the League it had absolutely no obligation to lead the peoples of Namibia to independence and, that since the United Nations had no obligation or supervision over it South Africa's primary obligation merely of good administration remained.

77. Mr. Muller wants us to accept that the Mandate survived the League and that the United Nations has nothing at all to do with mandates or with Namibia. I understand this to mean that South Africa is claiming Namibia as its private, personal property. This is alarming, but it is not a new claim. In 1946 that claim was made. South Africa wanted to incorporate the Territory into the Union. This is shown on page 40 of the Advisory Opinion:

"... the representative of the Union of South Africa submitted a proposal to the Second Part of the First Session of the General Assembly in 1946, requesting the approval of the incorporation of South West Africa into the Union. On 14 December 1946 the General Assembly adopted resolution 65 (I) noting–'... *with satisfaction* that the Union of South Africa, by presenting this matter to the United Nations, recognizes the interest and concern of the United Nations in the matter of the future status of territories now held under mandate"

"and declared that it was '... *unable to accede* to the incorporation of the territory of South West Africa in the Union of South Africa.' "

78. Justice Padilla Nervo reveals this shocking piece of evidence on pages 121 and 122:

"At the hearing of 15 March 1971, the representative for South Africa stated:

" 'Against the background of the submission which we had made in the previous proceedings to the effect that the Mandate, as a whole, had lapsed, together with all obligations thereunder, the honourable President asked the question "Under what title does the Government of South Africa claim to carry on the administration of Namibia? " Our answer is as follows:

" 'South Africa *conquered* the Territory by force of arms in 1915, and administered it under military rule until the end of the war.

" 'In the years since 1915, South West Africa has inevitably been *integrated* even more closely with the Republic.

" 'In the light of this history, it is the view of the South African Government that, if it is accepted that the Mandate has lapsed, the South African Government would have the right to administer the Territory by reason of a combination of factors, being *(a)* its original *conquest; (b)* its long occupation; *(c)* the continuation of the sacred trust basis agreed upon in 1920; and, finally *(d)* because its administration is to the benefit of the inhabitants of the Territory and is desired by them. In these circumstances the South African Government cannot accept that any State or organization can have a better title' that is the word, not "claim", 'to the Territory.' "

79. It is clear then that South Africa's idea of Namibia is one of a possession, such as one possesses some land in fee simple in London.

80. Zafrulla Khan threw another light on South Africa's intentions at the top of page 63 of the report:

"The representative of South Africa, while admitting the right of the people of South West Africa to self-determination, urged in his oral statement that the exercise of that right must take into full account the limitations imposed, according to him, on such exercise by the tribal and cultural divisions in the Territory. He concluded that in the case of South West Africa self-determination 'may well find itself practically restricted to some kind of autonomy and local self-government within a larger arrangement of co-operation' (hearing of 17 March 1971). This in effect means a denial of self-determination as envisaged in the Charter of the United Nations."

81. And Judge Ammoun puts the South African view in technical terms at the bottom of page 84:

"South Africa has not only contested the material existence of the facts but also the interpretation placed upon them by the General Assembly and the Security Council. Its point of view–rejected by all States, even those which question the validity of the measures taken against South Africa–is that its administration has been designed with the precise aim of realising the objectives of the Mandate, these being to promote the well-being and social progress of the inhabitants; that accordingly *apartheid,* or the separate development of these populations was, given their stage of social evolution, instituted in their own interest; that the measures which have been deemed contrary to the provisions of the Charter and the Universal Declaration of Human Rights, in particular by resolution 2145 (XXI) revoking the Mandate, were justified by the socio-anthropological circumstances and are directed solely to the accomplishment of the mission entrusted to South Africa."

82. The civilized world has never accepted South Africa's claims. Those claims were rejected as long ago as 1950 by the International Court of Justice itself. The Court then

said—and this can be found in paragraph 72, of the present report:

"... the General Assembly of the United Nations is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory, and that the Union of South Africa is under an obligation to submit to supervision and control of the General Assembly and to render annual reports to it.

83. Now Mr. Muller made some startling propositions that the International Court of Justice had exceeded its jurisdiction and had applied wrong legal principles. Mr. Muller evidently could not have grasped the essence of Article 38 of the Statutes of the International Court, which I quote:

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: *(a)* international conventions, whether general or particular, establishing rules expressly recognized by the contesting States; *(b)* international custom, as evidence of a general practice accepted as law; *(c)* the general principles of law recognized by civilized nations; *(d)* subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

"2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto."

84. I wish to emphasize 1 *(b)*, which relates to international custom, and 1 *(c)*, which relates to the general principles of law recognized by civilized nations, and the provision of paragraph 2 which allows the Court to decide cases on grounds of equity.

85. The Court expressed an opinion on the applicable principles of law. In paragraph 53, the Court said:

"... the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law. Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation. In the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned."

86. On page 72, Judge Ammoun has this to say:

"Again, the Court could not remain an unmoved witness in face of the evolution of modern international law which is taking place in the United Nations through the implementation and the extension to the whole world of the principles of equality, liberty and peace in justice which are embodied in the Charter and in the Universal Declaration of Human Rights."

"The Court", he goes on, "is not a law-making body. It declares the law. But it is a law discernible from the progress of humanity, not an obsolete law, a vestige of the inequalities between men, the domination and colonialism which were rife in international relationships up to the beginning of this century but are now disappearing, thanks to the struggle being waged by the peoples and to the extension to the ends of the world of the universal community of mankind."

It appears that South Africa would prefer the Court to apply principles which operated in international relations up to the beginning of this century.

87. What was South Africa doing when it was raising this spate of objections about the Court, of which Mr. Muller has mentioned three? South Africa mentioned many more. South Africa was in effect objecting to the jurisdiction of the Court and it made this objection an issue, as an examination of the report amply proves. But South Africa forgot that Article 36, paragraph 6, of the Statute made adequate provision for such objections. That Article reads: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." The Court considered the issue which South Africa raised and decided against it in the matter of jurisdiction. That decision of the Court was taken by a large majority.

88. Now, South Africa is saying, in effect, that it does not subscribe to the provisions of Article 36 of the Court's Statutes, particularly paragraph 6. That, in effect, is what Mr. Muller is advocating before us: that South Africa still says the Court has no jurisdiction and the Court could not have given a decision on its jurisdiction, forgetting that it, South Africa, cannot now renounce Article 93 of the United Nations Charter. Article 93 of the United Nations Charter makes it clear that: "All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice." You see, then, why we Africans still say that we cannot trust the racist régime in South Africa.

89. Now, Mr. Muller cited a number of articles appearing in certain British, Canadian and American newspapers. Those quotations did not do him justice for two reasons. Firstly, they were all articles said to be written mainly during the week of 20 to 26 June 1971. Why did these articles all appear during that particular week? The answer is clear. Notices had been sent out previously, in accordance with Article 58 of the Statutes of the International Court of Justice, that the Court would deliver its Advisory Opinion on 21 June 1971. One does not have to be a moron to sense the feverish tremors throughout the world on the part of the racist régime in South Africa practically trying to obtain press opinion about the economic, social and political consequences of South Africa's remaining in Namibia.

90. The Security Council wanted a judicial opinion. South Africa preferred press opinions and how well these press-

men played the game. But they overplayed it with injustice to South Africa.

91. This brings me to the second reason. The Bible tells us about the voice of Jacob and the hands of Esau. I venture to suggest that those articles were, practically without exception, dictated by the voice of South Africa, even though they appeared to be the hands of foreign correspondents.

92. Why do I say this? Let us examine them. But first let us determine South Africa's usual language and terminology. We all know that South Africa has never accepted the name Namibia—not even in this Council yesterday. To South Africa the Territory has always been, is, and ever will be South West Africa. To the civilized world, to respectable Americans, Canadians and Englishmen, to those who acknowledge respected principles of the United Nations, the Territory is Namibia.

93. Did it not strike you, Mr. President, that not a single foreign correspondent cited by Mr. Muller called the Territory by the name of Namibia. Why did they use the discarded name of South West Africa, which South Africa—and South Africa alone—uses. Just listen to them.

94. *The Times* of London reported in its issue of 21 June 1971: "The basic policy holds in South West Africa—the aim being to extend the franchise to all groups." The *Daily Express* of 22 June 1971 pointed out: "there is no 'people' of South West Africa". The *Daily Express* of 22 June 1971 also said that: "South West Africa is no threat to world peace . . .". *The Times* of 21 June of this year said that: "The future development of the tribes in South West Africa . . .".

95. Who wrote those articles? You need not waste your time guessing. The hands, I said, may be the British or American Esau, but the voice is definitely that of the South African Jacob.

96. Again, what does the civilized world call us—men of colour. Would the distinguished representative of Canada at this twenty-sixth session say that his educated and civilized editors refer to us as "Blacks". Or would the United States ambassador accept the suggestion that under the Nixon administration the real American editor would refer to us in some way as "Blacks", "the Black Government" or "Black men"? But, these are the terms joyfully used and quoted by Mr. Muller in gloating over the quotations he alleges to have been made by foreign correspondents, glorifying the wisdom of *apartheid* in Namibia.

97. Listen, again, to his quotations: "Particularly is this true of unskilled workers, who form the bulk of wage-earners in Africa. The Canadian *Vancouver Sun* reported in its issue of 23 June 1971 that "the journalists saw blacks everywhere working as nurses." Again, *Newsweek* reported to the same effect. It stated: "A so-called desert 'death factory' near Tsumeb—where nuclear weapons and lethal gases were supposedly being manufactured to use against black-governed nations". Going on, he said: " 'There is no injustice against black men in my land.' " I repeat the hands may have been those of British or American Esaus, but the voice is definitely that of a South African Jacob.

98. Mr. Muller did not mention his régime's policy of establishing Bantustans and the importation of *apartheid* into South West Africa, as he called it, Namibia, as we know it.

99. There is always another side to the coin. We could tell Mr. Muller that in the areas he had been so lucidly describing a different tribe is forced to live in totally separate areas outside the city of Windhoek. Travel to these areas and others throughout South West Africa—or Namibia—is prohibited. The South African Government fears what people would learn of its *apartheid* policies.

100. We could tell him that the South African Bantu policy consists of creating artificial homelands for each tribe. Usually these homelands have insufficient water and vegetation to support either cattle or agriculture.

101. We could tell him that although the South African Government claims to be improving the water conditions it is still true that it is forcing tribesmen off productive land and onto homelands before the water projects are completed. We can instance this by the Bantu administration in Windhoek, where the Hereros live on the homelands as well as in scattered unproductive reservations throughout South West Africa.

102. We could tell him that the Bantu administration, as he says, hopes within the next year that all the Hereros would be moved to the homelands even though the water project is not scheduled to be finished within the next ten years.

103. He talked about the Ovambo. We could tell him that the homelands are insufficient to support the tribe, that the men are forced to leave their families and come to the cities as migrant labourers, that Bantu policy does not allow their families to accompany them to the city. In addition the Ovambo migrant labourer is forced to work for slave wages of $11 a month. He said that they were having the highest wages but he did not quote their pay, did not say they were forced to live on $11 a month or that this in turn must be sent back to the family who have little else on which to survive.

104. We could tell him that outside the city the Ovambo labourer lives in inadequate barracks, crowded with 5,000 men. We could tell him much more: that the Africans in his South West Africa are given no voice in determining their destiny. They are told where to live. Even within their own tribes they have no power. There is another side to the coin.

105. Even if it is a fact that all the hurriedly compiled statistics given by Mr. Muller yesterday are backed by the views of foreign correspondents, even if these are valid, let me ask Mr. Muller this question: why then has the South African Government not co-operated with the United Nations Council for Namibia in allowing the members of that Council to visit Namibia and satisfy themselves about these wonderful facts? Should the United Nations depend on the newspapers of foreign correspondents rather than on its own Council?

106. And let us not forget the Advisory Opinion of the Court on these allegedly wonderful matters of material welfare. South Africa repeatedly tried to missionize the Court about the advantages of the policy being followed in Namibia, the advantages of the policy of *apartheid* and Bantustans. If we look in paragraph 128 of the opinion, we will find this:

"In its oral statement and in written communications to the Court, the Government of South Africa expressed the desire to supply the Court with further factual information concerning the purposes and objectives of South Africa's policy of separate development or *apartheid*, contending that to establish a breach of South Africa's substantive international obligations under the Mandate it would be necessary to prove that a particular exercise of South Africa's legislative or administrative powers was not directed in good faith . . .".

107. Then, in paragraphs 129 and 130:

"The Government of South Africa having made this request,"—that is, the request to explain the purposes and objectives of *apartheid*—"the Court finds that no factual evidence is needed for the purpose of determining whether the policy of *apartheid* as applied by South Africa in Namibia is in conformity with the international obligations assumed by South Africa under the Charter of the United Nations. In order to determine whether the laws and decrees applied by South Africa in Namibia, which are a matter of public record, constitute a violation of the purposes and principles of the Charter of the United Nations, the question of intent or governmental discretion is not relevant; nor is it necessary to investigate or determine the effects of those measures upon the welfare of the inhabitants.

"It is undisputed, and is amply supported by documents annexed to South Africa's written statement in these proceedings, that the official governmental policy pursued by South Africa in Namibia is to achieve a complete physical separation of races and ethnic groups in separate areas within the Territory. The application of this policy has required, as has been conceded by South Africa, restrictive measures of control officially adopted and enforced in the Territory by the coercive power of the former Mandatory."

108. The Court went on, in paragraph 131:

"Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."

109. Mr. Muller made an unconscious confession, relishing in the thought of the millions of dollars to be spent in providing bore holes and other water supplies. He intimated that according to estimates the capital costs of such projects would amount to $3,766 million by the year 2000. What conclusion must we draw from that statement? Is it not crystal clear that South Africa intends, come what may, to keep hold of Namibia until the next century? Is this not a manifestation that South Africa does not intend to comply with United Nations resolutions? And can this be consistent with self-determination under the Mandate? To me his meaning was clear. When he concluded his speech, Mr. Muller reminded us that South Africa had held on to Namibia for half a century now, that South Africa considered itself to have been faithfully discharging a trust in holding on to the Territory in a manner it considered to ensure peace, progress and self-determination, and that it does not intend to fail in that trust. In short, South Africa and South Africa alone is right—the rest of the world is wrong.

110. Having examined this, we ought to decide what should be the course of action—and the course of action has already been drawn up by my colleague, the Foreign Minister of Somalia *[1584th meeting]*, with whom I agree. Without the assistance of the permanent members of the Security Council little or nothing can be done. I am therefore appealing to the permanent members of the Security Council to realize that they should assist the world and assist the Namibians to achieve independence.

111. Part B of the report of the *Ad Hoc* Sub-Committee sets forth the important legal and other effects of South Africa's continued occupation. We appeal to the permanent members and to the other members of the Security Council to realize that part B represents only minimum requirements of the Afro-Asian group and that, if they can only agree to sponsor part B, they would not subsequently fall into the trap set by South Africa of allowing Namibia to remain for an indefinite time under South African rule so that South Africa can manipulate a plebiscite that would give the impression that the Namibians wanted to remain united with it.

112. I shall not dwell on the question of the plebiscite. Let us not be mistaken—the Sierra Leone delegation is not saying that there ought to be no plebiscite or free elections in Namibia. We accept this as a precondition for self-determination and independence. But certain conditions must be fulfilled.

113. First, South Africa has by its historical behaviour forfeited all claims to international trust with regard to the holding of such a plebiscite or free elections. Therefore, we cannot agree to the holding of such plebiscites while South Africa is administering the Territory.

114. Secondly, free elections or plebiscites must really be free—there must be free political parties, acknowledging the principles of democracy, freedom of opinion, freedom of campaigning and the release of political prisoners.

115. Thirdly, free elections must be in accordance with policies which are formed by the peoples themselves through their own political groupings and their political leaders, not policies merely designed to answer questions

posed by South Africa as to whether the people want to stay with South Africa or with the United Nations.

116. We appeal to the Security Council to realize that, if we support the part B set of resolutions, the objective which South Africa desires will not be attained, but the freedom which the world requires will be given to the Namibian people.

117. Mr. MALIK (Union of Soviet Socialist Republics) *(translated from Russian):* I should like to express my delegation's views on this question at a later stage in its consideration. But at this point I must draw attention to a reference in the statement of the Minister for Foreign Affairs of Liberia to some kind of trade relations that the Soviet Union is alleged to have with South Africa. I can only express my regret that the Liberian Minister has fallen victim to a false fabrication by some enemy of the Soviet Union. History has witnessed not a few such anti-Soviet fabrications put out by the foes of the USSR. Their aim is to distort and malign the policy of the Soviet Union, which is a policy directed towards peace and the liberation of the peoples. But these efforts are vain. The peoples and Governments of Africa know full well that the Soviet Union and its peoples have always been, are now and always will be faithful friends of the African peoples and of all other peoples struggling for their freedom and independence, and implacable foes of the imperialists, colonialists and racists.

118. The peoples of Africa also know what fury and pathological hatred this policy of the Soviet Union towards the African peoples arouses among imperialists and racists. In their impotent rage and hostility, the imperialists and their supporters are prepared to resort to any kind of anti-Soviet provocation to divert attention from their policy of aggression and of racist and colonial oppression of the peoples. We do not have to search far for examples.

119. I should also like to refer to a letter in the report of the *Ad Hoc* Sub-Committee on Namibia. It contains the reply of the Soviet Government to the note of the Secretary-General of the United Nations concerning resolution 283 (1970) on Namibia, which the Security Council adopted last year. This reply contains the following statement:

> "... the Soviet Union does not maintain diplomatic, consular, economic, military or other relations of any kind with South Africa, has no economic or other interests in Namibia, and has concluded no bilateral treaties with South Africa" *[S/10330, p. 27].*

The meeting rose at 5.35 p.m.