PART IV

CORRESPONDENCE

QUATRIÈME PARTIE

CORRESPONDANCE

1. THE DEPUTY PRIME MINISTER AND THE MINISTER FOR FOREIGN AFFAIRS OF ETHIOPIA TO THE REGISTRAR

28 October 1960.

Sir,

I have the honour to send you herewith a letter from the Agents of the Government of Ethiopia, transmitting to you on behalf of the Ethiopian Government an Application [1] instituting proceedings before the International Court of Justice and relating to a dispute with the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa.

I have the further honour to inform you that H.E. Dr. Tesfaye Gebre-Egzy and Hon. Ernest A. Gross have been appointed Agents of the Ethiopian Government in this case.

Very truly yours,

(Signed) Tsahafe Tezaz Aklilu HABTE-WOLD.

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2. THE AGENTS OF THE GOVERNMENT OF ETHIOPIA TO THE REGISTRAR

28 October 1960.

Sir,

We have the honour to address to you, on behalf of the Government of Ethiopia, an Application instituting Proceedings before the International Court of Justice and relating to a dispute with the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa.

Very truly yours,

(Signed) Tesfaye GEBRE-EGZY.
(Signed) Ernest A. GROSS.

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[1] See I, pp. 4-24.

3. THE AMBASSADOR OF LIBERIA TO THE NETHERLANDS TO THE REGISTRAR

4 November 1960.

Sir,

I have the honour to send you herewith a letter from the Agents of the Government of Liberia, transmitting to you, on behalf of the Liberian Government, an Application [1] instituting Proceedings before the International Court of Justice and relating to a dispute with the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa.

I have the further honour to inform you that Honourable Joseph W. Garber, Attorney General of Liberia, and Honourable Ernest A. Gross have been appointed Agents of the Liberian Government in this case.

Very truly yours,

(Signed) Joseph GRAHAM.

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4. THE AGENTS OF THE GOVERNMENT OF LIBERIA TO THE REGISTRAR

4 November 1960.

Sir,

We have the honour to address to you, on behalf of the Government of Liberia, an Application instituting Proceedings before the International Court of Justice and relating to a dispute with the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa.

Very truly yours,

(Signed) Joseph W. GARBER.
(Signed) Ernest A. GROSS.

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5. THE REGISTRAR TO THE CHARGÉ D'AFFAIRES A.I. OF SOUTH AFRICA TO THE NETHERLANDS [2]

4 November 1960.

Sir,

I have the honour to inform you that an Application has today been filed in the Registry of the International Court of Justice on behalf of the Government of Ethiopia instituting proceedings before the Court against

[1] See I, pp. 26-28.

[2] A similar communication was sent to the Chargé d'Affaires a.i. of South Africa in respect of the Application filed by the Government of Liberia.

the Union of South Africa and relating to a dispute with the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa. I enclose herewith a copy of this Application and of the letter of transmittal of H.E. the Deputy Prime Minister and Minister for Foreign Affairs of Ethiopia. I shall in due course transmit to you certified printed copies of the Application in the English and French edition which will be prepared by the Registry.

You will observe that the Applicant refers to Article 80, paragraph 1, of the Charter of the United Nations and founds the jurisdiction of the Court on Article 7 of the Mandate for German South West Africa made at Geneva on 17 December 1920, and on Article 37 of the Statute of the Court.

I take this opportunity of drawing your attention to Article 35 of the Rules of Court which provides (paragraph 3) that the Party against whom the Application is made and to whom it is notified shall, when acknowledging receipt of the notification, or failing this, as soon as possible, inform the Court of the name of its Agent, and (paragraph 5) that the appointment of an Agent must be accompanied by a statement of an address for service at the seat of the Court to which all communications relating to the case should be sent.

I have the further honour to inform you that the question of the fixing of time-limits for the filing of the pleadings in the case will form the subject of a later communication. In this connection, I would venture to draw your attention to Article 37, paragraph 1, of the Rules of Court.

I have, etc.

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6. THE REGISTRAR TO THE DEPUTY PRIME MINISTER AND MINISTER FOR FOREIGN AFFAIRS OF ETHIOPIA [1]

5 November 1960.

Sir,

I have the honour to acknowledge receipt of Your Excellency's letter of 28 October 1960 which was accompanied by a letter from the Agents of the Government of Ethiopia, transmitting to me on behalf of the Ethiopian Government an Application instituting proceedings before the International Court of Justice and relating to a dispute with the Government of the Union of South Africa, concerning the interpretation and application of the Mandate for South West Africa.

I have the further honour to inform Your Excellency that due note has been taken of the appointment of H.E. Dr. Tesfaye Gebre-Egzy and Hon. Ernest A. Gross as Agents of the Ethiopian Government in this case and of their address for service at the seat of the Court.

I have, etc.

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[1] A similar communication was sent to the Ambassador of Liberia to the Netherlands.

7. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA[1]

5 November 1960.

Sir,

I have the honour to refer to the letter of 28 October 1960 by which H.E. the Deputy Prime Minister and Minister for Foreign Affairs of Ethiopia informed me of your appointment as Agent of the Government of Ethiopia in the proceedings instituted by that Government against the Union of South Africa, and to acknowledge your letter of 28 October 1960 transmitting the Application in that case.

I have the further honour to inform you that the Application was filed in the Registry on 4 November 1960 and was the same day communicated to the Chargé d'affaires at The Hague of the Union of South Africa.

The question of the fixing of time-limits for the filing of the pleadings in the case will form the subject of a later communication. In this connection I would venture to draw your attention to Article 37, paragraph 1, of the Rules of Court.

I have, etc.,

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8. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

5 November 1960.

Sir,

I have the honour to refer to my telegram of yesterday's date, a copy of which is enclosed herewith, and to confirm that on 4 November 1960 Applications were respectively filed on behalf of the Government of Ethiopia and the Government of Liberia instituting proceedings against the Union of South Africa, each relating to a dispute with the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa.

I should be grateful if, in accordance with Article 40, paragraph 3, of the Statute of the Court, you would be good enough to notify the Members of the United Nations of the filing of these Applications.

For this purpose, I shall forward to you as soon as possible 125 certified true copies of each of the Applications, marked "Attention Director, General Legal Division".

I have, etc.,

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[1] The same communication was sent separately to the two Agents of the Government of Ethiopia and similar communications were sent separately to the two Agents of the Government of Liberia in respect of the Application filed by their Government.

9. LE GREFFIER AU MINISTRE DES AFFAIRES ETRANGÈRES D'AFGHANISTAN [1]

26 novembre 1960.

Monsieur l'Ambassadeur,

Le 4 novembre 1960 a été déposée au Greffe de la Cour internationale de Justice, au nom du Gouvernement de l'Ethiopie, une requête par laquelle ce Gouvernement a introduit contre le Gouvernement de l'Union sud-africaine une instance relative au Sud-Ouest africain.

J'ai l'honneur, à toutes fins utiles, de transmettre ci-joint à Votre Excellence un exemplaire de cette requête.

Veuillez agréer, etc.,

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10. LE GREFFIER A L'AMBASSADEUR DE SUISSE AUX PAYS-BAS [2]

26 novembre 1960.

Monsieur l'Ambassadeur,

Le 4 novembre 1960 a été déposée au Greffe de la Cour internationale de Justice, au nom du Gouvernement de l'Ethiopie, une requête par laquelle ce Gouvernement a introduit contre le Gouvernement de l'Union sud-africaine une instance relative au Sud-Ouest africain.

Me référant à l'article 40, paragraphe 3, du Statut de la Cour, j'ai l'honneur de transmettre ci-joint à Votre Excellence un exemplaire de cette requête.

Veuillez agréer, etc.,

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11. THE MINISTER OF EXTERNAL AFFAIRS OF SOUTH AFRICA TO THE REGISTRAR

3 December 1960.

Sir,

I have the honour to refer to the applications filed by the Governments of Ethiopia and Liberia to institute contentious proceedings against the Union of South Africa in the International Court of Justice in respect of South West Africa and to certify and declare, in terms of Article 35 of the Rules of Court of the International Court of Justice—

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[1] La même communication a été adressée à tous les autres Etats Membres des Nations Unies et une communication analogue a été faite au sujet de la requête du Gouvernement du Libéria.

[2] La même communication a été adressée aux autres Etats non membres des Nations Unies qui sont parties au Statut de la Cour, ou auxquels la Cour est ouverte aux termes de l'article 35, paragraphe 2, du Statut et une communication analogue a été faite au sujet de la requête du Gouvernement du Libéria.

1. that the Government of the Union of South Africa have been duly notified that such applications have been filed;
2. that the address for service to which all communications relating to the said applications and proceedings shall be sent shall be the Embassy of the Union of South Africa at The Hague;
3. that I have appointed

Dr. Joan Philip VERLOREN VAN THEMAAT

agent of the Union of South Africa in respect of the said applications and proceedings;
4. that the Government of the Union of South Africa reserves the right to appoint one or more additional, alternate or deputy agents at any time hereafter in respect of the said applications and proceedings, as it considers expedient.

I have the honour to state further that the foregoing acknowledgement of notification and appointment of the said Dr. verLoren van Themaat as Agent of the Union of South Africa is made irrespective of the questions as to whether the International Court of Justice has any jurisdiction in respect of such proceedings or not and as to whether the applications of the Governments of Ethiopia and Liberia are in any respect justified or not.

I have, etc.,

(Signed) Eric H. LOEW.

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12. THE AMBASSADOR OF LIBERIA TO THE NETHERLANDS TO THE REGISTRAR

19 December 1960.

Sir,

I have the honour to advise that the Governments of Liberia and Ethiopia will deposit on 15 April 1961 their Memorials re the application instituting proceedings before the International Court of Justice against the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa.

Sincerely yours,

(Signed) Joseph GRAHAM.

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13. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

31 December 1960.

Sir,

I have the honour to submit the following views on behalf of the Government of the Union of South Africa.

The 15th April 1961, the date proposed by the Governments of Liberia and Ethiopia for the filing of their Memorials, is acceptable to us.

It is respectfully submitted that in the light of the following considerations a lengthy period of time will be required for the preparation of the Counter-Memorial of my Government. Although it is not possible, at this stage, to say with any certainty what this period will be, it is estimated that a period of at least 10 to 12 months after the Applicants have filed their Memorials will not be unreasonable.

The Applications of the Governments of Ethiopia and Liberia cover an extremely wide field. These Applications deal not only with a number of intricate legal and constitutional points but also with a large number of factual questions relating to almost every facet of the administration of the Territory of South West Africa over a period of 40 years. Indeed it is my submission that no case so far dealt with by the International Court of Justice has had so wide a scope and contained so many questions of fact and law.

(a) In regard to the scope of the factual issues, the attention of the Court is respectfully directed, inter alia, to the following questions raised in the Applications:

(i) the provision, control and regulation of residence and housing (paragraph 4 *(e)* (3), (7) and (13) of the Applications);
(ii) the regulation of labour (paragraph 4 *(e)* (4), (5) and (6));
(iii) the administration, control and disposal of public land (paragraph 4 *(e)* (11) and (12));
(iv) the various measures taken for the maintenance of law and order (paragraph 4 *(e)* (8)-(10) and (14)-(17) read with paragraph 4 *(c)* and *(d)*);
(v) the provision and regulation of education (paragraph 4 *(e)* (2));
(vi) the provisions as regards political rights (paragraph 4 *(e)* (1));
(vii) the measures taken in respect of different sections of the population (paragraph 4 *(b)*). The scope of this question, in itself, is extremely wide.
(viii) the measures taken to promote to the utmost the material and moral well-being and social progress of the inhabitants (paragraph 4 *(a)*). This question is also very wide.

(b) The legal issues cover numerous problems which have evolved over at least 40 years. Some of these problems are unique in that no judicial pronouncements exist in connection therewith.

(c) The very nature of the issues raised in the Applications, their far-reaching and complex character which expands their scope, will necessarily require extensive research into historical and legal records extending over a period of more than 40 years. Furthermore

many of the documents which will be required, particularly those relating to the League of Nations, are no longer readily available.

(d) A pleading which covers all the questions raised will no doubt be a lengthy one and will most likely be accompanied by many annexures. The printing of such a document will doubtless take some time.

(e) In considering the question of the time now to be allowed to my Government for filing its Counter-Memorial it is submitted that the fact that the Applicants have had a long time to prepare their case should be borne in mind. On the other hand the first official intimation to my Government of the Applicants' intention to institute legal proceedings was only received at the same time when the applications were transmitted to it, viz. on the 4th November 1960.

In this regard, it must be pointed out that the responsible Minister and most of the officials concerned with this matter were at that time abroad attending the General Assembly of the United Nations.

In conclusion, I respectfully wish to state that my Government considers the allegations made against it in a very serious light. For this reason, also, it is desirous of obtaining sufficient time to enable it to deal properly and satisfactorily with the issues raised.

Wherefore I pray that the date which it may please the Honourable Court to determine for the filing of the Counter-Memorial of the Government of the Union of South Africa shall not be before the 15th February 1962.

Please accept, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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14. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

(telegram)

6 January 1961.

Have received your letter 3 January enclosing request of Agent of South Africa for leave to file Counter-Memorial South West Africa case "not before 15 February 1962". In view of Respondent's desire for so long a delay we respectfully request opportunity for a meeting pursuant Article 37, Rules of Court. We wish to co-operate with Court in assisting find balance between interest of Applicants in expeditious determination grave issues presented and right of Respondent to have adequate opportunity to meet allegations. Respectfully, Ernest A. Gross.

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15. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA [1]

13 January 1961.

Sir,

I have the honour to refer to the Application instituting proceedings in the *South West Africa* case (Ethiopia *v.* Union of South Africa) and to the President's interview today with the Agents for the Parties [2], and to inform you that, having ascertained the views of the Parties, the President has, by Order of today's date [3], fixed the following time-limits for the filing of pleadings:

For the Memorial of the Ethiopian Government: 15 April 1961;

For the Counter-Memorial of the Government of the Union of South Africa: 15 December 1961.

The subsequent procedure has been reserved for further decision.

The official copy of the Order for the Government of Ethiopia will be despatched to you in due course.

I have, etc.,

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16. THE MINISTER OF EXTERNAL AFFAIRS OF SOUTH AFRICA TO THE REGISTRAR

18 January 1961.

Sir,

I have the honour to refer to my letter of 3 December 1960, wherein I notified you of the appointment of Dr. J. P. verLoren van Themaat as Agent of the Union of South Africa in the contentious proceedings instituted by the Governments of Ethiopia and Liberia concerning South West Africa.

Pursuant to paragraph 4 of that letter, in which I intimated that the Government of the Union of South Africa reserved the right to appoint an additional Agent, I now have the further honour to inform you that I have appointed

Mr. Ross McGregor

as such additional Agent of the Union of South Africa in respect of the said Applications and Proceedings.

The appointment has been made subject to the same provisions stated in the last paragraph of my letter of 3 December 1960.

I have, etc.,

For Minister of External Affairs.

(Signed)
Secretary for External Affairs

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[1] A similar communication was sent to the Agent for the Government of Liberia in respect of the Application filed by his Government and the same communications were sent to the Agent for the Government of South Africa.

[2] See No. 59, p. 546, para. II 3, *infra*.

[3] *I.C.J. Reports 1961*, pp. 3 and 6.

17. THE AGENT FOR THE GOVERNMENT OF ETHIOPIA TO THE REGISTRAR [1]

28 March 1961.

Sir,

Reference is made to the Application of the Government of Ethiopia in the case of *South West Africa*.

In accordance with the order of 13 January 1961, by which the President of the Court has fixed time limits for the filing of pleadings in this case, the Memorial of Ethiopia will be filed on or before 15 April 1961.

The purpose of this letter is to notify the Registry that the Government of Ethiopia reserves the right, pursuant to Article 31 of the Statute of the International Court of Justice and of Article 3 of the Rules of Court, to choose a person to sit as Judge in this case.

Pursuant to Article 3, paragraph 1, of the Rules of Court, it is respectfully requested that the President of the Court fix a time-limit within which the Government of Ethiopia may notify the Registry of its intention to exercise its right to choose a Judge under Article 31 of the Statute and may state the name of such person, when and if chosen.

The undersigned will be grateful for your acknowledgment of the receipt of this request and an indication that the procedure suggested herein is acceptable to the Court.

Very truly yours,

(Signed) Ernest A. GROSS.

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18. THE AGENTS FOR THE GOVERNMENT OF ETHIOPIA TO THE REGISTRAR [1]

15 April 1961.

Sir,

In accordance with Article 43 of the Statute of the International Court of Justice and Article 41 of the Rules of Court, and in compliance with the order of 13 January 1961 by which the President of the Court has fixed time-limits for the filing of pleadings in the *South West Africa* case (Ethiopia *v.* Union of South Africa), we have the honour to present herewith the Memorial of the Government of Ethiopia [2].

Pursuant to Article 43 of the Rules of the Court, copies of all the relevant documents, or extracts therefrom, have been communicated to the Registrar for use of the Court and of the other Party. A list of such relevant documents is given after the submissions, in accordance with the requirements of Article 43.

Very truly yours,

(Signed) Tesfaye GEBRE-EGZY.
(Signed) Ernest A. GROSS.

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[1] A similar communication was sent to the Registrar by the Agent for the Government of Liberia.

[2] See I, pp. 32-211.

19. THE REGISTRAR TO THE LEGAL ADVISER OF THE DEPARTMENT OF STATE OF THE UNITED STATES OF AMERICA [1]

19 April 1961.

Sir,

With reference to your letter of 10 November 1960, I have the honour to inform you that, the Parties in the *South West Africa* cases (Ethiopia *v.* Union of South Africa and Liberia *v.* Union of South Africa) having indicated that they have no objection to the pleadings in these cases being made available to the Government of the United States of America, it has been decided under Article 44, paragraph 2, of the Rules of Court, that the documents in question shall be made available to that Government.

I am therefore enclosing copies of the only Pleadings filed so far in the cases and would draw your attention to the confidential character of such pleadings as long as the case is *sub judice*.

I have, etc.,

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20. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA [2]

24 May 1961.

Sir,

I have the honour to refer to the letter of 28 March 1961 by which I was notified that the Government of Ethiopia reserved the right, pursuant to Article 31 of the Statute and Article 3 of the Rules of Court, to choose a person to sit as Judge in the *South West Africa* case (Ethiopia *v.* Union of South Africa), and in which it was requested that a time-limit be fixed within which the Government of Ethiopia might notify the Registry of its intention to exercise the right to choose a Judge under Article 31 of the Statute and state the name of such person, when and if chosen.

Your letter was immediately placed before the Court which has now had an opportunity to discuss it in conjunction with a similar request submitted on behalf of the Government of Liberia in the *South West Africa* case (Liberia *v.* Union of South Africa).

After deliberation, the Court, by an Order dated 20 May 1961 [3], has joined the proceedings instituted by the Applications of the Government of Ethiopia and the Government of Liberia and found that the Government of Ethiopia and the Government of Liberia are in the same interest; it has fixed 15 November 1961 as the time-limit within which the Government of Ethiopia and the Government of Liberia, acting in concert, may choose a single Judge *ad hoc*.

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[1] A similar communication was sent to the Governments of the United Kingdom (24 April 1962), Israel (11 September 1962), Chile (11 April 1963), Canada (3 March 1964) and the United Arab Republic (13 July 1964).

[2] Similar communications were sent to the Agents for the Governments of Liberia and South Africa.

[3] *I.C.J. Reports 1961*, p. 13.

I have the honour to enclose herewith the official copy of this Order for the Government of Ethiopia. Further copies will be despatched to you when printed.

I have, etc.,

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21. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

9 June 1961.

Sir,

I have the honour to acknowledge receipt of your letters Nos. 33730, 33731 and 33734 of 24 May 1961, the annexed letters from the Agent of the Governments of Liberia and Ethiopia of 28 March 1961, and the Order of 20 May 1961.

These letters and Order were received by me on 3 June 1961, and, as the notifications by the Governments of Ethiopia and Liberia of 28 March 1961, had not been communicated to me before, it was only on that date that I became aware of their contents. The competent South African authorities were therefore not enabled to submit their views before the Order was made, as they were entitled to do in terms of Article 3 (1) of the Rules.

Furthermore, it would appear that the purview of Article 3 of the Rules was exceeded in that, whereas the said Article requires the Applicants to decide prior to the time-limit fixed for the filing of the memorial whether they will choose an *ad hoc* judge, the effect of their request of 28 March and the Order made pursuant thereto is to enable them to defer their decision until some seven months later.

As the Government of the Republic of South Africa is now faced with a fait accompli, I am directed to draw your attention to the foregoing and to enquire whether there were any special circumstances which led to these apparent departures from the Rules. It is not our intention to raise any formal objection to the Order, but my Government is naturally anxious to ensure that it will be informed timeously of any procedural matters whereby its interests may be affected.

. . . . . .

I also note that both Orders, of 13 January and 20 May 1961, refer to a "dispute concerning the interpretation and application of the Mandate of South West Africa". I assume that these words are employed merely by way of descriptive reference to the allegations in the Applications and Memorials of the Governments of Ethiopia and Liberia and not as signifying that the question whether such dispute exists could not be in issue in the proceedings.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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22. THE ACTING REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

15 June 1961.

Sir,

I have the honour to acknowledge receipt of the letter of 9 June 1961 in which you refer to the Order made by the Court on 20 May 1961 in the *South West Africa* cases (Ethiopia *v.* Republic of South Africa; Liberia *v.* Republic of South Africa).

In accordance with Article 3 of the Rules, the Court in that Order fixed a time-limit within which the Government of Ethiopia and the Government of Liberia, acting in concert may choose a single Judge *ad hoc*. In so doing it intended neither to deprive the Government of the Republic of South Africa of its rights under the Rules nor to prejudice in any way the exercise of such rights.

It is noted that it is not your intention to raise any formal objection to the Order of the Court. The Government of the Republic of South Africa will in due course have ample opportunity to submit its views on any choice made by the applicant Governments, acting in concert, within the time-limit laid down in the Order. These views will not be limited to the identity of any person so chosen but will be entirely at large. It is the intention of the President, if such a choice be made by the Applicants, to fix a time-limit within which the Government of the Republic of South Africa may submit its views in accordance with paragraph 1 of Article 3.

You state that the competent South African authorities were prevented from submitting their views before the Order was made on 20 May 1961, and indicate that this constituted a departure from the Rules, in particular from Article 3, paragraph 1, thereof, and you ask whether this was the result of any special circumstances. I would point out in the first place that the provision to which you refer in no way requires that the fixing of the time-limit first mentioned therein should be delayed until the other party should have submitted its views.

In the second place, I would draw your attention to the fact that in making its Order of 20 May 1961 the Court was concerned with the application of paragraph 2 of Article 3 and in fact fixed a time-limit for the choice of a single Judge *ad hoc* by the two Governments. There would appear to be evident advantages in giving you an opportunity to express your views after, rather than before, that decision had been taken. It is clear that if no choice be made by the applicant Governments, acting in concert, the Republic of South Africa cannot in any way be prejudiced. In the event of such a choice being made, it will be immediately communicated to you. If, after you have submitted your views, any doubt or objection should arise, the decision, in accordance with the last sentence of paragraph 1 of Article 3, shall rest with the Court, if necessary after hearing the Parties.

In conclusion on this point, I am directed by the President to assure you that the Court's chief concern is that in all matters there should be complete equality between the Parties. When the time comes for the Government of the Republic of South Africa to reach a decision concerning the choice of a Judge *ad hoc*, any wishes it may express as to time-limits to be fixed will be fully taken into consideration.

. . . . . .

Finally, I would inform you that your assumption, expressed in the last paragraph of your letter, with reference to the words there cited, is entirely correct. In accordance with the common practice of the Court, the general words used to describe the nature of the case referred to it are taken from the letters of transmittal of the Applications referring the case to the Court. The employment of these descriptive words prejudges no issue between the Parties.

I have, etc.,

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23. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

4 October 1961.

Sir,

I have the honour to refer to the Order of 20 May 1961 in the *South West Africa* case whereby the Court fixed 15 November 1961 as the time-limit within which the Government of Ethiopia and the Government of Liberia, acting in concert, may choose a single Judge *ad hoc*.

On the assumption that the aforesaid Governments may, on or before 15 November 1961, nominate a Judge *ad hoc*, it would be appreciated if you would inform me whether my Government will have to nominate a Judge *ad hoc* on or before the date that its first pleadings are filed or whether my Government need only reserve a right to do so and give its final decision on the matter and the name of the person chosen within a time-limit to be fixed by the President in terms of Article 3 of the Rules.

On the other hand, should the Government of Ethiopia and the Government of Liberia, acting in concert, not choose a Judge *ad hoc* within the time-limit fixed by the Court, kindly inform me up to what time my Government may exercise the right to choose a Judge under Article 31 of the Statute. In this event would the Government of Liberia and the Government of Ethiopia again be accorded the right to choose a Judge *ad hoc* within a further time-limit to be fixed?

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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24. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

11 October 1961.

Sir,

I have the honour to refer to the Order of the International Court of Justice, dated 20 May 1961, in which the Court fixed 15 November 1961 as the date within which the Governments of Ethiopia and Liberia, acting in concert, exercise their right to choose a single *ad hoc* Judge to sit in the *South West Africa* cases.

This is to advise the Registry that Ethiopia and Liberia are prepared to waive their right to appoint a Judge *ad hoc* to sit in the *South West Africa* cases, provided, however, that the Union of South Africa make a similar waiver. In the event that the Union of South Africa chooses a Judge *ad hoc*, or signifies its intention to do so, Ethiopia and Liberia hereby advise the Court of their intention to do likewise and hereby respectfully request the Court to grant them permission to do so within suitable time-limits to be prescribed by the Court. In making this request, it is the intention of Ethiopia and Liberia to assure that a situation will not arise in which the Court would be sitting with a Judge *ad hoc* from one of the Parties only.

We request you to transmit this communication to the Members of the Court and to the other Party.

Confirmation that the foregoing procedure is acceptable to the Court would be appreciated.

Very truly yours,

(Signed) Ernest A. GROSS.

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25. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

12 October 1961.

Sir,

I have the honour to acknowledge receipt of your letter, dated 4 October 1961 and received in the Registry on 11 October 1961, in which you refer to the Order made by the Court in the *South West Africa* cases on 20 May 1961, which fixed 15 November 1961 as the time-limit within which the Government of Ethiopia and the Government of Liberia, acting in concert, may choose a single Judge *ad hoc*.

You ask, in the first place, on the assumption that the applicant Governments may nominate a Judge *ad hoc* within that time-limit, whether your Government will have to nominate a Judge *ad hoc* on or before the date that its first pleadings are filed or whether your Government need only reserve a right to do so and give its final decision on the matter and the name of the person chosen within a time-limit to be fixed by the President in terms of Article 3 of the Rules.

In reply to this question, I have the honour to point out that Article 3 of the Rules does not require that the name of a person chosen to sit as Judge shall be communicated within the time-limit fixed for the filing of the first pleading. That date, under the Article, is relevant to the statement of the Party's intention. Since the Court was ready to accept the reservation of the right by the applicant Governments as sufficient compliance with the requirements of the Rules and fixed the time-limit within which a Judge *ad hoc* may be chosen, it may be concluded that, should your Government wish to adopt a similar course, it will be permitted to do so. In this connection, I have the honour to refer to my letter of 15 June 1961, in which I informed you that the President had

directed me to assure you that the Court's chief concern was that in all matters there should be complete equality between the Parties.

You ask, in the second place, to be informed up to what time your Government may exercise the right to choose a Judge under Article 31 of the Statute should the Government of Ethiopia and the Government of Liberia, acting in concert, not choose a Judge *ad hoc* within the time-limit fixed by the Court.

I have the honour, in reply to this question, to state that the failure of the applicant Governments to choose a Judge *ad hoc* within the time-limit fixed by the Order of 20 May 1961 would not affect the time-limits applicable to the Government of the Republic of South Africa.

Finally, you ask whether, in the eventuality contemplated in your second question, the Government of Liberia and the Government of Ethiopia would again be accorded the right to choose a Judge *ad hoc* within a further time-limit to be fixed.

In reply to this question, I have the honour to refer you to the Nottebohm case (Liechtenstein *v.* Guatemala) in the second phase of which a situation arose similar to that which you envisage; no action with reference to the choice of a Judge *ad hoc* was taken by the Applicant at the time of the filing of the Memorial (3 June 1952). The Respondent having, within the time-limit fixed for the filing of the Counter-Memorial (20 April 1954), designated a person to sit as Judge *ad hoc*, the Agent for the Government of Liechtenstein informed the Registrar that this nomination left the Government of Liechtenstein with no alternative but to exercise, in their turn, their right to nominate a Judge *ad hoc* and that a name would shortly be submitted to the Court in this connection. At the same time the Agent indicated that it had not been the original intention of the Government of Liechtenstein to nominate a Judge *ad hoc* and that that Government was willing to refrain from nominating a Judge on the condition that the Government of Guatemala withdrew their nomination and made no other. The latter Government, not having acted upon this proposal, the Government of Liechtenstein on 26 July 1954 notified its choice of a Judge *ad hoc* who in due course sat to consider the case.

The right conferred by Article 31 of the Statute is an absolute one which affects the composition of the Court and the equality of the Parties. Accordingly the provisions of Article 3 of the Rules could never be interpreted by the Court in such a way as to frustrate the object of the Statute by introducing inequality as between the Parties. The Nottebohm case serves to illustrate the principle in accordance with which the Rule is applied.

In these circumstances it will be clear that the possibility can be excluded of the Court's sitting with a Judge *ad hoc* chosen by one Party only while the other Party was desirous of choosing a Judge *ad hoc* and ready to do so.

Copies of your letter and of the present reply are being sent to the Agents for the Governments of Ethiopia and Liberia.

I have, etc.,

26. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

8 November 1961.

Sir,

I have the honour to acknowledge receipt of your letter No. 34438 of 17 October 1961, with annexure[1], and to advise you that, after due consideration, the Government of the Republic of South Africa has decided to exercise its right under Article 31 of the Statute of the Court. In terms of Article 3 of the Rules of the Court, I therefore have the honour to notify you that it is my Government's intention to choose a Judge *ad hoc*.

The name of the person chosen to sit as Judge will be stated in due course.

In the circumstances, my Government will not accede to the proposal contained in the annexure to your letter of 17 October 1961.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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27. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

(telegram)

14 November 1961.

Pursuant to Court Order 20 May 1961 fixing 15 November 1961 as date within which Ethiopia and Liberia, acting in concert, may exercise right to choose single *ad hoc* Judge to sit in *South West Africa* cases, Court is hereby advised that said Governments, while reaffirming their willingness to waive such right subject to Government of Union of South Africa doing likewise, designate The Honourable Joseph Chesson of Liberia to sit as Judge *ad hoc*. In making this designation Governments concerned reserve right to replace Mr. Chesson with another qualified jurist if in their opinion circumstances so require.

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[1] See No. 24, p. 524, *supra*.

28. THE DEPUTY REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

15 November 1961.

Sir,

I have the honour to inform you that the following telegram, dated 14 November 1961, has just been received in the Registry from the Agent for Liberia and Ethiopia in the *South West Africa* cases:

[See No. 27, p. 527, supra]

I have the further honour to inform you that the President has fixed 15 December 1961 as the time-limit within which the Government of the Republic of South Africa may submit its views to the Court in accordance with the provisions of Article 3 of the Rules of Court.

I have, etc.

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29. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

17 November 1961.

Sir,

With reference to your letter No. 34571 of 14 November 1961 and further to my letter No. 1/18/15/4 of 8 November 1961, I have the honour to notify you that the Government of the Republic of South Africa has chosen The Honourable Jacques Theodore van Wyk, Judge of the Appellate Division of the Supreme Court of South Africa, to sit as Judge *ad hoc* in terms of Article 31 of the Statute and Article 3 of the Rules of Court. Mr. Justice van Wyk's *curriculum vitae* will follow hereafter.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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30. THE DEPUTY-REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA[1]

17 November 1961.

Sir,

I have the honour to inform you that by a letter dated 17 November 1961 the Agent for the Government of the Republic of South Africa in the *South West Africa* cases has informed me that his Government has chosen The Honourable Jacques Theodore van Wyk, Judge of the Apellate Division of the Supreme Court of South Africa to sit as Judge

[1] The same communication was sent to the Agent for the Government of Liberia.

ad hoc in terms of Article 31 of the Statute and Article 3 of the Rules of Court.

I have the further honour to inform you that the President of the Court has fixed 18 December 1961 as the time-limit within which the Government of Ethiopia may submit its views to the Court in accordance with the provisions of Article 3 of the Rules of Court.

I have, etc.,

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31. THE AGENT OF THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

30 November 1961.

Sir,

In reply to the Memorials filed by the Governments of Liberia and Ethiopia on 15 April 1961, I have the honour to file herewith the Preliminary Objections[1] of the Government of the Republic of South Africa. In accordance with Article 43 of the Rules of Court, documentation not available in one of the two Libraries in the Peace Palace is also filed. According to the Librarian of the Court, the only authorities not available are the Senate Debates, 1956, and The Republic of South Africa Constitution Act, No. 32 of 1961. These have been filed in Folder No. 7.

For the convenience of the Court, photostatic extracts have been made of League of Nations and United Nations publications quoted, as well as of certain of the articles in periodicals quoted. If it might be considered convenient, we would gladly make photostatic copies of any or all authorities referred to. A translation in English of the relevant part of a Dutch and an Afrikaans publication referred to has also been supplied. The documentation is contained in folders. A resumé of the contents of each folder is attached[2].

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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32. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA[3]

5 December 1961.

Sir,

I have the honour to refer to my letter of 1 December 1961 and to inform you that by an Order[4] of today's date the President of the International Court of Justice has fixed 1 March 1962 as the time-limit

[1] See I, pp. 212-416.

[2] Not reproduced.

[3] The same communication was sent to the Agents for the Governments of Liberia and South Africa.

[4] *I.C.J. Reports 1961*, p. 61.

within which the Governments of Ethiopia and Liberia may file a written statement of their Observations and Submissions with regard to the Preliminary Objections raised by the Government of the Republic of South Africa in the *South West Africa* cases.

I shall send you in due course the official copy of the Order for your Government.

I have, etc.,

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33. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA[1]

20 December 1961.

Sir,

. . . . . .

I now have the honour to inform you that the time-limit fixed by the President having expired without any objections having been raised by the Government of the Republic of South Africa to the designation of The Honourable Joseph Chesson, I am sending him the file of the case, in his capacity as Judge *ad hoc*.

I have, etc.,

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34. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA[2]

20 December 1961.

Sir,

. . . . . .

I now have the honour to inform you that the time-limit fixed by the President having expired without any objections having been raised by the Governments of Ethiopia and Liberia to the designation of The Honourable Jacques Theodore van Wyk, I am sending him the file of the case, in his capacity as Judge *ad hoc*.

I have, etc.,

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[1] The same communication was sent to the Agents for the Governments of Liberia and South Africa.

[2] The same communication was sent to the Agents for the Governments of Ethiopia and Liberia.

35. THE SECRETARY OF STATE OF LIBERIA TO THE REGISTRAR

20 December 1961.

Dear Sir,

I have the honour to refer to letter No. I.C.J.-641-'60 of 4 November 1960, sent to you by the Liberian Ambassador at The Hague and your reply to him No. 32547 WT/aps dated 5 November 1960, with regard to the Agents of Liberia in the proceedings before the International Court of Justice relating to a dispute with the Government of the Union of South Africa concerning the interpretation and application of the Mandate for South West Africa.

I have the honour to notify you further of the appointment of Honourable Joseph J. F. Chesson, Attorney General of the Republic of Liberia, as Agent in succession to Honourable Joseph W. Garber.

With sentiments of esteem,

(Signed) J. Rudolph GRIMES.

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36. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

8 January 1962.

Sir,

Reference is made to the Order of the Court dated 20 May 1961 relating to the right of Ethiopia and Liberia to choose a single *ad hoc* Judge to sit in the *South West Africa* cases, and to the cable dated 14 November 1961 to the Registrar from the undersigned as Agent for Liberia and Ethiopia, advising that the said Governments desired to designate The Honourable Joseph Chesson of Liberia to sit as Judge *ad hoc*. The attention of the Court is respectfully called to the reservation by the aforesaid Governments of the right to replace Mr. Chesson with another qualified jurist if circumstances in their opinion should so require.

This letter is to inform the Court that circumstances have arisen which make it appropriate in the opinion of the Governments of Ethiopia and Liberia to designate His Excellency Sir Muhammad Zafrulla Khan of Pakistan as Judge *ad hoc* to sit in the *South West Africa* cases in the place and stead of the Honourable Joseph Chesson of Liberia, whose designation is hereby withdrawn.

It is the hope and expectation of the Governments of Ethiopia and Liberia that Sir Zafrullah Khan will sit as *ad hoc* Judge for the duration of this proceedings.

The Court is respectfully requested to take such action as is necessary to give effect to this designation, including such notice as may be required pursuant to Article 3 of the Rules of Court.

The *curriculum vitae* of Sir Zafrulla Khân is already available to the Court by reason of his having served as a Judge of the Court. It only remains to be added that Sir Zafrulla Khan is at the present time Per-

manent Representative of Pakistan to the United Nations, with offices at Pakistan House, 8 East 65th Street, New York 21, New York.

Respectfully submitted,

(Signed) Ernest A. GROSS.

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37. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

15 January 1962.

Sir,

I have the honour to send you herewith a certified true copy of a letter dated 8 January 1962 which was received in the Registry on 13 January 1962 from the Agent for the Governments of Ethiopia and Liberia in the *South West Africa* cases.

I have the further honour to inform you that the President has fixed 15 February 1962 as the time-limit within which the Government of the Republic of South Africa may submit its views to the Court in accordance with the provisions of Article 3 of the Rules of Court with regard to the designation of His Excellency Sir Muhammad Zafrulla Khan to sit as Judge *ad hoc*.

I have, etc.,

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38. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

23 February 1962.

Sir,

I have the honour to refer to the Order of 5 December 1961, whereby the Court determined 1 March 1962 as the time-limit within which Ethiopia and Liberia might file their observations in terms of Rule 62 (3).

I assume that after receipt of such observations, the Court will consider the fixing of a date for the commencement of oral proceedings regarding the Preliminary Objections. My Government respectfully requests the Court to defer its decision in that regard for a short period, say 14 days, after receipt of the Applicants' observations, in order to allow an opportunity for possible representations concerning the further proceedings. Before receipt of the observations, it will not be possible for my Government to decide whether it will be necessary or desirable to make such representations, e.g., as appears to be contemplated by Rule 62 (4) for leave to file further written replies or documents. The Court might wish to take this into consideration in determining the date of commencement of the oral proceedings.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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39. THE AGENTS FOR THE GOVERNMENT OF ETHIOPIA TO THE REGISTRAR [1]

1 March 1962.

Sir,

In accordance with Article 62 of the Rules of Court, and in compliance with the order of 5 December 1961 by which the Court fixed the time-limit for the filing of Ethiopia's written statement of its Observations and Submissions with regard to the Preliminary Objections raised by the Government of the Republic of South Africa in the *South West Africa* cases, we have the honour to present herewith the written Observations of the Government of Ethiopia [2].

Pursuant to Article 43 of the Rules of Court, copies of all the relevant documents, or extracts therefrom, have been communicated to the Registrar for use of the Court and of the other Party. A list of such relevant documents is given after the submissions, in accordance with the requirements of Article 43.

Very truly yours,

(Signed) Tesfaye GEBRE-EGZY.
(Signed) Ernest A. GROSS.

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40. *THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR*

(telegram)

3 March 1962.

Applicants *South West Africa* cases reserve right to object in event Republic South Africa requests privilege file further pleadings prior to hearing.

Ernest A. GROSS.

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41. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

(telegram)

14 March 1962.

After consideration of Applicants' Observations my Government does not consider it necessary at present stage to make representations concerning further proceedings. At a later stage, however, my Government will probably seek to submit further documents under rule 48 but it is unlikely that these will be of major extent.

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[1] A similar communication was sent to the Registrar by the Agent for the Government of Liberia.

[2] See I, pp. 417-489.

42. THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

24 May 1962.

Sir,

Reference is made to the Order of the Court dated 29 May 1961 relating to the right of Ethiopia and Liberia to choose a single *ad hoc* Judge to sit in the *South West Africa* cases. In a communication to the Registrar, dated 8 January 1962, the Governments of Ethiopia and Liberia designated His Excellency Sir Mohammad Zafrullah Khan to sit as Judge *ad hoc*.

The Agents for Ethiopia and Liberia have been informally advised that Sir Mohammad Zafrullah Khan is unable to sit as Judge *ad hoc* in the *South West Africa* cases, and that the Court has been so informed.

Pursuant to the Order of the Court dated 20 May 1961, the Governments of Ethiopia and Liberia hereby designate Sir Adetokunbo A. Ademola, Chief Justice of the Federation of Nigeria, as Judge *ad hoc* to sit in the *South West Africa* cases in the place and stead of Sir Mohammad Zafrullah Khan, whose designation is hereby withdrawn.

The *curriculum vitae* of Chief Justice Sir Adetokunboh A. Ademola is enclosed [1].

Respectfully submitted,

(Signed) Tesfaye GEBRE-EGZY.
(Signed) Ernest A. GROSS.

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43. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

2 June 1962.

Sir,

I have the honour to refer to my letter of 15 January 1962 and to inform you that by a letter of 24 May 1962 the Agents for the Governments of Ethiopia and Liberia in the *South West Africa* cases have informed me that Sir Muhammad Zafrulla Khan is unable to sit as Judge *ad hoc* in these cases and that the Governments of Ethiopia and Liberia have designated Sir Adetokunboh A. Ademola, Chief Justice of the Federation of Nigeria, to sit as Judge *ad hoc* in the place and stead of Sir Muhammad Zafrulla Khan, whose designation is withdrawn.

The Agents for the Governments of Ethiopia and Liberia have sent me the *curriculum vitae* of Chief Justice Sir Adetokunboh A. Ademola a copy of which I have the honour to enclose herewith.

I have the further honour to inform you that the President has fixed 2 July 1962 as the time-limit within which the Government of the Republic of South Africa may submit its views to the Court in accordance with the provisions of Article 3 of the Rules of Court with regard to the designation of Sir Adetokunboh A. Ademola to sit as Judge *ad hoc*.

I have, etc.,

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[1] Not reproduced.

44. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA [1]

2 July 1962.

Sir,

. . . . . .

I have the honour to inform you that the time-limit fixed by the President having expired without any objections having been raised by the Government of the Republic of South Africa to the designation of Sir Adetokunboh A. Ademola, I am sending him the file of the case, in his capacity as Judge *ad hoc*.

I have, etc.,

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45. THE ACTING REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA [1]

24 July 1962.

Sir,

I am directed and I have the honour to inform you that the date provisionally fixed for the opening of the hearings on the Preliminary Objections in the *South West Africa* cases (Ethiopia *v.* South Africa; Liberia *v.* South Africa) is Monday, 1 October 1962.

It is expected that the hearings will begin on that date, but the possibility exists that the date may be slightly altered, by not more than a day or two.

I shall not fail to inform you as soon as a firm date is decided upon.

I have, etc.,

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46. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

(telegram)

19 September 1962.

Court is respectfully advised Ethiopia and Liberia have designated Sir Louis Mbanefo as Judge *ad hoc* in *South West Africa* cases. Sir Louis is Chief Justice of the High Court, Eastern Region of Nigeria. Any further biographical material will be supplied urgently.

Ernest A. GROSS.

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[1] The same communication was sent to the Agents for the Governments of Liberia and South Africa

47. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

19 September 1962.

Sir,

I have the honour to inform you that the Governments of Ethiopia and Liberia in the *South West Africa* cases have designated Sir Louis Mbanefo, Chief Justice of the High Court, Eastern Region of Nigeria, to sit as Judge *ad hoc* in the place and stead of Sir Adetokunboh A. Ademola.

I have the further honour to inform you that the President has fixed 25 September 1962 as the time-limit within which the Government of the Republic of South Africa may submit its views to the Court in accordance with the provisions of Article 3 of the Rules of Court with regard to the designation of Sir Louis Mbanefo to sit as Judge *ad hoc*.

I have, etc.,

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48. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

24 September 1962.

Sir,

With reference to your letter No. 36674 of 19 September 1962, I have the honour to advise you that the Government of the Republic of South Africa will raise no doubts or objections in respect of the designation of Sir Louis Mbanefo to sit as Judge *ad hoc* in the *South West Africa* cases.

I have, etc.,

(Signed.) J. P. VERLOREN VAN THEMAAT.

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49. THE AGENT FOR THE GOVERNMENT OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

23 October 1962.

Sir,

At the close of the proceedings on 22 October 1962 [1], after the Agent for the Respondent had amended its Submissions, the Applicants requested an opportunity to consider whether the amendment to Respondent's Submissions raised a new substantive issue as to which the Applicants would wish to submit comments.

During the course of the evening, you were good enough to advise me that the Court is prepared, in the event Applicants deemed it necessary,

[1] See VII, pp. 382-383.

to receive such comments, at a session of the Court on Wednesday, 24 October, at 10.30 a.m.

The Agent for the Applicants, having now had an opportunity to review fully the Written and Oral Proceedings, as they might relate to the issue thus raised by Respondent, has reached the conclusion that no further comments are required.

It would be appreciated if you would convey this information to the President of the Court.

Sincerely yours,

(Signed) Ernest A. GROSS.

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50. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA [1]

23 October 1962.

Sir,

I have the honour to acknowledge the receipt of your letter of 23 October 1962, in which you inform me that, having considered whether the amendment to the Respondent's Submissions raised a new substantive issue as to which the Applicants would wish to submit comments, you have reached the conclusion that no further comments are required. A copy of this letter has been transmitted to the Agent for the Government of the Republic of South Africa.

I am instructed by the President of the Court to inform you that there will be no further hearings in the *South West Africa* cases (Preliminary Objections) and that the oral procedure is closed.

I have, etc.,

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51. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA [2]

17 December 1962.

Sir,

In accordance with Article 58 of the Statute, I have the honour to inform you that the International Court of Justice will hold a public sitting at the Peace Palace, The Hague, on 21 December 1962, at 9.30 a.m. for the delivery of the Judgment in the *South West Africa* cases, Preliminary Objections (Ethiopia *v.* South Africa; Liberia *v.* South Africa) [3].

I have, etc.,

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[1] A similar communication was sent to the Agent for the Government of South Africa.

[2] The same communication was sent to the Agent for the Government of South Africa.

[3] *I.C.J. Reports 1962*, p. 319.

52. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

19 January 1963.

(Memorandum)

1. In most cases that come before the International Court, the issues are of relatively limited extent. The *South West Africa* cases, however, cover an exceptionally wide field embracing virtually all aspects of the administration of South West Africa over a period of more than 40 years. They may properly be described as a large number of cases rolled into one.

Chapters V to IX of the Applicants' Memorials (I, pp. 104-196) deal specifically with the following:

(a) The well-being, social progress and development of the people of South West Africa in the following aspects:

(i) *The Economic Aspect*
Agriculture
Industry—Fishing Industry
Mining and Minerals
Railways and Harbours
Labour recruitment
Labour Conditions

(ii) *Government and Citizenship*
Suffrage
Participation in Territorial Government
General Administration
Local Government
Government within the Native Tribes and Reserves

(iii) *Security of the Person, Right of Residence and Freedom of Movement*

(iv) *Education*
Elementary and High School Education
Vocational Training
Higher Education
Comparative Status of Teachers
Comparative Budgets

(b) Petitions and supplementary material concerning Government and Citizenship, Civil Rights and Civil Liberties and Education.

(c) Alleged Militarization of the Territory.

(d) *Alleged Camouflaged Annexation of the Territory*

(i) Conferment of South African Citizenship upon inhabitants.
(ii) Representation in the South African Parliament.
(iii) Administrative separation of the Eastern Caprivi Zipfel.
(iv) Vesting of Native Reserve land in the South African Native Trust and the transfer of Administration of Native Affairs to the South African Minister of Bantu Affairs.

(e) Alleged Unilateral Alteration of the Status of the Territory.

2. The Applicants' accusations against Respondent, with reference to the various subjects listed above, are concerned in part with standards of development that have or have not been achieved, and in part with alleged motives involved in the policies adopted by Respondent in the Administration of South West Africa.

These features of the accusation necessitate a broad and full response extending beyond the confines of the specific matters raised by the Applicants.

As at present advised Respondent should consequently include in the Counter-Memorial (in addition to, or as part of the foundation for, answering of the specific allegations)—

(i) a geographical survey of the Territory;
(ii) an ethnological survey covering each of the numerous population groups;
(iii) an economic survey;
(iv) general progress made in the development of the Territory and the advancement of the well-being of the inhabitants;
(v) reasons for applying differing measures to the various population groups;
(vi) standards in comparable territories and States.

3. A certain measure of research and preliminary compilation work has been done over a period of nearly two years by a team of experts, officials and lawyers.

A survey based on such work indicates that the Counter-Memorial may run into 1,500 printed pages of the standard size of publications at the Court, and perhaps even more.

In addition there will have to be extensive copying of documents.

4. According to an estimate made by Sijthoffs Publishing Company, the Court's official printers in Leyden, at least 15 weeks will be taken for printing of a Counter-Memorial of 1,500 pages.

5. In view of the above considerations, Respondent's representatives cannot see how their task can properly and adequately be performed in less than 12 months.

This estimate takes due account of the fact that Respondent's legal team is now being substantially increased in numbers.

6. Respondent would very much appreciate an opportunity for Messrs. de Villiers and Muller, Senior Counsel, to be present at prospective discussions with the President in terms of Rule 37 of the Rules of Court. They have had insight at first hand into the preparatory work now being done, and will be able to furnish particulars of the nature and difficulties of the task of preparing and filing the Counter-Memorial even within the time limit of 12 months respectfully requested by Respondent.

(Signed) J. P. VERLOREN VAN THEMAAT.

53. LE GREFFIER AU MINISTRE DES AFFAIRES ETRANGÈRES D'AFGHANISTAN [1]

28 janvier 1963.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'arrêt rendu par la Cour le 21 décembre 1962 sur les exceptions préliminaires dans les affaires du *Sud-Ouest africain* (Ethiopie c. Afrique du Sud; Libéria c. Afrique du Sud).

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

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54. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

30 January 1963.

Sir,

I

As Agent for the Governments of Ethiopia and Liberia I have the honour to refer to your communication No. 37249 dated 21 January 1963, enclosing a copy of a Memorandum dated 19 January 1963, addressed to the Court by the Agent for the Republic of South Africa, Respondent in the *South West Africa* cases. Respondent requests the Court to fix a time limit of 12 months in which Respondent may file its Counter-Memorial and requests the opportunity to be present at prospective discussions with the President in terms of Rule 37 of the Rules of Court.

By cable dated 23 January 1963 the undersigned, as Agent for Ethiopia and Liberia (the "Applicants"), notified the Court of their objection to the request of Respondent, and stated that Applicants would convey their views in support of their objection as soon as possible. Applicants, in accordance with Article 37 of the Rules of Procedure, respectfully submit their views and reasons for urging the Court to reduce the length of time requested by Respondent for preparing and filing its Counter-Memorial.

II

1. The practice of this Honourable Court makes it clear that Respondent's right to have reasonably adequate opportunity to present its case is to be balanced against Applicants' right to obtain a reasonably expeditious determination of the issues.

The matters complained of by Applicants in the pending cases are of a nature justifying and requiring reasonably expeditious resolution. Applicants allege that rights have been unlawfully denied to the inhabitants of the Territory of South West Africa by Respondent. The inhabitants of the Territory, as well as interested States, seek judicial

[1] La même communication a été adressée a tous les autres Etats Membres des Nations Unies et aux Etats non membres des Nations Unies qui sont parties au Statut de la Cour ou auxquels la Cour est ouverte aux termes de l'art. 35, par. 2, du Statut.

remedies adequate to assure the safe-guards of the Mandate respecting rights which—if Applicants' contentions are sustained by the Court—have been denied by Respondent for a number of years.

2. The considerations adduced by Respondent in its request for 12 months' delay in filing its Counter-Memorial are that the issues are complex and numerous, and that they cover a period of more than 40 years. Respondent cites the possible length of its Counter-Memorial and urges that at least 15 weeks will be required for printing.

3. In December 1960, Respondent was called upon to submit its views as to the time-limit in which it should file its Counter-Memorial. By letter dated 31 December 1960, addressed to the Registrar of the Court, Respondent requested a period of "at least 10 to 12 months". In support of its request, Respondent set forth basically the same considerations it now repeats, including then, as it does now, a summary of factual issues raised. In addition, Respondent, in 1960, contended that although Applicants had had a long time in which to prepare their case, Respondent's "first official intimation" that there would be legal proceedings directed against it occurred when it received the Applications on 4 November 1960.

4. In its letter of 19 January 1963, Respondent acknowledges that "a certain measure of research and preliminary compilation work has been done over a period of nearly two years by a team of experts, officials and lawyers". In the light of the long history of controversy regarding the matters complained of in the Applications, and the fact that Respondent has had official and explicit knowledge of them since at least 4 November 1960, it would have indeed been surprising had Respondent not acknowledged that it has already done much of the work required for its Counter-Memorial.

III

Respondent, more than 2 years ago thus requested "at least 10 to 12 months" in which to file its Counter-Memorial. It was, by order of the Court dated 13 January 1961, given 8 months in which to do so. Applicants strongly urge that Respondent has advanced no adequate reason for now extending the length of time previously determined by the Court to be adequate. On the contrary, it is respectfully submitted that a period shorter than 8 months would now be fair and adequate.

(1) The reasons adduced by Respondent in 1960 for an unduly long time limit were basically the same reasons adduced now.

(2) Whereas Respondent asserted in 1960 that it had had no time previously in which to prepare, it now admittedly has had 2 years, and Respondent acknowledges, as must reasonably be assumed, that it has engaged in research and compilation work during the 2-year period.

(3) The issues requiring preparation by Respondent now are significantly less than those considered at the time the previous time limit was fixed. During the course of the Preliminary Objections certain of the key legal issues were resolved.

(4) Since 21 December 1962, when the Court handed down its Judgment on Respondent's Preliminary Objections, Respondent has had more than one month in which to continue work on its Counter-Memorial.

(5) Not all of the 15 weeks envisaged by Respondent for printing would have to be devoted solely to that purpose, even if Respondent's Counter-Memorial were to reach the length forecast by Respondent.

Clearly, manuscript could be transmitted for printing in stages of completion.

(6) The issues of fact involved in the *South West Africa* cases have not been newly raised. They have for many years been the subject of published reports by the United Nations Committee on South West Africa, and have been debated in the General Assembly and in Committees of the General Assembly. Moreover, information relating to the factual issues is peculiarly within the knowledge and control of Respondent as Mandatory for the Territory of South West Africa. Respondent has had ready, and in some cases, unique access to relevant documentation and source material. Indeed, for many years information concerning the subject-matter of most of the factual issues was regularly compiled by Respondent and submitted by it to the Permanent Mandates Commission of the League of Nations. It is reasonable to presume that current information of a like nature has also been compiled and maintained by Respondent.

IV

Applicants have researched the cases before the Court as reported for the years 1947 to July 1961 (excluding the cases at bar). To Applicants' knowledge, never has a party been given a period as long as 12 months in which to file a Counter-Memorial, even taking into account extensions of time-limits. The longest period accorded to any party in any case, so far as Applicants have found, was 9 months, and including extensions, 11 months, *prior to* the filing of Preliminary Objections. The average amount of time, including extensions, appears to have been 3 to 6 months. *The longest period any party has been accorded for filing its Counter-Memorial, after filing Preliminary Objections, and including extensions, was 4 months.*

The closest analogy to the case at bar appears to be *Rights of Passage over Indian Territory* (Portugal *v.* India). At the initial stages of the proceedings India was accorded 6 months in which to file its Counter-Memorial, and thereafter was granted an additional 4 months. India then filed Preliminary Objections. After the Judgment dismissing the Objections, India was accorded 3 months in which to file its Counter-Memorial. It thereafter received a 1-month postponement, during which time it filed its Counter-Memorial.

In the case at bar, Respondent was accorded 8 months in which to file its Counter-Memorial (the second longest period accorded to a party) on its representation that it required such a lengthy period primarily because of the large number of factual issues raised concerning the merits. Respondent thereafter employed all but 2 weeks of the 8 months in preparing its *Preliminary Objections.*

The *Right of Passage Case,* noted above, is apt precedent for the proposition that when a party is originally accorded a lengthy time-limit (in that case more than 6 months) for filing its Counter-Memorial, and thereafter files *Preliminary Objections* near the expiration of that limit, it should not thereafter be granted an equal—to say nothing of a longer—period to complete its pleading.

V

On the basis of the foregoing views and reasons, the Governments of

Ethiopia and Liberia urge that the request of the Republic of South Africa be denied, and that the Court determine that Respondent should have 6 months in which to file its Counter-Memorial. If discussions are held in the terms of Article 37 of the Rules of Court, Applicants request the privilege of attendance.

Respectfully submitted,

(Signed) Ernest A. GROSS.

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55. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA [1]

5 February 1963.

Sir,

I have the honour to inform you that by an Order [2] of today's date the President of the International Court of Justice has fixed 30 September 1963 as the time-limit for the filing of the Counter-Memorial of the Government of the Republic of South Africa in the *South West Africa* cases, the subsequent procedure being reserved for further decision.

I shall send you in due course the official copy of the Order for your Government.

I have, etc.,

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56. LE DIRECTEUR GÉNÉRAL DU BUREAU INTERNATIONAL DU TRAVAIL AU GREFFIER

8 juillet 1963.

Monsieur le Greffier,

J'ai l'honneur de vous informer, et vous prie de bien vouloir faire savoir à M. le Président de la Cour, qu'à sa 156me session, par une résolution en date du 29 juin 1963, le Conseil d'administration du Bureau international du Travail a décidé que le Directeur général du Bureau international du Travail se tienne à la disposition de la Cour internationale de Justice pour fournir toutes les informations que la Cour pourrait demander à l'Organisation internationale du Travail, en relation avec les procédures en cours concernant le Sud-Ouest africain.

Vous voudrez bien trouver, joints à la présente lettre, deux exemplaires du procès-verbal [1] des séances du Conseil d'administration au cours desquelles cette question a été discutée.

Veuillez agréer, etc.,

(Signé) David A. MORSE.

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[1] The same communication was sent to the Agents for the Governments for Ethiopia and Liberia.

[2] *I.C.J. Reports 1963*, p. 6.

[3] Non reproduit.

57. LE GREFFIER AU DIRECTEUR GÉNÉRAL DU BUREAU INTERNATIONAL DU TRAVAIL

10 juillet 1963.

Monsieur le Directeur général,

Par votre lettre du 8 juillet 1963, vous voulez bien me faire savoir, en me demandant d'en informer M. le Président de la Cour, qu'à sa 156me session, par une résolution du 29 juin 1963, le Conseil d'administration du Bureau international du Travail a décidé que le Directeur général du Bureau international du Travail se tienne à la disposition de la Cour internationale de Justice pour fournir toutes les informations que la Cour pourrait demander à l'Organisation international du Travail, en relation avec les procédures en cours concernant le Sud-Ouest africain. Vous joignez à votre lettre deux exemplaires du procès-verbal des séances du Conseil d'administration au cours desquelles cette question a été discutée.

En accusant la réception de votre obligeante communication, j'ai l'honneur de vous informer que je ne manquerai pas de porter ce qui précède à la connaissance de M. le Président de la Cour.

Veuillez agréer, etc.,

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58. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

21 August 1963.

Sir,

1. You are respectfully referred to the Order of 5 February 1963, fixing 30 September 1963, as the time-limit for the filing of Respondent's Counter-Memorial in the *South West Africa* cases.

2. Despite utmost endeavours to expedite preparation, it has been found impossible to complete the Counter-Memorial in time for filing on 30 September 1963. My Government is accordingly regretfully obliged to apply, as it hereby does, for an extension of the time-limit in terms of Rule of Court No. 37.4.

3. In previous communications, I have had occasion to refer to the multiplicity and complexity of the issues raised in the *South West Africa* cases, resulting in a situation whereby they in effect amount to a large number of cases rolled into one. In order to avoid unnecessary repetition in this regard, I respectfully wish to draw attention in particular to the document dated 19 January 1963, submitting Respondent's views regarding the time-limit for filing of the Counter-Memorial. In that document, the matters specifically dealt with in Chapters V to IX of Applicants' Memorials are tabulated and a list is given of subjects with each of which Respondent will have to deal systematically, as a necessary foundation for, and thus in addition to, chapters answering the specific

allegations. On the basis of that analysis and of an estimated 15 weeks required for printing, I then stated that—

> "Respondent's representatives cannot see how their task can properly and adequately be performed in less than 12 months."

4. Events since January 1963 have shown that the period of 12 months in the above statement was a considerable underestimate on the part of Respondent's representatives, for which I wish to convey our sincere apologies.

5. As was intimated in the document of 19 January 1963, a team of experts, officials and lawyers had been engaged on research and preliminary compilation work relative to the Counter-Memorial for a period of nearly two years, i.e., commencing shortly after the filing of the Applications in these cases and concurrently with the preparation and presentation of Respondent's case on the Preliminary Objections.

6. Upon dismissal of the Preliminary Objections and the fixing of 30 September 1963, as the time-limit for filing of the Counter-Memorial, the preparatory work had to be co-ordinated and re-written in a form suitable for presentation to the Honourable Court. In order to expedite matters in this regard as much as possible, the following steps were, *inter alia*, taken:

(a) The team of legal representatives, experts and officials was considerably enlarged.

(b) Every effort was made by the drafting team to reduce the length of the Counter-Memorial to the minimum reasonably required for adequate presentation.

(c) Negotiations with printers, in the Netherlands and in South Africa, resulted in a considerable reduction of the original estimates of printing time, the assessment (in both countries) now being six weeks, subject to a very fast rate of proof-reading and supply of copy.

7. In practice, however, it has been found, as will be readily appreciated, that there is a limit to the time savings that can be accomplished even by means such as the above. In view of the need for accuracy, co-ordination and unity in the end product, all the work must in its final stages necessarily pass through the hands of relatively few persons—who must also assist in the planning and co-ordination of earlier stages of production. The volume of the work involved is enormous. Preliminary drafts (which are of necessity unco-ordinated and overlapping) run into thousands of typed pages, with the result that critical reading alone takes up considerable time. One of the objects at the final stages is to reduce the volume of reading matter to sizeable proportions, for the convenience of the Honourable Members of the Court, without thereby doing injustice to the case that requires to be presented on Respondent's behalf.

8. Respondent expects to have available in print, before 30 September 1963, one self-contained portion of the Counter-Memorial, dealing with basic legal issues which will require consideration at this stage of the proceedings, as well as with the historical background relative thereto. Respondent will gladly make this volume available to Applicants as soon as it is completed, in order to enable them to proceed with the preparation of their answer and thus expedite the filing of their Reply. If the Court or the Honourable President should so desire, Respondent would also

gladly file this portion of the Counter-Memorial immediately upon its completion.

9. In order to complete the rest of the Counter-Memorial, however, Respondent will, for the reasons indicated above, require time beyond 30 September 1963. But here also, if it should be so desired by Applicants, Respondent is prepared to co-operate in the adoption of special methods with a view to reducing the period which Applicants may need to file their Reply. Thus, as and when further portions of the Counter-Memorial may become available in final roneoed form prior to printing, Respondent would be prepared to render them available to Applicants.

Although Respondent would in such event reserve the right to effect alterations at the printing stage, such alterations, if any, would in all probability be of minor import only.

10. The possible special steps referred to in paragraphs 8 and 9 hereof, are respectfully submitted merely as suggestions with a view to minimizing the delay and inconvenience that might arise from the extension now applied for. They need not be taken if not favoured by the Honourable President or the Court. Respondent would also gladly consider any reasonable alternative suggestions having the same purpose in view.

11. Having regard to all the relevant factors, Respondent's representatives, to the best of their ability, estimate that a further seven and a half months will be required for completion of the Counter-Memorial.

I therefore respectfully apply on Respondent's behalf, for extension of the time-limit for the filing of the Counter-Memorial in the *South West Africa* cases until 15 May 1964.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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59. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

6 September 1963.

Sir,

I

Reference is made to Communication No. 38386 dated 30 August 1963, from the Deputy-Registrar, transmitting a copy of a letter dated 21 August 1963, addressed to the Registrar by the Agent for the Government of the Republic of South Africa, Respondent in the *South West Africa* cases. Respondent has requested a seven and a half months extension of the time-limit fixed for the filing of its Counter-Memorial in these cases, the said request having been received and filed in the Registry of the Court on 29 August 1963, one month prior to the expiration of the time-limit of 30 September 1963.

Promptly upon receipt of telegraphic advice from the Registry of the aforesaid letter, the Applicants, through the undersigned Agent, dispatched a cable dated 30 August 1963, opposing any extension of time

for filing the Counter-Memorial, and reserving the right to submit a Memorandum upon receipt of the copy of Respondent's letter. Having now received said copy, Applicants respectfully renew their vigorous objection to granting of Respondent's request, and in support of such objection call to the Court's attention the considerations enumerated below.

II

Respondent's request for an extension of time follows its consistent pattern of requesting unreasonably long periods to prepare its pleadings, while, on the contrary, Applicants have at all times sought to proceed with expedition, at no stage having requested longer than five months to submit a pleading herein.

1. The Applications were filed on 4 November 1960.

2. Applicants requested and received a 5 months' time-limit for filing their Memorials, which were duly filed 15 April 1961. Respondent by letter of 31 December 1960, requested until 15 February 1962 to file its Counter-Memorial, a period of more than 15 months from the date of the Applications and ten months from the date of the Memorials. Respondent sought to justify its request for so lengthy a period primarily on the ground that the Applications dealt "not only with a number of intricate legal and constitutional points but also with a large number of factual questions relating to almost every facet of the administration of the Territory of South West Africa over a period of 40 years".

3. Objection to the request having been made by Applicants, the Agents for the respective Parties met on 13 January 1961 with the President of this Honourable Court, in terms of Article 37 of the Rules of Court, and both Parties submitted Memoranda in support of their respective views [1]. *Having heard the Parties and having considered* the views set forth in their written submissions, this Honourable Court by Order dated 13 January 1961, fixed 15 December 1961 as the time-limit for the filing of the Counter-Memorial.

Accordingly, Respondent had virtually the entire year of 1961 to gather all documents and source material relevant to the issues raised in the Applications, to engage in requisite research and to prepare argument upon the legal issues raised therein, with all of which Respondent had a unique familiarity and access, arising from over 40 years' administration of South West Africa.

Shortly prior to the expiration of the aforesaid time-limit, *viz.* on 30 November 1961, Respondent filed its Preliminary Objections and Applicants thereupon requested and received a period of 3 months in which to file their Observations.

4. Following the Judgment of 21 December 1962 on the Preliminary Objections, Respondent requested and received a period of 1 month for formulating its views concerning the time-limit required for Counter-Memorial.

5. By memorandum dated 19 January 1963, Respondent requested a period of 12 months in which to file its Counter-Memorial. Such request was for a period more than twice that accorded to any party in any case

[1] Not filed with the Registry.

previously before this Court for filing a Counter-Memorial, *including extensions*, following a Judgment on Preliminary Objections. Respondent's supporting arguments for so lengthy a period were basically the same as those adduced in its initial request of 31 December 1960.

6. By Memorandum dated 30 January 1963, Applicants opposed the request for 12 months as dilatory. The Court allowed Respondent 9 months.

7. Respondent, repeating for the third time in two years the same basic contentions as to the necessity for compilation of material and extensive research, now seeks an additional seven and a half months. Respondent now concedes, however, that printing can be completed in 6 weeks rather than the 15 weeks it previously represented, but contends that it underestimated by what is, in effect, more than half a year the time required to prepare its Counter-Memorial.

III

Applicants refer the Court to their Memorandum of 30 January 1963 setting forth the grounds for opposing as dilatory Respondent's earlier request for 12 months in which to file its Counter-Memorial. Conceding Respondent's right to have reasonably adequate opportunity to present its case, Applicants then submitted and now reiterate their equally valid right to a reasonably expeditious determination of the grave issues of international accountability and legal protection of human rights involved in these cases.

The Honourable Court, having earlier determined that a fair balancing of the respective interests of the Parties called for the fixing of 30 September 1963 as the time-limit for filing the Counter-Memorial is now confronted, at virtually the last minute, with a mere repetition of arguments, already twice made, for unreasonably long periods. Nothing is added by Respondent by way of justification except the contention that Respondent finds it "impossible" to complete the Counter-Memorial in time.

A plea of "impossibility", concerning a matter in which discretion and diligence play so decisive a part, and which involves collection and preparation of material within Respondent's unique knowledge and control, should, it is submitted, be appraised against the history of the pleadings in these cases.

1. Applications were filed 4 November 1960.

2. Applicants requested and received 5 months for filing Memorials.

3. Respondent requested 15 months from the date of the Applications for filing its Counter-Memorial largely on the grounds that such a period is required to deal with the factual issues concerning its administration of South West Africa; received 13 months; filed Preliminary Objections 2 weeks before expiration of time-limit for the Counter-Memorial, which objections, of course, do not deal with the aforesaid factual issues at all.

4. Applicants requested and received 3 months for filing Observations.

5. After a lapse of 1 month following the Court's Judgment of 21 December 1962, Respondent requested 12 months for filing its Counter-Memorial; the Court granted until 30 September 1963, a period of approximately 9 months from the date of Judgment and of almost 3 years from the date of the filing of the Applications.

IV

In its appraisal of Respondent's plea of "impossibility" of completing its Counter-Memorial, Applicants respectfully urge upon the Court the consideration that pursuant to Article 41 of the Rules of Court, the Parties herein will have the opportunity to file further pleadings. While calling attention to the danger that Respondent may seek to continue its dilatory procedures in connection with the exercise of its right of Rejoinder, Applicants submit that any residual matters which Respondent may feel it has overlooked or has been unable to analyse during the almost 3-year period which has elapsed since the filing of the Applications herein, may be included in its Rejoinder and, if necessary, in the Oral Hearings as well.

V

In conclusion, Applicants respectfully reaffirm the reasons set forth in their Memoranda of 12 January 1961 and 30 January 1963, and oppose the granting of any extension of time for filing the Counter-Memorial.

Applicants respectfully request the opportunity to be heard at the earliest possible time, pursuant to Article 37 of the Rules of Court, in the event the Court does not see fit in the absence of such a hearing to deny any extension of the time-limit presently fixed for the filing of the Counter-Memorial herein.

(Signed) Ernest A. GROSS.

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60. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA [1]

18 September 1963.

Sir,

I have the honour to inform you that by an Order [2] of today's date the International Court of Justice has extended to 10 January 1964 the time-limit for the filing of the Counter-Memorial of the Government of the Republic of South Africa in the *South West Africa* cases, the subsequent procedure being reserved for further decision.

I shall send you in due course the official copy of the Order for your Government.

I have, etc.,

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[1] The same communication was sent to the Agents for the Governments of Ethiopia and Liberia.

[2] *I.C.J. Reports 1963*, p. 12.

61. LE GREFFIER AU DIRECTEUR GÉNÉRAL DU BUREAU INTERNATIONAL DU TRAVAIL

1er octobre 1963.

Monsieur le Directeur général,

Comme suite à ma lettre du 10 juillet 1963, j'ai l'honneur de vous faire savoir que je n'ai pas manqué de porter votre lettre du 8 juillet 1963 à la connaissance du Président.

L'information qu'elle contenait a été communiquée à la Cour, qui en a pris note.

Veuillez agréer, etc.,

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62. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

10 January 1964.

Sir,

The Counter-Memorial[1] of the Republic of South Africa in the *South West Africa* cases is filed herewith in terms of the Order of the Honourable Court of 18 September 1963.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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63. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

10 January 1964.

Sir,

In the preparation of my Government's Counter-Memorial, a large number of different documents have been used. For the convenience of the Court two photostatic copies have been prepared of the relevant portions of those documents referred to in the Counter-Memorial which are not available in the Court Libraries, even though they may have been published and available to the public in terms of Rule 43 (1).

The system followed in submitting these documents to the Court is similar to that used in connection with my Government's Preliminary Objections in that the photostatic copies were arranged in the order in which they appear in the Lists of the Relevant Documentation. No photostatic copies have been made of documents available in the Court Libraries or filed with the Preliminary Objections although such documents also appear in the Lists of the Relevant Documentation.

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[1] See **II, III** and **IV**, pp. 1-195.

The documents submitted are referred to in Books III to VIII of the Counter-Memorial. Reference to two documents only is made in Book I. Both these documents are available in the Court Libraries. All the documents referred to in Book II are either available in the Court Libraries or have been submitted with the Preliminary Objections. Book IX has no documentation.

The documentation submitted for the convenience of the Court as referred to in Books III, VI and VII of the Counter-Memorial, is submitted herewith. Owing largely to transport difficulties, it was found impossible to submit the documents referred to in Books IV, V and VIII before 13 January. Certain supplementary documents referred to in Books III and VI which, as now appears, are not available in the Court Libraries, will also be forwarded on that date.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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64. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA[1]

20 January 1964.

Sir,

I have the honour to inform you that by an Order[2] of today's date the President has fixed the following time-limits for the further proceedings in the *South West Africa* cases:

for the filing of the Reply of the Government of Ethiopia and the Government of Liberia, 20 June 1964;

for the filing of the Rejoinder of the Government of South Africa, 20 November 1964.

I shall send you in due course the official copy of the Order for your Government.

I have, etc.,

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65. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

12 February 1964.

Sir,

In paragraph 35 (**II**, pp. 476-477) of Book IV of the Counter-Memorial an expected Report of a Commission on South West Africa was referred to. This Report has just been published and is available to the public. For the convenience of the Court, it is the intention to include two copies of this Report among the documentation submitted with the

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[1] The same communication was sent to the Agents for the Governments of Liberia and South Africa.

[2] *I.C.J. Reports 1964*, p. 3.

Counter-Memorial, in two folders both marked Volume IV-5, and these folders will be submitted to you by our Embassy.

Although the said Report has nothing to do with the Counter-Memorial as such, Members of the Court may find it convenient to have copies thereof constantly at their disposal for reference purposes. For this purpose it is our intention to forward a further 23 copies of this Report to you through our Embassy, if you consider such procedure to be in order.

I have, etc.,

(Signed) J. P. VERLOREN VAN THEMAAT.

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66. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

25 February 1964.

Sir,

I have the honour to acknowledge, with thanks, your letter dated 18 February 1964, transmitting a copy of a letter dated 12 February 1964, addressed to you by the Agent for the Respondent in the *South West Africa* cases. Pursuant to your request to be informed promptly whether the Agents for the Applicants desired to make any observations in connection with the aforesaid correspondence, a cablegram was dispatched to you by the undersigned as promptly as possible following the receipt of your letter, advising you of our intention to do so.

The Agents for the Applicants gratefully accept the invitation to express their views concerning matters raised in the letter dated 12 February 1964 from the Agent for the Respondent, and respectfully submit herewith observations which they regard to be both relevant and significant to the proper course and conduct of the pending litigation.

In his letter of 12 February 1964, the Agent for the Respondent advises the Registrar of his intention to include among the documentation submitted with Respondent's Counter-Memorial, two copies of a certain "Report of a Commission on South West Africa". The addition of this Report to the documentation previously submitted with the Counter-Memorial, is asserted in the letter of 12 February 1964 to be designed "for the convenience of the Court". The letter does not, however, make clear how or to what end the "convenience of the Court" is served by the inclusion of this Report among the documentation. The averment in the letter that "the said Report has nothing to do with the Counter-Memorial as such" appears inconsistent with the Agent's comment that "Members of the Court may find it convenient to have copies thereof constantly at their disposal for reference purposes".

The Report in question was, as the Agent for the Respondent points out, referred to in paragraph 35 of Chapter VII of Book IV (**II**, pp. 476-477) of the Counter-Memorial. In this paragraph, Respondent set forth the objective with which the Respondent had appointed the Commission, the composition of the Commission, its terms of reference, and the advice

to the Court that the Report of the Commission was "expected to be published in the very near future".

Without in any way commenting upon the merits at issue in the pending litigation, it seems highly relevant to question how, under the foregoing circumstances, it can be said that the Report "has nothing to do with the Counter-Memorial as such". The most cursory examination of the Recommendations of the Report reveals a direct and decisively important relationship to the merits of principal issues at bar.

It would be inappropriate to comment herein concerning the merits of issues joined in the Pleadings previously filed by the Parties. It does not, however, in any sense trench upon the merits to point out that implementation of numerous key Recommendations of the Commission would be inconsistent with, and in derogation of, contentions made by the Applicants and relief sought by them in the Applications and Submissions. Accordingly, Applicants respectfully reserve their rights under Article 41 of the Statute of the Court and Article 61 of the Rules of Procedure in the event Respondent should proceed with measures of implementation of the Report of the Commission.

Under these circumstances, the statement in the letter of 12 February 1964, that the Report "has nothing to do with the Counter-Memorial as such", must be understood to constitute an assurance to the Court that implementation of Recommendations of the Commission inconsistent with contentions at issue in the pending litigation, will be deferred in any event until after the final Judgment of this Honourable Court, and upon this understanding, Applicants perceive no objection to the inclusion of copies of the Report among the documentation submitted with the Counter-Memorial, in such quantities as the Court may find useful. Applicants, in any event, respectfully reserve the right in their Reply and subsequent stages to bring to the attention of the Court such considerations as Applicants deem relevant, concerning objectives of Respondent in appointing the Commission, its terms of reference, its Arguments, Findings and Recommendations.

I have, etc.,

(Signed) Ernest A. GROSS.

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67. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

25 March 1964.

Sir,

1. I have the honour to acknowledge receipt under cover of your letter No. 39244 dated 2 March 1964, of a copy of a letter of 25 February 1964, addressed to you by the Agents for the Applicants in the *South West Africa* cases.

2. In their said letter the Agents for the Applicants express their views concerning matters raised in a letter by Dr. J. P. verLoren van Themaat to you dated 12 February 1964. The views expressed by Applicants reveal that there is a misconception on their part regarding the purpose and effect of Dr. verLoren van Themaat's letter and of forwarding

to you copies of the report of the Commission of Enquiry into South West Africa Affairs. It is therefore necessary to clarify the position.

3. In its Counter-Memorial in the *South West Africa* cases (**II**, p. 476), the Government of the Republic of South Africa made mention of the fact that the aforementioned Commission had been appointed, set forth the composition of the Commission and its terms of reference and stated further:

> "The report of this Commission has been due for some months now, and is expected to be published in the very near future. Unfortunately it has not become available at an early enough stage to be dealt with in this *Counter-Memorial*. In so far as its recommendations, and the Respondent Government's reactions thereto, will be relevant to the matters concerned in this case, Respondent will at a subsequent stage take the necessary steps, with the leave of the Court in so far as necessary, to present such information to the Court for its consideration."

4. When the letter of 12 February 1964, was written, the Commission's report had been published and made available to the public but the Government's reactions to the recommendations of the Commission had not been announced as is still the position to date.

5. In forwarding copies of the Commission's report to you for the convenience of Members of the Court, the matter dealt with in Dr. ver-Loren van Themaat's letter of 12 February 1964, it was not intended that such report should thereby become part of the pleadings or proceedings in the Case submitted to the Court for adjudication.

6. As indicated in the above extract from the Counter-Memorial, our contemplation was to defer steps in this last-mentioned respect until the Government's reactions to the recommendations become known. Such is still our intention as at present advised.

7. However, as the Commission's report contains an up to date and detailed survey of South West Africa and its peoples and is thus in itself a useful reference work on that topic, it was considered that Members of the Court might welcome facilities for ready access thereto and the letter of 12 February 1964, specifically mentioned that the copies of the report were being made available for that purpose.

8. The statement in the letter that the report had "nothing to do with the Counter-Memorial"—which may possibly have given rise to misunderstanding—was intended merely to draw attention to the distinction between the report and other documents forwarded. The other documents were either part of the Counter-Memorial or documents "in support" thereof in the sense contemplated in the Statute and Rules, i.e., documents cited in the Counter-Memorial in support of statements contained therein. The report, however, fell into neither of these categories and the statement under discussion was not intended to convey anything more than this obvious fact.

9. There is accordingly no justification for an understanding on the part of the Applicants that the said statement in the letter of 12 February 1964, constitutes ". . . an assurance to the Court that implementation of Recommendations of the Commission inconsistent with contentions at issue in the pending litigation, will be deferred in any event until after the final Judgment of this Honourable Court, . . ." or any

assurance at all. The letter of 12 February in no way touched upon any question pertaining to implementation or otherwise of recommendations of the Commission. Likewise this letter must not be regarded as touching upon that matter which is still under consideration by the Government.

10. In their letter the Agents for the Applicants also state that Applicants reserve their rights under Article 41 of the Statute of the Court and Article 61 of the Rules of Procedure. On behalf of Respondent I must state that it is difficult to see what relevance the aforementioned provisions have to the forwarding to the Court of copies of the Commission's report for the purpose mentioned in the letter of 12 February 1964. I therefore at this stage refrain from commenting further on the Applicants' reservation and argumentation in support thereof.

11. I would appreciate conveyance of the above observations to the Agents for the Applicants.

I have, etc.,

(Signed) R. McGREGOR.

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68. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

8 April 1964.

Sir,

Receipt is acknowledged of your letter No. 39463, dated 2 April 1964, forwarding a copy of a letter dated 25 March 1964 addressed to you by the Agent for Respondent in the *South West Africa* cases.

In his letter, Agent for Respondent states that the Report of the Commission of Enquiry into South West Africa Affairs is being made available to the Court as a "useful reference work", but not as "part of the pleadings or proceedings in the Case". Applicants perceive no basis for objection to Respondent's presentation to the Court of "reference works" which are considered to be relevant to and in support of its pleadings, subject to the right of Applicants to comment upon them as such.

In the light of Respondent's failure to assure the Court that it will refrain from measures of implementation of the Commission's recommendations while the proceedings are pending, Applicants are constrained respectfully to reaffirm the reservation of their rights under Article 41 of the Statute of the Court and Article 61 of the Rules of Court.

Respectfully submitted,

(Signed) Ernest A. GROSS.

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69. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

28 May 1964.

Sir,

1. In Respondent's Counter-Memorial and in subsequent correspondence mention was made of a contemplation to place on record, at an appropriate stage, the recommendations of the recent Commission of Enquiry into South West Africa Affairs and the Respondent Government's reactions thereto, in so far as may be relevant to the *South West Africa* cases. Reference may, in this regard, be made particularly to paragraphs 3 to 6 of my letter No. 1/18/15/8 of 25 March 1964—acknowledged in your letter No. 39462 of 2 April 1964—where the relevant passage in the Counter-Memorial is also cited.

2. My Government's reactions to the Commission's recommendations were set out in a Memorandum published on 29 April 1964, and the decisions involved therein were approved by Resolution of the House of Assembly of the South African Parliament on 8 May 1964. Thereafter Respondent's legal representatives have lost no time in preparing and causing to be printed a Supplement to the Counter-Memorial[1], covering the above developments. I hereby apply in terms of Rule 37 (4) for leave to file this Supplement now as part of the Counter-Memorial. For this purpose 150 copies of the Supplement together with 3 copies signed by Respondent's Agents are herewith forwarded to you. Reasoning in support of this application is set out in the portion of the Supplement headed "Introductory". I may further point out that the presentation in the Supplement is purely factual, without comment, and of the briefest nature possible. The purpose is merely to bring the facts to the notice of the Court in a convenient manner, so as to facilitate comment and discussion in later stages of the proceedings.

3. I realise that the time-limit for the filing of Applicants' Reply will soon expire. If, therefore, Applicants should wish to deal specifically with the matters raised in the Supplement by way of an addition to their Reply, filed within a reasonable time after expiry of their time-limit and while we are preparing the Rejoinder, we would have no objection.

4. As regards relevant documentation, this comprises only the Commission's Report and my Government's Memorandum thereon. The Memorandum is printed as an annex to the Supplement, and therefore only two further copies are herewith forwarded in terms of the Rules. In regard to the Commission's Report, two copies have already been forwarded to you under cover of my letter No. 1/18/15/3 of 12 February 1964. I should be pleased if you would now treat these two copies as tendered in terms of the Rules. I am also forthwith forwarding two copies to the Carnegie Library in the Peace Palace, as a presentation from my Government. In further pursuance of my last-mentioned letter, I am forwarding an additional 23 copies for the convenience of Members of the Court, and shall be pleased to hear from you whether this will be adequate for your purposes.

I have, etc.,

(Signed) R. McGREGOR.

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[1] See IV, pp. 197-219.

70. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

29 May 1964.

Sir,

1. I have the honour to submit herewith 150 copies of a Book X[1] of the Counter-Memorial as contemplated in my letter No. 1/18/15/3 of 10 February 1964, and your reply No. 39188 of 18 February 1964. The contents of this Book which, as will be observed, differs slightly from the Book as originally conceived, are as follows:

(a) lists of errata, i.e., corrections of slips or errors in respect of Books I to VIII of the Counter-Memorial;
(b) a comprehensive table of cases cited in the Counter-Memorial;
(c) a comprehensive list of documents cited in the Counter-Memorial;
(d) individual tables of cases and lists of documentation, arranged volume by volume. The individual lists of documentation are not merely reprints of the lists annexed to the volumes of the Counter-Memorial but embody corrections of slips and errors in the original lists and should, therefore, be regarded as replacing those lists.

2. Whilst the lists mentioned in paragraph 1 *(a)* and *(d)* above are submitted in terms of Article 40 (5) of the Rules of Court, those mentioned in paragraph 1 *(b)* and *(c)* above are submitted for the sake of completeness and for the convenience of the Honourable Court.

3. Beside each reference to a document in the individual lists of documentation (mentioned in paragraph 1 *(d)* above) there appear symbols indicating where that document can be found. A full explanation of the symbols used, which is repeated on each page in so far as applicable, is given in the Introduction to Book X.

4. As a result of the correction of certain slips and errors (reflected in the lists of errata) the following further documents are now required to be introduced in support of the pleadings:

. . . . . .

5. It would be appreciated if the aforementioned documents, two sets whereof with a list for each are attached hereto, could after compliance with the requirements of Article 40 (5) of the Rules of Court be filed in the Addenda Box. The indication, "[A]", i.e., "filed in the Addenda Box", has been used in the individual lists of documentation (mentioned in paragraph 1 *(d)* above) to designate documents already filed in the Addenda Box as well as those submitted herewith and listed in paragraph 4 above.

6. In addition to Book X and the documents listed in paragraph 4 above, 150 copies of each individual list of errata, relating to Books I to VIII, are forwarded herewith for insertion in each copy of the relevant volumes already filed with the Court.

I have, etc.,

(Signed) R. McGregor.

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[1] See **IV**, pp. 139-195.

71. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

10 June 1964.

Sir,

On behalf of the Applicants in the *South West Africa* proceedings, I have the honour to refer to your letter dated 5 June 1964, in which you were good enough to transmit Respondent's Supplement to the Counter-Memorial, together with a letter dated 28 May 1964 from the Agent for Respondent concerning the Supplement. In response to your request for prompt comment thereon, the following observations are respectfully submitted.

It appears from Respondent's introductory note to the aforesaid Supplement that the Report of the Commission of Enquiry into South West Africa Affairs (Odendaal Commission), was tabled by Respondent in Parliament on 27 January 1964, that Respondent on 29 April 1964 tabled a Memorandum concerning the Report and that on 8 May 1964 the House of Assembly of the South Africa Government passed a resolution expressing approval of the Government's decisions contained in the Memorandum.

The Commission's Report has been the subject of prior correspondence to the Court, viz., a letter dated 12 February 1964 from Respondent's Agent to the Registrar, Applicants' response thereto, dated 25 February 1964, a letter from Respondent's Agent to the Registrar dated 25 March 1964 and Applicants' response thereto dated 8 April 1964.

In his letter dated 25 March 1964, Respondent's Agent commented, *inter alia*, that in forwarding copies of the Commission's Report for convenience of Members of the Court, "it was not intended that such Report should thereby become part of the pleadings or proceedings in the case submitted to the Court for adjudication" (para. 5). In the same letter (para. 6), Respondent advised the Court of its intention "to defer steps in this last-mentioned respect until the Government's reactions to the recommendations become known".

In his letter dated 8 April 1964, Agent for Applicants took note of the foregoing representation and advised the Court that Applicants perceived no basis for objecting to Respondent's presentation to the Court of evidentiary material considered by Respondent to be relevant to, and in support of, its pleadings, subject to the right of Applicants to comment upon them as such. In the aforesaid letter of 8 April 1964, Applicants reaffirmed the reservation of their rights under Article 41 of the Statute of the Court and Article 61 of the Rules of Court.

The Supplement to the Counter-Memorial states that the Report of the Commission and Respondent Government's "policy and contemplated course of action pursuant thereto" are "relevant to some of the major issues in the present proceedings, and in particular to those relating to the alleged violations of Article 2 of the Mandate". Accordingly, Respondent expresses its wish "to introduce the said Report and Memorandum formally to the record as relevant documents". (*Supplement*, **IV**, pp. 197-198.)

In the light of the foregoing, it is apparent that Respondent now intends that the two documents become part of the pleadings and proceedings in the Case. Applicants perceive no basis for objection to such a course, subject to their rights of reply in respect of the merits of the

aforesaid documents, at the same time respectfully maintaining the reservation of their rights in terms of Article 41 of the Statute of the Court and Article 61 of the Rules of Court.

Respectfully submitted,

(Signed) Ernest A. GROSS.

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72. THE SECRETARY OF STATE OF LIBERIA TO THE REGISTRAR

15 June 1964.

Sir,

I have the honour to inform you that The Honourable Joseph Chesson has resigned as an Agent of the Government of Liberia in the *South West Africa* cases and that in his stead H.E. Mr. Nathan Barnes has been appointed an Agent by and on behalf of the Government of the Republic of Liberia. The Honourable Ernest A. Gross remains, as heretofore, an Agent of the Government of Liberia in these Cases.

Very truly yours,

(Signed) J. Rudolph GRIMES.

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73. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

20 June 1964.

Sir,

I have the honour to acknowledge receipt of one original signed copy and one hundred and forty-nine printed copies of the Reply [1] of the Governments of Ethiopia and Liberia in the *South West Africa* cases.

This pleading, which was handed to me today, was filed within the time-limit fixed by the Order of 20 January 1964.

I have, etc.,

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74. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

5 October 1964.

Sir,

1. You are respectfully referred to the Order of 20 January 1964, which fixed the following time-limits: for the filing of Applicants' Reply,

[1] See **IV**, pp. 220-616.

20 June 1964; and for the filing of Respondent's Rejoinder, 20 November 1964.

2. Although every attempt has been made to expedite preparation of the Rejoinder, it is already apparent that, for the reasons set out hereinafter, it will not be completed for filing on 20 November 1964. My Government has accordingly been compelled to ask the indulgence of an extension of the time-limit in terms of Article 37.4 of the Rules of Court. This letter serves as an application in terms of the said Article.

3. The main problems in completing the Rejoinder within the time-limit prescribed by the Court, arise from the nature of the material contained in the Reply and its method of presentation. At the outset I wish to emphasize that any comments made in this regard in the present letter are not intended in a spirit of criticism. I would also not like to be understood as suggesting herein that Applicants have exceeded the degree of latitude permitted to litigants in framing their Reply—for present purposes, this question does not arise. Furthermore, I assume that some of the matters to which I shall refer, were themselves occasioned by pressure of time. However, for the purposes of this letter, I must point out that the Reply is an extremely difficult pleading to deal with. Our difficulty arises firstly from its method of presentation. It does not follow the pattern either of the Memorials or the Counter-Memorial nor does it contain a systematic exposition of the subjects dealt with, but frequently treats one topic in a number of different Chapters and annexes. Such annexes often consist of reports, publications, articles, etc., which have been incorporated by reference into the text. This method of presentation renders it very difficult to determine what the issues between the Parties really are—particularly since the various overlapping parts of the Reply are not always consistent—and consequently the task of drawing up a coherent and systematic reply thereto is equally difficult.

4. But an even more serious difficulty arises from the contents of the Reply. Applicants have not confined themselves strictly to matters initially raised in the Memorials, but have included a large number of fresh contentions or allegations in their Reply. To some extent this is caused by the method of presentation referred to in the previous paragraph. Many of the documents incorporated into the Reply as annexes cover a much wider field than the issues as defined in the Memorials and Counter-Memorial. In addition, however, Applicants themselves have raised a number of new issues in the body of the Reply. Once again, I do not want this letter to be understood as making any technical objection to this approach on Applicants' part. For present purposes the only point is that the broader ambit of the Reply necessarily causes more research and work in preparing the Rejoinder than is usual and than was contemplated, certainly on our part, when the time-limits were fixed. As examples of new issues arising from the Reply, I may refer to Applicants' contention regarding the existence of a "norm of non-discrimination and non-separation"—a contention which is spread over 29 pages of the Reply (**IV**, pp. 491-519) and is based on a large number of publications, reports, treaties, resolutions, etc.; to Applicants' reliance on scientific authority for some of their submissions (vide *ibid.*, pp. 302-307 and 600-602); and to their treatment of the topic of migratory labour, which they have now introduced as one of their important points of attack (vide *ibid.*, p. 262, and thereafter at various places).

5. A further problem has been the difficulty in obtaining some of the documents on which Applicants have relied in their Reply. In many instances their references were faulty, and although our problem in this regard has been reduced to some extent by receipt of their list of errata forwarded under cover of your letter No. 40163 of 8 September 1964, it has by no means been eliminated. In fact, there are still a number of sources which we are entirely unable to trace. In this regard it is relevant to point out that with its Counter-Memorial Respondent filed, for the use of Applicants, an extra set of copies of all supporting documents which were not available in the Carnegie Library of the Peace Palace (and even of some that were). Applicants have not done likewise, thus rendering our task more onerous than it might have been.

6. As was stated when the time-limits were fixed, we could not say how much time would be required for the Rejoinder, since that depended on the Reply. The usual procedure was thereupon followed in that an equal period of time was fixed for the preparation of the Reply and the Rejoinder. Where I am now asking for more time than was granted to Applicants, I might respectfully point out that Applicants enjoyed certain advantages which we have not had. Chief amongst these arose from the fact that Respondent transmitted parts of its Counter-Memorial to Applicants in advance of the formal filing so as to enable them to commence work thereon. Thus on 2 November 1963, we sent them copies of Book II, on 15 November 1963, copies of sections B and C of Book VIII, and on 7 December 1963 copies of Books III and VII of the Counter-Memorial. In fact therefore Applicants had considerably longer than the 5 months granted by the Court for the preparation of their Reply. In addition, they received the benefit of copies of the supporting documents to which reference was made above.

7. For the reasons set out above, I respectfully request that the Court be pleased to grant an extension of the time-limit for filing Respondent's Rejoinder. We estimate that 6 weeks' grace would enable us to meet with the minimum requirements of a coherent, systematic and properly finished Rejoinder. This would then entail an extension to the beginning of January 1965. If it were to meet with the Court's approval, I would respectfully suggest that 8 January 1965, would be a suitable date, inasmuch as it is, in terms of Article 25.1 of the Rules of Court, the first Court day after the Christmas vacation; and I hereby apply accordingly.

I have, etc.,

(Signed) R. McGregor.

75. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

13 October 1964.

Sir,

I

1. As Agent for the Governments of Ethiopia and Liberia in the *South West Africa* cases, I have the honour to refer to your telegraphic communications No. 40297 and No. 40299 with regard to the request of Respondent for an extension of the time-limit in which to file its Rejoinder. Reference is also made to cable dated 9 October 1964 dispatched by the undersigned on behalf of Applicants promptly upon receipt of your communication No. 40297.

2. In their cable of 9 October 1964, Applicants undertook to communicate their views promptly upon receipt of Respondent's letter and requested an opportunity to present in writing the reasons for their objection to the granting of Respondent's request. Respondent's letter dated 5 October 1964 has now been received and Applicants, in accordance with Article 37 of the Rules of Procedure, respectfully submit their views and reasons for urging the Court to deny Respondent's request for an extension of the time-limit for filing the Rejoinder.

II

1. The time-limits for the filing of the Reply of the Governments of Ethiopia and Liberia, and for the filing of the Rejoinder of the Government of South Africa, were fixed by the President of the Court by Order dated 20 January 1964 [1]. The time-limits set by the President, *viz.*, 20 June 1964 for the filing of Applicants' Reply, and 20 November 1964 for Respondent's Rejoinder, were established following full discussion and expression of views at a meeting at the Peace Palace on Monday, 20 January 1964, in which the Agents of the parties met with the President of the Court.

2. In the course of the aforesaid meeting, Applicants' Agent, noting the extreme bulk of the Counter-Memorial, undertook nonetheless to exercise all diligence and exert all effort necessary to complete and file Applicants' Reply within a period of 5 months. This undertaking, which was faithfully carried out, reflected Applicants' conviction that the protracted course of this litigation threatened to work substantial hardship upon the inhabitants of the Territory, whose rights are in issue. The Applications herein having been filed in November 1960, the time-limit now fixed for the filing of Respondent's Rejoinder marks the end of a 4-year period during which the instant Cases have been pending. These factors were adverted to in the discussions at the Peace Palace leading to the fixing of the time-limits by Order of 20 January 1964.

3. Applicants urge that Respondent's request for an extension of the time-limit within which to file its Rejoinder violates the commitment exchanged between Applicants and Respondent at the meeting with the President, to make all necessary effort and to exercise in good faith the

[1] *I.C.J. Reports 1964*, p. 3.

requisite degree of self-discipline to honour time-limits which both parties then perceived would involve strenuous effort.

4. Applicants submit that the explanations assigned by Respondent in its letter of 5 October 1964 to justify an extension of the time-limit, are untenable. Although it would be neither seemly nor appropriate in this exchange of correspondence to discuss matters of form or substance raised in the Pleadings, Applicants are astonished by Respondent's contention that the Reply raises new issues. On the contrary, matters referred to by Respondent are all relevant and responsive to arguments of law and contentions of fact raised in the Counter-Memorial. Furthermore, with respect to Respondent's complaint of unavailability of documentary and other sources, Applicants have been at pains at all stages to comply with the Rules and are unaware of any omissions or *lacunae* on their part.

III

Applicants have previously made clear, in their several communications of 12 January 1961, 30 January 1963, and 6 September 1963, opposing either unduly long periods requested by Respondent, or extension of time-limits previously fixed by the Court, awareness of Respondent's right to have reasonably adequate opportunity to present its case. As pointed out in their letter of 30 January 1963, however, Applicants submit that Respondent's right in this respect must be balanced against Applicants' right to obtain a reasonably expeditious determination of the issues raised in these Proceedings. Applicants respectfully reaffirm this submission, to which added weight attaches by reason of Applicants' strenuous and good-faith efforts to respect the time-limit for their own Pleadings, fixed by the President after full discussion and due deliberation.

IV

1. In view of the arguments set forth above, supported and confirmed by considerations of justice and equity, Applicants respectfully but strenuously urge denial of Respondent's request for an extension of the time-limit which Respondent agreed to observe in the meeting with the President on 20 January 1964.

2. In the event the Court sees fit, notwithstanding these objections, to grant an extension of the time-limit for filing the Rejoinder, Applicants respectfully urge that any such extension should not be permitted to delay the commencement of Oral Proceedings herein. Applicants' research of cases before the Court, as reported for the years 1947 to date, have not disclosed any previous case in which so long a period has elapsed from the filing of Application to the closure of written proceedings. Applicants have sought throughout these Proceedings to comply with Orders of the Court fixing time-limits for Pleadings, both in deference to this Honourable Court and out of a deep sense of the importance of expeditious determination of causes remitted to the judicial process.

Sincerely yours,

(Signed) Ernest A. GROSS.

76. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA [1]

20 October 1964.

Sir,

I have the honour to inform you that by an Order [2] made today the President has extended to 23 December 1964 the time-limit for the filing of the Rejoinder of the Government of South Africa in the *South West Africa* cases.

I shall in due course forward to you the official copy of the Order.

I have, etc.,

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77. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

12 November 1964.

Sir,

Upon the filing of the Rejoinder, the *South West Africa* cases will be ready for hearing, and a date for the commencement of the oral proceedings will have to be fixed in terms of Article 47 of the Rules of Court. The said Article makes no provision for hearing the parties or ascertaining their views, and I am aware that the date of commencement of oral proceedings is commonly fixed without reference to the parties at all. Nevertheless, in view of certain special circumstances pertaining to the present cases, the South African Government trusts that it will not be considered presumptuous on its part to draw attention to certain considerations set out herein, to which it is hoped that the Court or the President will have regard in the exercise of the function envisaged by Article 47. This letter is being written at this early stage since, if the Court or the President is willing to give consideration to the contents thereof, an opportunity will no doubt be afforded to the Applicants to reply thereto, and my Government assumes that the Court would wish to finalize this matter on or soon after the date set for filing the Rejoinder, i.e., 23 December 1964.

In previous communications, I have had occasion to stress the wide ambit covered by the pleadings in the present matters, and the large number of issues, both of fact and of law, which arise therefrom. It is consequently unnecessary to elaborate in general on this feature, which, it is submitted, distinguishes the present cases from any other matter which has served before this Court. At the same time the feature must necessarily have an important bearing also on the amount of work which will be entailed in preparing for the oral proceedings; and it is to certain practical implications in this regard that I wish, on behalf of my Government, to draw attention.

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[1] The same communication was sent to the Agent for the Governments of Ethiopia and Liberia.

[2] *I.C.J. Reports 1964*, p. 171.

After completion of the Rejoinder, Respondent's legal advisers will first of all have to consider the full pleadings carefully with a view to determining which matters require further treatment or substantiation in the oral proceedings—a task which has been rendered more difficult by Applicants' method of pleading, to which reference was made in my letter of 5 October 1964.

Thereafter the actual preparations for the oral proceedings can be set in train. The nature and extent of such preparations will be affected not only by the wide ambit of the issues, but also by the further factor that a large number of matters raised by Applicants are of a technical nature: these concern particularly the merits of economic, political and social policies applied by Respondent or of those suggested as preferable by Applicants. In regard to such matters Respondent's legal advisers will require the assistance of a number of experts, whether as advisers, or as potential witnesses, or both. It is already evident at this stage of the drafting of the Rejoinder that the treatment in the written pleadings of these matters and attendant questions of fact, which may be in issue or relevant to the issues, will require amplification and elucidation at the oral hearing, in all probability to a considerable extent—partly in evidence and partly in argument.

Obtaining the services of suitable persons—who, in some instances, would first have to qualify themselves regarding specific aspects of the case—and thereafter arranging and holding consultations with them, constitute time-consuming processes, which have to be completed some time earlier than the commencement of the oral proceedings so as to enable Respondent to comply with the provisions of Article 49 of the Rules of Court.

With regard to some of these persons the processes have to some extent been engaged upon during the course of the preparation of the pleadings; but it will be appreciated that the nature and extent of assistance required from such persons during the drafting of pleadings differ considerably from that required for purposes of the oral proceedings, particularly as regards the possible tendering of oral evidence on certain aspects of the case.

Finally, I wish to advert to one further matter. In his letter to you of 13 October 1964 the Agent of the Applicant Governments stated that the Respondent's right to a reasonably adequate opportunity to present its case should be balanced against Applicants' right to obtain a reasonably expeditious determination of the issues raised in these proceedings. With this proposition I am in full agreement; but in striking such a balance the Court should, it is respectfully submitted, have regard to the extent of inconvenience or detriment that would result to each of the parties if its submissions regarding the fixing of dates were not accepted. As regards Applicants, their Agent referred in his said letter to his "conviction that the protracted course of this litigation threatened to work substantial hardship upon the inhabitants of the Territory, whose rights are in issue". Respondent submits, however, that this is a much exaggerated statement. On the one hand, the charges made by Applicants in these proceedings are undoubtedly of a very serious nature, and they are strenuously contested by Respondent on that basis. But on the other hand they relate more to general lines of policy, most of which have been in operation for many years, than to conduct which would from its very nature require extremely urgent redress: in the event of conduct of this

latter nature supervening, the procedure for *interim* protection would always be available to Applicants. In Respondent's submission, even if Applicants' charges as formulated should be substantiated, a delay of a few months could in a practical sense hardly make a substantial difference in regard to the inhabitants' interests.

In this regard it is, moreover, to be borne in mind that, as is generally known, Respondent is engaged upon extensive projects for accelerated development of the Territory and the advancement of all its inhabitants in the economic, educational, health and general social spheres; and recommendations for development projects in the political and administrative spheres, which are contentious for purposes of the present proceedings, are being held in abeyance until the termination of the proceedings. (Vide Supplement to the Counter-Memorial, **IV**, pp. 215-216, read with pp. 213-215.) The prospect of substantial hardship for inhabitants involved in a few months' delay must therefore be accounted a very slender one indeed. On the other hand, the lack of a sufficient period for Respondent to prepare fully and properly for the oral proceedings involves a very real prospect of irremediable prejudice, not only for Respondent but also for the peoples of South West Africa. It is surely in their long-term interest in particular that the case to the Court should, from both sides, be presented in as thorough a manner as possible.

In the light of all the circumstances, my Government would respectfully request that in fixing the date for the commencement of the oral proceedings, the Court or the President have regard to the various considerations set out above which result in Respondent requiring a longer period for preparation than is usually the case. Although I would hesitate to suggest any definite date, it is nevertheless my conviction that a date prior to May or June would render it extremely difficult for Respondent to do justice to its case, as well as to provide such assistance to the Court in this complicated matter as it would like to do.

I have, etc.,

(Signed) R. McGregor.

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78. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

2 December 1964.

Sir,

I have the honour to refer to your letter of 12 November 1964 which, as I informed you in mine of 20 November, has been placed before the President.

I am now instructed to inform you that the practice hitherto followed by the Court, which does not involve the consultation of the Parties with regard to the date to be fixed for the opening of the hearings, will be adhered to in the *South West Africa* cases.

As soon as the Rejoinder of the Government of South Africa has been filed and the written procedure thus completed, the date for the com-

mencement of the oral proceedings will be fixed by the President in the light of all the relevant circumstances, and you will, of course, be notified immediately.

I am sending a copy of this letter to the Agent for the Applicants.

I have, etc.,

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79. THE AGENTS FOR THE GOVERNMENT OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

7 December 1964.

Sir,

The Agents for the Governments of Ethiopia and Liberia in the *South West Africa* cases have received your letter of 25 November 1964 transmitting copy of a letter dated 12 November 1964 addressed to the Registrar by the Agent for the Government of South Africa. We have the honour also to acknowledge receipt of your letter of 2 December 1964 transmitting copy of a letter of the same date which you have sent to the Agent for the Government of South Africa.

Note is taken of your advice to the Agent of South Africa that the practice hitherto followed by the Court, which does not involve consultation of the parties with regard to the date to be fixed for the opening of the hearings, will be adhered to in the *South West Africa* cases. You further advise that as soon as the Rejoinder has been filed, the date for the commencement of the oral proceedings will be fixed by the President in the light of all the relevant circumstances.

Under these circumstances, the Agents for the Applicants assume that the considerations set forth in the letter dated 12 November 1964 from the Agent for the Government of South Africa to the Court, purporting to justify delay of the commencement of oral proceedings until "May or June", will not be regarded in the context of "relevant circumstances" affecting the decision concerning the fixing of the date for the commencement of oral proceedings.

In deference to the wish of the Court to decide this matter in terms of Article 47 of the Rules of Court, without consultation of the parties with regard to the date to be fixed for the opening of hearings, Applicants forbear from pointing out to the Court the many countervailing considerations which support their urgent plea that the oral proceedings be expedited.

With a view to co-operation with the Court in the interest of such expedition, Applicants respectfully advise the Court that they will be prepared to present their case at any time following the end of the Court's Winter vacation, and that they are prepared likewise to waive strict application of Article 49 of the Rules of Court, so that the parties may, at any stage of the oral proceedings, subject to the Court's approval, communicate to the Registry information regarding evidence which they intend to produce or to request the Court to obtain.

We have, etc.,

(Signed) Tesfaye GEBRE-EGZY.
Nathan BARNES.
Ernest A. GROSS.

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80. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

22 December 1964.

Sir,

I have the honour to inform you that the Embassy of the Republic of South Africa, The Hague, has been directed to arrange for the delivery to you on 23 December 1964, of 150 copies of Respondent's Rejoinder (consisting of two volumes) [1], together with those documents, cited in Volume II of the Rejoinder, which are not available, or presumably not available, in the Carnegie Library at the Peace Palace.

Part I, Volume I, of the Rejoinder contains a "General Introduction" setting out the composition of the Rejoinder.

Respondent's Submissions, signed by its two Agents, will be found in part VII, Volume II. Four copies of the Rejoinder, bearing the actual signatures of the Agents (**VI**, p. 429), will be handed to you personally.

You will note that the lists of documentation appear at the end of each volume [2] and that an indication is given, next to each document, as to whether it is available in the Carnegie Library or whether it is filed with the Rejoinder. In this connection I wish to explain that despite the most strenuous effort, it has not been possible to complete the collection of all the documents cited in Volume I of the Rejoinder. The printing of Volume I has continued until this morning with the result that the preparation of the documents and the making of translations of a number of documents could only be commenced with a few hours ago. However, Respondent undertakes to forward to the Court the outstanding documents within one week.

I have, etc.,

(Signed) R. McGREGOR.

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81. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA [3]

29 December 1964.

Sir,

I have the honour to inform you that the President has fixed Monday 15 March 1965 as the date for the commencement of the oral proceedings in the *South West Africa* cases (Ethiopia *v.* South Africa; Liberia *v.* South Africa).

The opening sitting will be held in the morning of that date at an hour which will be notified to you in due course.

It is the intention of the Court to sit in the mornings only. It has been

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[1] See **V** and **VI**.

[2] See **VI**, pp. 430-473.

[3] The same communication was sent to the Agents for the Governments of Liberia and South Africa.

decided that the proceedings will be simultaneously interpreted and the speakers will accordingly not be invited to interrupt their addresses from time to time to allow of consecutive interpretation. It is proposed, however, that there should, in the course of the morning sitting, be a short adjournment of about 15 minutes, of the time of which you will be informed prior to the commencement of the hearings.

I have, etc.,

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82. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE REGISTRAR

30 December 1964.

Sir,

I have the honour to acknowledge receipt of your communication dated 23 December 1964 advising that the Respondent in the *South West Africa* cases has filed its Rejoinder, as well as your cable dated 29 December 1964 in which you inform the Applicants that the President of the Court has fixed Monday, 15 March 1965, as the commencement date for the oral proceedings.

With the closure of the written proceedings, and the announcement of the date fixed for commencement of hearings, Applicants respectfully advise the Court that, in terms of Article 44, paragraph 3, of the Rules of Procedure, they would have no objection to an Order of the Court authorizing the pleadings and annexed documents in the *South West Africa* cases to be made accessible to the public at any time henceforward.

I have, etc.,

(Signed) Ernest A. GROSS.

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83. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE REGISTRAR

20 January 1965.

Sir,

I have the honour to acknowledge your letter No. 40825 of 11 January 1965 forwarding for my information a copy of a letter dated 30 December 1964 addressed to you by the Agent for Ethiopia and Liberia.

Concerning the second paragraph of the last-mentioned letter, Respondent has no objection to the pleadings being made accessible to the public as from the time of the commencement of the oral proceedings on 15 March 1965. Respondent, however, does not consent to the publication of the pleadings before that time.

I have, etc.,

(Signed) R. MCGREGOR.

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84. THE DEPUTY-REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA[1]

10 March 1965.

Sir,

I have the honour to refer to the letter of 30 December 1964 from the Agent for Ethiopia and Liberia and further correspondence concerning the making accessible to the public of the pleadings and annexed documents in the *South West Africa* cases.

Having regard to Article 44, paragraph 3, of the Rules of Court, the Court has authorized those pleadings and annexed documents to be made accessible to the public as from the time of the commencement of the oral proceedings on 15 March 1965.

I have, etc.,

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85. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

11 March 1965.

Sir,

I have the honour to refer to my discussion with you on the 10th instant when I intimated that Respondent intended to call witnesses and experts in the oral proceedings and that I would address a formal communication to you in that regard.

While confirming the intention to call witnesses, I regret to have to inform you, however, that Respondent's representatives upon due consideration find it impossible at this stage to comply fully with the requirements of Article 49 of the Rules of Court regarding submission of a list of witnesses.

Not only have we been unable within the limited time at our disposal to complete consultations with prospective witnesses, but we have also a more fundamental problem which arises from the attitude adopted by the Applicants in the proceedings to date.

In the first place Applicants have in their Reply to a large extent avoided dealing specifically with factual allegations made in Respondent's Counter-Memorial, with the result that it is impossible to determine on the pleadings which statements of fact are admitted or denied by Applicants. The same difficulty applies with regard to factual statements made in Respondent's Rejoinder concerning which Applicants' attitude is not as yet known to Respondent. The compilation of a list of witnesses will therefore to a very large extent depend on the attitude to be adopted by Applicants relative to the above matters.

Finally, although not a fundamental consideration, notification by Applicants of their intentions regarding the possible presentation of oral testimony could also affect Respondent's position in that regard.

[1] A similar communication was sent to the Agents for the Governments of Liberia and South Africa.

We have given serious consideration to the possibility of submitting a provisional list at this stage, but on due reflection have decided that it would be best, if so permitted, to raise the whole matter at the discussions with the Honourable President of the Court at the meeting scheduled to take place at 10 a.m. tomorrow.

I have, etc.,

(Signed) R. McGREGOR.

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86. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

12 March 1965.

Sir,

At the conference this morning in the chambers of the Honourable President of the Court, it was agreed that an opportunity would, at the outset of the proceedings on Monday, be given to Counsel for my Government to present a proposal to the Court in regard to a possible inspection *in loco*. Apart from expressing our appreciation of your co-operation in this regard, I hereby also wish to honour the undertaking given by us in that regard, viz., to inform you by letter, at the earliest opportunity, what the purport of the proposal will be.

Briefly the proposal will be that the Court, or a Committee thereof, as may be preferred, accompanied by legal representatives of the Parties, undertake an inspection of

1. the Territory of South West Africa, in order to see whatever the Court or the Committee may wish at the instance of either Party or at its own request;
2. the Territories of the Applicant States to a sufficient extent to gain a general impression of comparable standards and circumstances which could facilitate fair and proper evaluation of well-being and progress, and Respondent's policies thereanent, in South West Africa;
3. one or two other sub-Saharan African countries or territories of the Court's own choosing, to an extent and for a purpose similar to those in the case of 2 above, but by way of contrast preferably including at least one country that formerly was under Mandatory and Trusteeship administration.

The suggestion will further be that the inspection be undertaken at an opportune time to be decided by the Court after consultation with the parties, and that practical details in regard to itinerary, size of the travelling group, and the like, be arranged by discussion or such other means as the Court might think fit.

Yours faithfully,

(Signed) R. McGREGOR.

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87. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

13 March 1965.

Sir,

With reference to my letter of the 11th instant and to the conference yesterday (12 March 1965) in the chambers of the Honourable President of the Court, I have the honour to state that in view of the facts that the Applicants have stated that they do not intend to call any witnesses unless it becomes necessary to rebut evidence led by the Respondent, and that they have declared that for the purposes of their case all factual averments made by Respondent and not specifically denied by them can be regarded as undisputed, two of Respondent's difficulties relative to the submission of a list of witnesses have been resolved, viz., those set out in the fourth and fifth paragraphs of my letter of the 11th instant.

The third difficulty, however, remains, viz., that within the limited time at its disposal Respondent has been unable to complete its consultations with persons considered at this stage to be prospective witnesses, which persons are resident in different parts of the world.

In view of this difficulty Respondent still finds it impossible at this stage to comply fully with the requirements of the relative Article of the Rules of Court and can at this juncture only submit a provisional list. The attached list should[1] therefore be regarded as such, in the sense that it may later prove necessary to add names to the list or to delete names now appearing thereon. I trust that the list will be accepted in this sense and that Respondent will not be precluded from filing such amendments thereto, as may at a later date prove to be necessary. Any such amendments will be submitted in sufficient time to obviate any inconvenience to the Court or prejudice to the Applicants.

I have, etc.,

(Signed) R. McGREGOR.

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88. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE PRESIDENT OF THE COURT

14 March 1965.

Dear Mr. President,

Pursuant to the conference held on the morning of 12 March 1965, in the chambers of the Honourable President of the Court, the Agents and Counsel for the Applicants in the *South West Africa* cases have been in communication with the Agents and Counsel for Respondent, both in writing and in person, and have discussed the matters which were taken up during the conference aforesaid.

This letter is respectfully submitted for the purpose of informing the President concerning certain agreements reached between the Parties as a result of their discussions.

(1) The first area of agreement reached relates to the matter of the

[1] See pp. 573-575, *infra*.

List of Witnesses and Experts in terms of the Rules of the International Court of Justice (See No. 87)

Surname	First Names	Description	Place of Residence	Points to which evidence will be directed
BRETHOLZ	Wolfgang	Journalist	Lausanne, Switzerland	Political and economic problems in Africa
BRUWER	Johannes Petrus van Schalkwyk	D.Phil.; Professor of Social and Cultural Anthropology, University of Port Elizabeth	Port Elizabeth, S.A.	Basic considerations regarding separate development in South West Africa
CILLIE	Petrus Johannes	Journalist; Editor of *Die Burger*, Cape Town	Cape Town, S.A.	Basic considerations regarding separate development
COOK	Peter Alan Wilson	Ph.D.; Deputy Secretary, Department of Bantu Education, Pretoria	Pretoria, S.A.	Educational policy
DAHLMANN	Kurt	Journalist; Editor of *Allgemeine Zeitung*, Windhoek	Windhoek, South West Africa	Non-White political organizations in South West Africa
EISELEN	Werner Willi Max	Ph.D.; Commissioner-General for the Northern Sotho	Sovenga via Pietersburg, S.A.	Basic considerations regarding separate development and educational policies
GERICKE	Jacobus Stephanus	Minister of Religion in the Dutch Reformed Church and Deputy Rector of the University of Stellenbosch	Stellenbosch, S.A.	Views of church leaders and theological and ethical considerations regarding group relations and policies in Southern Africa
GINIEWSKI	Paul	Author and Journalist; Editor of *La Terre Retrouvée*	Paris, France	Practical considerations regarding group relations and policies in Southern Africa
GROENEWALD	Evert Philippus	Th.D.; Professor in the Theological Faculty, Dutch Reformed Church, University of Pretoria	Pretoria, S.A.	Views of church leaders and theological and ethical considerations regarding group relations and policies in Southern Africa
HOLLOWAY	John Edward	D.Sc. (Econ.); Economist; Former South African High Commissioner in London	Johannesburg, S.A.	Economic policies in South West Africa and general considerations underlying separate development

List of Witnesses and Experts in terms of the Rules of the International Court of Justice (See No. 87)

Surname	First Names	Description	Place of Residence	Points to which evidence will be directed
JENNY	Hans	Doctor of Economics; Author	Zurich, Switzerland	Political and economic problems in Africa
KNOETZE	Johannes Chasparus	Manager, Municipal Non-European Affairs Department, Vanderbijlpark	Vanderbijlpark, Transvaal, S.A.	Policy regarding Native urban administration and influx control
KROGH	Desmond Charles	D.Phil.; Professor of Economics, University of South Africa, Pretoria	Pretoria, S.A.	Economic policy in South West Africa
LAMBERTY	Max	Professor in Philosophy and Sociology, Brussels University	Brussels, Belgium	Problems of human relations and need for separation in certain circumstances
LOGAN	Richard F.	Professor of Geography, University of California	Los Angeles, U.S.A.	Geographical conditions as affecting economic development in South West Africa
MARÉ	Johannes Albertus Gerhardus	LL.Drs.; Rector of the University College of Zululand	Ngoye, Zululand, S.A.	Educational policy with particular reference to higher education
MILLS	Johan Hendrik Taute	Secretary, Department of the Chief Minister and Minister of Finance, Umtata	Umtata, S.A.	Bantu authorities and political development in the Transkei
MOLNAR	Thomas	Professor of French, University of Brooklyn, New York	New York, U.S.A.	Political, social and economic problems in Africa, including Southern Africa
PEPLER	Louis Andreas	Director of Bantu Development, Department of Bantu Administration and Development, Pretoria	Pretoria, S.A.	Economic development of Native areas
POSSONY	Stefan T.	Professor; Director of International Political Studies Programme, Hoover Institute, Stanford University, California	Stanford, California, U.S.A.	Social and political relations between various communities and need for separation in certain circumstances

List of Witnesses and Experts in terms of the Rules of the International Court of Justice (See No. 87)

Surname	First Names	Description	Place of Residence	Points to which evidence will be directed
RAUTENBACH	Casper Hendrik	D.Phil.; Rector of the University of Pretoria	Pretoria, S.A.	Basic considerations regarding separate development and separate universities
SEARLE	Charlotte	D.Phil.; Member of the S.A. Nursing Council	Pretoria, S.A.	Policy regarding training of nurses
VAN DEN BERG	Jan	Ex-Ambassador of the Netherlands	Eure, France	Practical considerations regarding group relations and policies in Southern Africa
VAN DEN HAAG	Ernest	Ph.D.; Member of the Faculty of New York University and the New School for Social Research	New York, U.S.A.	Sociological and psychological considerations regarding group relations, group reactions, etc.
VAN DER WATT	Johan Jacobus	Former Assistant Chief Bantu Affairs Commissioner, South West Africa	Pretoria, S.A.	Separate identities of groups in South West Africa and development of Native areas of South West Africa
VAN ZYL	Hendrik Johann	Ph.D.; Deputy Secretary, Department of Bantu Education, Pretoria	Pretoria, S.A.	Bantu education system
WATT	James Shaw	D.V.S.M.; Director of Agriculture in South West Africa	Windhoek, South West Africa	Problems in combating stock diseases in South West Africa
WIPPLINGER	Otto	D.Sc. (Eng.); Director of Water Affairs, South West Africa	Windhoek, South West Africa	Problems relating to water supplies in South West Africa

Applicants' position with respect to averments of fact in Respondent's Pleadings, and the application of Article 49 of the Rules of Court, in the premises.

The Applicants have re-affirmed their position on these matters as follows:

Reserving their right to contest the relevance of facts contained in Respondent's Pleadings, including the oral proceedings, the facts—as distinct from inferences which may be drawn therefrom—are not contested except as otherwise indicated, specifically or by implication, in the Applicants' Written Pleadings or in the Oral Proceedings.

The Applicants, having been furnished a copy of Respondent's provisional list of witnesses and experts intended to be called by Respondent, in terms of Article 49 of the Rules of Court, raise no further question at this time with regard to the application of the aforesaid Rule, except as follows:

(a) The Applicants reserve the right to call any witnesses necessary to rebut evidence led by Respondent, and to comment on the evidence given, in terms of Article 50 of the Rules of Court;

(b) The Applicants understand that the list of witnesses and experts furnished to the Court in the Annex to Respondent's letter of 13 March 1965 fairly reflects the ambit of evidence which Respondent intends to produce, and the general terms of the points to which Respondent's evidence will be directed.

(2) Reference also is made concerning further agreement reached between the Parties, as described below. Appraisal of the significance of this agreement requires a brief explanation of the context in which it was reached.

During the later stages of the conference in the chambers of the Honourable President, Respondent's Counsel made reference to Respondent's intention to propose to the Honourable Court that the Court, or a Committee thereof, visit the Territory of South West Africa and "certain other areas". The latter phrase is quoted in the words as heard by all three representatives of the Applicants who were in attendance. No further explanation or description was offered by Respondent concerning the "areas" intended to be covered in the proposal. The Applicants, in a spirit of accommodation, agreed to the suggestion that Respondent might present its proposal at the outset of the oral proceedings, on the basis of Respondent's assurance to the President that the total time required for such presentation would approximate a quarter of an hour.

As a precautionary matter, however, the Applicants addressed a request, which the President was kind enough to grant, that Respondent reduce its intended proposal to writing and communicate a copy thereof to the Applicants as soon as possible, preferably the same day.

Upon receipt thereof on that day, the Applicants first learned of the nature and extent of the proposed visit, viz., to the territories of certain designated Sovereign States, as well as others not designated in the proposal, one of the foregoing States being in any way subject of dispute or complaint in these Proceedings.

During the course of an extended discussion between the Parties following receipt by the Applicants of the foregoing information, the Applicants pointed out the diversionary and tendentious political nature

of the proposal, which would impel the Applicants to request the Court for leave to make immediate response thereto and which, in turn, might lead to the necessity for Respondent to exercise its right of rejoinder. The risk of such a development at the outset of the oral proceedings in these important cases would, moreover, be taken without any perceived procedural necessity for the interposition of the proposal, which trenches on the merits, as the terms of the intended proposal makes clear.

Among the possibilities discussed, was that Respondent might defer submission of its proposal until after the three or four days which will be required by the Applicants for the presentation of legal issues and interrelated factual questions.

The political nature of the proposal and of the intended method of its presentation was conceded by Respondent, as was the fact that the proposal is related solely to the merits.

The Applicants, accordingly, urged Respondent to reconsider the proposed timing of its presentation.

Agreement was reached between the Parties that Respondent would give further consideration to this matter, and advise the Applicants of the result. It was expressly understood between the Parties that, in the event Respondent adhered to its previous view in respect of the time for presentation of its proposal, the Applicants would feel bound to request the President for a meeting, and that, if the President should be so kind as to grant the request, it was understood that the Applicants would respectfully urge that the order of procedure be fixed so that the Applicants might start presentation of their case immediately following the normal preliminaries.

Respectfully,

(Signed) Ernest A. GROSS.

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89. AGREEMENT REGARDING FACTUAL AVERMENTS

(handed to the President on 14 March 1965)

Subject to reserving their right to contest the relevance of facts contained in Respondent's pleadings, including the ORAL PROCEEDINGS, Applicants agree that such facts—as distinct from inferences which may be drawn therefrom—are not contested except as otherwise indicated, specifically or by implication, in Applicants' Written Pleadings or in the ORAL PROCEEDINGS.

This agreement pertains also to factual averments in respect of which no documentary proof has been filed, including statements made upon Departmental Information.

Any denial of averments made in the Rejoinder will be intimated by Applicants at the earliest convenient stage in the ORAL PROCEEDINGS.

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90. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

15 March 1965.

Sir,

I have the honour to refer you to my letter of 13 March 1965, under cover of which I submitted a copy of a letter of 12 March 1965, addressed to the Agent for the Governments of Ethiopia and Liberia in the above matter regarding a proposed statement to the Court on a possible inspection *in loco*. I refer also to the further discussion on this subject between representatives of the Parties and the Honourable President of the Court at a conference yesterday afternoon, when it was intimated to us that any opportunity to raise at the outset the question of an inspection would be limited to part only of the proposal which we actually intended making.

I now wish to inform you, after further consideration of the matter, that inasmuch as the subject of a possible inspection of various territories should, in our view, be dealt with and considered as a whole, we do not intend to avail ourselves of the opportunity to raise the subject in a more limited form at the outset of the proceedings. Our intention is, accordingly, to raise the matter at an appropriate later stage.

I have, etc.,

(Signed) R. McGREGOR.

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91. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA

5 May 1965.

Dear Sir,

Reference is made to the formal proposal submitted to the Court by the Applicants during the Proceedings of 4 May 1965 (**IX**, p. 123), and the colloquy which ensued, appearing in the same Verbatim Record, at *ibid.*, pages 124-125.

In view of the fact that the Applicants' proposal contemplates a stipulation between the Parties, or failing such stipulation, an order by the Court to the same effect, it may be convenient to set out the terms of such stipulation, which the Applicants consider to be both fair and feasible in the circumstances.

The Parties would stipulate as follows:

1. In the event that Respondent desires to produce any evidence the production of which is permitted by the Court, the Applicants agree that a deposition, or written statement in any other form, embodying such evidence and properly authenticated, constitutes a full and correct statement of evidence which such witness or expert would have adduced if personally in Court.
2. The Applicants waive all right to be present during the taking of such depositions or the preparation of such statements, for any purpose, including the purpose of cross-examination.

3. The stipulation would be subject to the Court's desire to observe the demeanour of any witnesses or expert, or to address questions to him personally in Court. In order to comply with the Court's possible wish in this respect, Respondent agrees to produce any such witness or expert for that purpose.
4. The Applicants waive all right to examine any witness or expert who appears personally.
5. In the event the Court intimates a desire to listen to, rather than merely read, the evidence of any witness or expert whose deposition or statement already has been introduced, such deposition or statement would be read *viva voce*, in such manner as the Court may direct.
6. The Applicants reserve the right, in terms of Article 50 of the Rules of Court, to comment upon any deposition or statement produced as aforesaid, or upon evidence in any other form, the production of which may be permitted by the Court.

The Applicants would be glad to discuss with Respondent details, such as the appropriate time and manner of formalizing the stipulation and submitting it to the Court. If Respondent should have any questions regarding the foregoing proposed terms of stipulation, the Applicants will be pleased to attempt to clarify any such points.

Inasmuch as the Applicants have requested the Court to issue an order, or otherwise decide, that the aforementioned procedures should be followed, in the event that the Parties fail to reach agreement thereon, a copy of this letter has been transmitted to the Court for its information.

Sincerely yours,

Ernest A. GROSS.

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92. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

10 May 1965.

Dear Sir,

I refer to your letter of the 5th instant which sets forth a proposal that the Parties agree by way of stipulation to evidence being adduced by Respondent in a manner other than that provided for in the Rules of Court, viz., by filing written depositions.

I have to inform you that upon due consideration of the proposal I am unable, for reasons which Counsel for the Respondent has already intimated to the Court, to agree to the proposal.

Where, however, it may appear to Respondent during the course of the hearing that, for good reasons, it may be necessary or convenient to adduce the testimony of a particular witness or witnesses in the manner suggested by you Respondent will, with the permission of the Court, follow that course.

In view of what is stated in the last paragraph of your said letter a copy of this reply will be transmitted to the Court for its information.

Sincerely yours,

(Signed) R. MCGREGOR.

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93. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

13 May 1965.

Sir,

With reference to my letter of 13 March last, with which was submitted a provisional list of witnesses, I have the honour to enclose herewith, in duplicate, an additional list[1] of the witnesses whom Respondent intends calling to testify on its behalf.

Unfortunately this list is not a final one as a few more prospective witnesses must still be consulted towards the end of this month. I, however, anticipate that I shall be in a position to send you a final list early next month. I trust that this delay will not in any way inconvenience the Court.

I have, etc.,

(Signed) R. McGREGOR.

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94. THE DEPUTY-REGISTRAR TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

25 May 1965.

Sir,

With reference to two documents mentioned by Counsel for the Respondent in the course of the sitting of the Court yesterday, 24 May (see verbatim record **IX**, at pp. 401 *et seq.*), when, upon the direction of the President, copies thereof were made available to you, and pursuant to Article 48 of the Rules of Court, I have the honour to transmit herewith a copy of each of two documents of the Preparatory Commission of the United Nations marked, respectively, PC/TC/11 and PC/TC/30[2], each being certified as a true copy of documents from the official files of the United Nations Preparatory Commission, by the Chief of the Registry Section of the United Nations.

I should be grateful if you would be good enough to inform me whether it is the intention of the Applicants to lodge any objection to the production of these documents.

I am transmitting a copy of the present letter to the Agent for the Respondent for his information.

I have, etc.,

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[1] See p. 581, *infra*.

[2] See Part III, p. 455, *supra*.

Surname	First Names	Description	Place of Residence	Points to which evidence will be directed
DONHOFF	(Count) Christoph	Director of the German-South African Society	Munchen, West Germany	Political and economic problems in Africa
LEWIS	Percy Charles	B.Sc., A.M.I.C.E.; Chief Engineer, Roads Branch, South West Africa Administration	Windhoek, South West Africa	Road transportation in South West Africa: problems and development.
MARSHALL	(Brigadier-General) Samuel Lyman Atwood	Military critic, editorial writer and author	Birmingham, Michigan, U.S.A.	Alleged militarization in South West Africa. Political and social problems in South Africa and South West Africa.
OOSTHUYSEN	Jacobus Arnoldus	M.B., Ch.B.; Director of Health Services, South West Africa	Windhoek, South West Africa	Health problems and development of health services in South West Africa
PINAY	Antoine	Former Prime Minister of France and Former President of the Council in France. Industrialist	Paris, France	Political aspects of policy in South Africa and South West Africa.
SCHMITTLEIN	Raymond	Vice President of the National Assembly of France. Former Cabinet Minister. Author and Journalist.	Belfort, France	Political aspects of policy in South Africa and South West Africa.
VON ROHR	Hans Olof	Dr. Juris.; Industrialist.	Koldingen, Bei Hannover, West Germany	Political and economic problems in Africa.

95. THE DEPUTY-REGISTRAR TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

28 May 1965.

Sir,

In reply to your letter No. 41537 of 25 May 1965, with regard to the filing on the part of Respondent of the two documents referred to therein, this is to advise that the Applicants do not perceive any objection to the production of the documents in question, although reserving the right to comment thereon, as well as to produce any other documents which may be of assistance to the Court or otherwise relevant, in terms of Article 48 of the Rules of Court.

Respectfully yours,

(Signed) Ernest A. GROSS.

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96. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR [1]

16 June 1965.

Sir,

I have the honour to enclose herewith a further list[2] of witnesses proposed to be called on Respondent's behalf. Inasmuch as it has been impossible to consult with all prospective witnesses, I regret that I am not at this stage in a position to furnish a final list.

In view of the fact that Applicants are now relying, in so far as their Submissions Nos. 3 and 4 are concerned, solely on the alleged existence of a norm and/or standards, I wish to bring the following to your attention:

(a) It is considered that it will not be necessary to call all the witnesses whose names have been included in the original and supplementary lists of witnesses which have already been filed with you. I shall in due course notify you which witnesses will not be called.

(b) The testimony of all the witnesses to be called will be directed solely to the question whether a norm and/or standards such as contended for by Applicants exist and are applicable to South West Africa. One witness will also testify with regard to the issues arising under Applicants' Submission No. 6.

In addition to the witnesses who will give oral testimony it is intended at a later stage to put in as evidence depositions of certain persons. This will be done after consultation with the Agents of the Applicant States.

I have, etc.,

(Signed) R. MCGREGOR.

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[1] See **VIII**, p. 61.

[2] See p. 583, *infra*.

Surname	First Names	Description	Place of Residence	Points to which evidence will be required
MANNING	Charles Anthony Woodward	B.A., B.C.L. (Oxon); Emeritus Professor of International Relations, London. School of Economics, University of London.	London, England	Concerning a norm and/or standards such as contended for by Applicants relative to South West Africa.
MCINTYRE	Claude Vincent	Bushman Affairs Commissioner in South West Africa.	Tsumkwe, South West Africa	—ditto—
LORD MILVERTON	Arthur Frederick Richards	G.C.M.G.; Retired Governor of various British Colonies, the last being Nigeria.	Cox Green, Berkshire, England	—ditto—

97. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

19 June 1965.

Dear Sir,

I refer to my letter of the 16th instant and to the direction of the Honourable President of the Court in the session of the 18th instant[1] that Respondent should indicate which of the prospective witnesses whose names are included in the original and supplementary lists of witnesses filed of record will, for reasons mentioned by Counsel for the Respondent, no longer be called.

Although I am unable as this stage to give a complete list of all the prospective witnesses who will no longer be called to testify I can state that the testimony of the following persons will not be necessary and that they will not be called to testify:

W. Bretholz,
P. C. Lewis,
J. A. Oosthuysen,
J. A. Watt,
O. Wipplinger.

As intimated to the Court there are certain other persons whose names appear on the lists filed of record with regard to whom it has not yet been determined whether they will be called or not.

In accordance with the undertaking given by Counsel to the Court a further notification regarding the testimony of such persons will be addressed to you in due course.

I have, etc.,

(Signed) R. McGregor.

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98. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE DEPUTY-REGISTRAR[2]

20 June 1965.

Sir,

I have the honour to acknowledge receipt of your letter dated 16 June 1965 in which you forwarded a copy of a letter of the same date, addressed to the Deputy-Registrar by the Agent for the Government of South Africa in the *South West Africa* cases.

The Applicants have deferred acknowledgement of receipt of the foregoing correspondence pending further action on the part of Respondent in respect of presentation of evidence, in the expectation that such further action might clarify Respondent's contemplated procedures in compliance with the Statute and Rules of Court, as well as with

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[1] See **VIII**, p. 57.
[2] *Ibid.*, p. 61.

the practice of the Court. More particularly, reference is made to Article 48 of the Statute of the Court and the Order of the Court announced during the oral proceedings of 24 May 1965, **VIII,** p. 48, as well as Articles 49 and 50, *inter alia,* of the Rules of Court.

During the course of the oral proceedings of 18 June 1965, Respondent made a so-called "explanatory introductory statement", purporting to explain "what the broad purposes will be of the evidence to be led". (**X,** p. 82.) On the same day, immediately following Respondent's comments, a witness was called, for the purpose of adducing evidence directed toward broadly stated and ambiguously worded points.

The Applicants forebore from requesting leave to intervene, in order that they might have an opportunity to read the verbatim record of the oral proceedings and thus, in deference to the Court, be in a position to present studied and deliberate comment, rather than merely immediate and precautionary objection to a confusing oral statement. The Applicants deem it necessary for the protection of their rights, fully reserved at the time of the submission of their case (**IX,** p. 373), respectfully to submit the following observations and reservations:

1. The Applicants take note of certain comments in Respondent's letter dated 16 June 1965, aforesaid, which purport to characterize certain of the Applicants' theories or contentions in these Proceedings, upon which the Applicants are said to be "now relying", as well as comments which purport also to re-formulate the Applicants' case and to indicate that the testimony of all witnesses "will be directed solely" to the case so reformulated. Respondent's comments in these respects appear to be argumentative, and inappropriate for correspondence.

2. The Applicants are constrained nevertheless:

(a) to make clear that they do not acquiesce in, but expressly disclaim, the validity of such characterizations or formulations; and

(b) to reserve full right to object to the introduction of, or to comment upon, any evidence directed to issues or points which are based upon, or reflect, erroneous characterizations, reformulations, or other distortions of the Applicants' case.

3. The foregoing observations and reservations are the more compelling in light of the following considerations:

(a) in the Applicants' respectful submission, the procedures envisaged by order of the Court, announced 24 May 1965, consistently with Article 49 of the Rules of Court, entitle the Applicants to due notice of the witnesses or experts intended to be called, as well as clarity in the scheme proposed to be followed by Respondent in the presentation of such witnesses and experts, and reasonable particularity, made clear in advance, so as to constitute due notice, concerning the point or points to which the evidence of each witness or expert will be directed;

(b) contrary to the foregoing, Respondent has indicated an incomprehensible and illusory scheme, in which issues of law and fact are inter-twined, and individuals are to be qualified as witnesses and experts to testify indistinguishably on undefined fact and law points;

(c) in addition to lack of due notice concerning the identity of witnesses to be called, the lack of a comprehensible scheme concerning the objective of their evidence, and lack of particularity concerning the

point or points to which their testimony is to be directed, the course pursued, or proposed, by Respondent would visit an unconscionable burden of time and expense upon the Applicants. As is clear from the course of the testimony led on 18 June 1965, the evidence sought to be introduced is of the most doubtful relevance or materiality and cumulates material already embodied in voluminous written pleadings.

4. In the course of its so-called "explanatory introductory statement" on 18 June 1965, Respondent made certain references to "activities in the international bodies", indicating an intention to offer evidence of an unspecified nature with regard thereto. (**X**, p. 84, *inter alia*.)

5. With respect to all the foregoing, the Applicants deem it necessary to make general objection to all evidence sought to be adduced without further clarity of scheme or particularity, as well as a general reservation of their right to raise questions of relevance, materiality and/or propriety of any such testimony, as well as their rights under the Statute and Rules of Court, including, but without limitation, Articles 49, 50 and 57 of the Rules of Court.

Respectfully yours,

(Signed) Ernest A. GROSS.

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99. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

21 June 1965.

Sir,

I wish to confirm that Dr. Ernest van den Haag will testify tomorrow, 22 June 1965[1].

In pursuance of the direction of the President in Court towards the close of the session today[2] to the effect that the Applicants should be furnished with an indication of the points to which Dr. van den Haag's evidence will be directed, I wish to inform you as follows:

Dr. van den Haag is a professor of Social Philosophy, covering Psychology and Sociology.

He has conducted extensive research into the subject of human group formation, group relations, group reactions, relations between individuals and group, the phenomenon of prejudice, factors tending to increase or decrease prejudice, and merits and demerits of separation or attempted integration in particular circumstances. On the basis of such researches and general principles recognized in his fields of study, he will testify to the effect that a norm and/or standards of non-discrimination or non-separation as contended for by Applicants are not applied in

[1] See **X**, pp. 130-182 and 427-478.
[2] *Ibid.*, p. 124.

some parts of the world and could, if attempted to be so applied, lead to unfavourable results for the well-being and progress of the peoples concerned.

Yours faithfully,

(Signed) R. McGREGOR.

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100. *THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA*

29 June 1965.

Sir,

I have the honour to inform you that after the Parties have responded to the questions put by the Court on 22 June 1965[1], Respondent will call as a witness and expert Professor Johannes Petrus van Schalkwyk Bruwer.

Professor Bruwer is a Professor of Social Anthropology at the University of Port Elizabeth, South Africa. His evidence will be relative to the issue raised under Applicants' Submissions Nos. 3 and 4; viz., whether a norm and/or standards such as contended for by Applicants exist and are applicable to South West Africa. The points to which his evidence will be directed will be the following:

(1) the differences between the various population groups of South West Africa, the consciousness of a separate identity amongst the different groups, their wishes to maintain their separate identities; and

(2) what, in the opinion of the witness, the effects would be if all measures of differentiation on the basis of membership in a population group were to be done away with in South West Africa.

Yours faithfully,

(Signed) R. McGREGOR.

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101. THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA TO THE DEPUTY-REGISTRAR

30 June 1965.

Sir,

Further to my letter to you of 28 May 1965 and to your acknowledgement thereof, dated 1 June 1965, enclosed herewith is a Memorandum[2] of today's date, by which Applicants exercise their right to

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[1] See **X**, pp. 238-335.

[2] See Part III, p. 461, *supra*.

comment upon the documents produced by Respondent on 24 May 1965 and referred to in your letter of 25 May 1965. Attached to such Memorandum are certain Annexes, identified therein and incorporated thereby, which consist of documents which may be of assistance to the Court or otherwise relevant, in terms of Article 48 of the Rules of Court, equally as referred to in the aforementioned correspondence.

Respectfully yours,

(Signed) Ernest A. GROSS.

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102. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

6 July 1965.

Dear Sir,

The witness and expert following on Professor Logan will be Mr. P. J. Cillie[1], whose evidence will also relate to issues arising under Applicants' Submissions 3 and 4. Mr. Cillie is a South African Journalist of 30 years' standing and Editor of *Die Burger* for the last 11 years. *Die Burger* supports the policies of the present Government regarding separate development of the various population groups in South Africa and South West Africa, and has played a leading role in shaping and propagating it. As political observer and analyst Mr. Cillie will testify on the political aspects and implications of the policies of differentiation applied in South Africa and South West Africa, and of possible alternatives thereto, with special regard to the feasibility or otherwise of application in practice of a suggested norm and/or standards of a content as contended for by Applicants.

Yours faithfully,

(Signed) R. MCGREGOR.

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103. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

30 July 1965.

Sir,

I have the honour to inform you that in view of the narrowing of the issues in the case, Respondent has decided to limit further evidence, and will therefore dispense with the testimony of the witnesses whose names appear on the lists already furnished save the following[2]:

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[1] See **X**, pp. 505-558.
[2] See **XI**, p. 111.

1. K. Dahlmann
2. J. S. Gericke
3. E. P. Groenewald[1]
4. D. C. Krogh
5. C. A. W. Manning
6. S. L. A. Marshall
7. L. A. Pepler
8. S. T. Possony
9. C. H. Rautenbach
10. H. J. Van Zyl.

Particulars of the said witnesses and the points to which their evidence will be directed are set out in the annexures hereto.

I have, etc.,

(Signed) R. McGregor.

Name: Dahlmann.
First Name: Kurt.
Description:
Journalist: Editor *Allgemeine Zeitung*, Windhoek.
Special field of knowledge: Political trends and political parties in South West Africa.
Place of residence: Windhoek, South West Africa.

Evidence will relate to the issues raised under Applicants' Submissions Nos. 3 and 4: both as witness and as expert.
Points to which his evidence will be directed:

(1) The nature, programmes and activities of, and the extent of support for non-White political parties in South West Africa.
(2) The relations between such parties.

Surname: Gericke.
First Names: Jacobus Stephanus.
Academic Qualifications: B.A., B.D.
Present occupation: Minister of the Dutch Reformed Church of South Africa.
Other offices, etc.: Vice-Chairman of the Synod of the Dutch Reformed Church of South Africa; Chairman of the Christian Students Association of South Africa; Vice-Chairman of the General Mission Commission of the Dutch Reformed Church; Vice-Chancellor of the University of Stellenbosch; Member of the South African Academy for Arts and Sciences; Member of the South African Bureau for Racial Affairs.
Place of residence: Stellenbosch, South Africa.

The evidence concerns the issues raised under Applicants' Submissions Nos. 3 and 4, and will be directed to the following matters:

Considerations underlying the development in the Dutch Reformed Church of a system of separate churches for Coloured and Bantu members.
The advantages of such development for Coloured and Bantu members and the communities to which they belong.
The significance of the Church's experience of different population groups for the State in its administration of a heterogeneous population.

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[1] See **XI**, p. 67.

The Church's concern with the social, political and economic life and circumstances of the various population groups and their members, and with the formation and implementation of State policy in these fields.

Name: GROENEWALD.
First Names: Evert Philippus.
Academic Qualifications: B.A., B.D., Ph.D.
Occupation: Professor of New Testament Theology, and Dean of the Faculty of Theology, University of Pretoria, South Africa; Minister of the Dutch Reformed Church of South Africa.
Place of residence: Pretoria, South Africa.

As to the points to which this witness's evidence will be directed please see the particulars specified in the case of witness Gericke.

Name: KROGH.
First Names: Desmond Charles.
Description:
Academic Qualifications: B.Com., University of Cape Town; M.A., University of Cape Town; Doctoral in Economics, University of Amsterdam; Dr. of Philosophy, University of Pretoria.
Present position: Professor of Economics: Head of the Department of Economics, University of South Africa.
Special field of study: Economic accounting and development.
Place of Residence: Pretoria, South Africa.

Evidence will relate to the issues raised under Applicants' Submissions Nos. 3 and 4: both as witness and as expert.
Points to which his evidence will be directed:
(1) Circumstances and conditions in South West Africa which materially influence and affect economic development of the territory.
(2) The necessity of applying measures of differentiation between the various population groups in South West Africa in the economic development of the Territory.

Name: MANNING.
First Names: Charles Anthony Woodward.
Description:
Academic achievements: B.A. (Oxon) Greats 1920; B.A. (Oxon) Jurisprudence 1921; B.C.L. 1922.
Career: Barrister Middle Temple 1922; Personal Assistant to Secretary General of the League of Nations, 1922; Tutor Zimmern School of International Studies, Geneva, 1925, and subsequent summers; Pro-

fessor of International Law and Diplomacy, Oxford, 1927; Emeritus professor of International Relations, University of London, 1930-1962.
Place of Residence: London, England.

Evidence concerns the issues raised under Applicants' Submissions Nos. 3 and 4. Witness and expert.
Points to which evidence will be directed:
Professor Manning's evidence will be directed to the following points:
(1) Group relations generally.
(2) The advisability of applying measures of differentiation between population groups in countries such as South West Africa.

Name: MARSHALL.
First Names: (Brigadier-General) Samuel Lyman Atwood.
Academic Qualifications: L.H.D., Wayne State University; LL.D., St. Bonaventure University.
Description: Military critic, editorial writer and author.
Place of residence: Birmingham, Michigan, U.S.A.
Experience: Major, Brig.-General, U.S. Army, 1942-1952; Chief orientation, U.S. Army, 1948; Chief historian, U.S. Army, in various theatres; Member Army Hist. Adv. Comm., Army Public Relations Comm., Michigan Civil Defence Comm.; Author of a number of books dealing with military matters; official military texts and manuals; military contributor to *Am. Coll. Dictionary,* Crowell-Collier *Encyclopaedia Brit.*
Points to which evidence will be directed:
Whether the facilities in South West Africa which are described by Applicants as military bases, can be regarded as such.

Name: PEPLER.
First Names: Louis Andreas.
Description:
Academic qualifications: B.Sc. (Agriculture) University of Pretoria.
Present position: Director of Bantu Development in South Africa.
Formerly: Senior lecturer in Farm Management of the Glen and Potchefstroom Colleges of Agriculture (1933-1941); Superintendent of Orange River Irrigation Schemes at Upington and at the Loskop Irrigation Scheme (1942-1949); Chief Professional Officer in Charge of agricultural planning and development of Bantu Homelands (1950-1956); Director of Bantu Agriculture (1956-1961).
Place of Residence: Pretoria.

Points to which evidence will be directed:
His evidence will relate to the issues raised under Applicants' Submissions Nos. 3 and 4. Witness and expert.
His evidence will be directed to the following points:
(1) The different agro-economic regions of South West Africa.

(2) Schemes and methods applied in the promotion of economic development of the said regions particularly in the field of agriculture.
(3) The reasons for differential treatment (in the economic development) of the areas occupied by different population groups.

Name: POSSONY.
First Names: Stefan Thomas.
Description:
Academic Qualifications: Ph.D. LL.D. (Hon.), principal subjects of study being psychology, philosophy and sociology (major) and ethnology (minor).
Fields of Research and Teaching: International Relations, Sociology, Modern History, Comparative Constitutions, Economics.
Previous Positions Occupied: Special advisor to U.S. Air Force and consultant to other United States governmental and congressional agencies, including the White House, in spheres of policy sciences, including the handling of natural science data for the purpose of policy formulation; Carnegie Fellow at the Institute of Advanced Study, Princeton, N.J.; Professor of International Politics, Graduate School, Georgetown University; Associate of the Foreign Policy Research Institute, University of Pennsylvania; Visiting Professor, University of Cologne.
Present Position: Director of International Political Studies Program, Hoover Institution, Stanford University, California.
Publications: Co-author of Text-book on International Relations (two editions) and author of several historical works.
Place of Residence: Los Altos, California, U.S.A.

Points to which evidence will be directed:
Will be directed to the issues arising under Applicants' Submissions 3 and 4, more particularly towards showing, on the basis of scientific and empirical knowledge regarding group relations in various parts of the world—

(a) the absence of a general practice of a suggested norm and/or standards of "non-discrimination and non-separation" as relied upon by Applicants,
(b) that the attempted application of such a suggested norm and/or standards would in many instances have an adverse effect on the well-being and progress of the persons concerned, and
(c) that on the basis of the facts concerning South West Africa as on record from other evidential sources, the Territory falls within the instances mentioned in *(b)*.

Name: RAUTENBACH.
First Names: Casper Hendrik.
Description: B.A., B.D., M.A., D.Phil., D.U. (h.c.) (Montreal), Rector (Principal) of the University of Pretoria, Republic of South Africa;

Member of the Council of the University of South Africa; Chairman of the Council of the Bantu College of the North; Member of National Council for Social Research and Chairman of its General Purposes Committee; Chairman of National Advisory Council on Education.
Place of Residence: Pretoria, Republic of South Africa.

Issues in regard to which evidence is tendered:
The issues arising from Applicants' Submissions 3 and 4, as to which Prof. Rautenbach will speak both as witness and as expert.
Points to which evidence will be directed:
The basic considerations regarding separate development, particularly in the sphere of higher education, and the consequences of applying a policy involving an absence of separation in the said sphere. A comparison between policies regarding higher education in South Africa and recent trends elsewhere in Africa.

Name: VAN ZYL.
First Names: Hendrik Johann.
Description: Ph.D. (Ethnology). Deputy Secretary, Department of Bantu Education, Pretoria; Chairman of the 1958 Commission of Enquiry into Bantu and Coloured Education in South West Africa.
Place of Residence: Pretoria, Republic of South Africa.

Issues in regard to which evidence is tendered:
The issues arising from Applicants' Submissions 3 and 4, as to which Dr. Van Zyl will speak both as witness and as expert.
Points to which evidence will be directed:
Considerations underlying differential education for the various population groups in South Africa and South West Africa. The basic principles of the Bantu Education System, its application and effects. The probable consequences of doing away with differential measures in the educational field.

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104. THE SECRETARY OF STATE OF LIBERIA TO THE DEPUTY-REGISTRAR

10 August 1965.

Sir,

I have the honour to inform you that the Honourable Edward R. Moore has been appointed an Agent by and on behalf of the Government of the Republic of Liberia in the *South West Africa* cases.

His Excellency Mr. Nathan Barnes and the Honourable Ernest A. Gross remain, as heretofore, Agents of the Government of Liberia in these cases.

Very truly yours,

(Signed) J. Rudolph GRIMES.

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105. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

18 September 1965.

Sirs,

The first witness and expert to be called by Respondent in the *South West Africa* cases when the hearing of these cases is resumed on the 20th instant, will be the Reverend J. S. Gericke [1].

Particulars of this witness and the points to which his evidence will be directed, were set out in the relative annexure to my letter of 30 July last to the Deputy-Registrar of the Court, copy of which he transmitted to you, but for the sake of convenience I repeat them hereunder:

[See No. 103, p. 589, supra.*]*

Yours faithfully,

(Signed) R. McGREGOR.

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106. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

20 September 1965.

Sir,

I have the honour to inform you that Dr. J. P. verLoren van Themaat, S.C., one of the Agents of Respondent in the *South West Africa* cases has, because of ill-health, returned to South Africa. He nevertheless remains an Agent but Mr. R. F. Botha of the Department of Foreign Affairs and Advocate of the Supreme Court of South Africa who up to now has been one of Respondent's Advisers, has been appointed an Agent also.

I have, etc.,

(Signed) R. McGREGOR.

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107. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

20 September 1965.

Sirs,

I have to inform you that the next witness and expert to be called by Respondent in the *South West Africa* cases after the Reverend J. S.

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[1] See **XI**, pp. 3-67.

Gericke—vide my letter of the 18th instant—will be Professor D. C. Krogh [1].

Particulars of this witness and points to which his evidence will be directed, were set out in the relative annexure to my letter of 30 July last to the Deputy-Registrar of the Court, copy of which he transmitted to you, but for the sake of convenience I repeat them hereunder:

[See No. 103, p. 590, supra.*]*

Professor Krogh will, during his testimony, refer to *The Strategy of Economic Development* by A. O. Hirschman (New Haven: Yale University Press, 1960). This book appears in the List of Documentation in Volume II of Respondent's Rejoinder (**VI**, p. 466).

Yours faithfully,

(Signed) R. McGregor.

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108. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

22 September 1965.

Sirs,

Mr. L. A. Pepler [2] will be the next witness and expert to be called by Respondent in the *South West Africa* cases after Professor Krogh, who is referred to in my letter of the 20th instant, completes his testimony.

Particulars of Mr. Pepler and points to which his evidence will be directed, were set out in the relative annexure to my letter of 30 July last to the Deputy-Registrar of the Court, copy of which he transmitted to you, but for the sake of convenience I repeat them hereunder:

[See No. 103, p. 591, supra.*]*

Yours faithfully,

(Signed) R. McGregor.

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109. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

28 September 1965.

Sir,

I have the honour to enclose a copy of the notes of Professor D. C. Krogh concerning the occupational distribution of Natives in South West Africa, 1960 which was referred to in evidence [3] today.

(Signed) R. F. Botha.

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[1] See **XI**, pp. 67-206.
[2] See *Ibid.*, pp. 206-251.
[3] See **XI**, p. 191.

SOUTH WEST AFRICA: OCCUPATIONAL DISTRIBUTION OF NATIVES, 1960

Occupation	*Number*
A. *Workers other than labourers*	
1. *Professional and technical*	
(a) Medical service	208
(b) Teacher, instructor	883
(c) Religious service	222
(d) Other	35
	1,348
2. *Administrative and managerial*	
(a) Headman, Induna	98
(b) Manager	42
	140
3. *Clerical, sales and related work*	
(a) Clerk	212
(b) Shop assistant	489
(c) Working proprietor	109
(d) Other	8
	818
4. *Craftsman, production worker*	
(a) Textile, leather worker	107
(b) Metal worker	98
(c) Carpenter, joiner	124
(d) Painter	121
(e) Bricklayer, plasterer	698
(f) Potter, brick and clay worker	143
(g) Food worker	156
(h) Packer, labeller	93
(i) Stationary engine, other equipment operator	67
(j) Other	433
	2,040
5. *Worker in transport and communication*	
(a) Ships crew	18
(b) Driver (road)	577
(c) Messenger	437
(d) Other	6
	1,038
6. *Service, sport and recreation worker*	
(a) Policeman	307
(b) Other protective worker	190
(c) Caretaker, cleaner	576
(d) Domestic service and laundrywoman	13,219
(e) Other personal service	287
(f) Other	18
	14,597

Occupation	*Number*
7. *Other skilled or semi-skilled worker*	
(a) Hunter	237
(b) Fisherman	890
(c) Lumberman	58
(d) Miner, quarryman	64
	1,249
Sub-total A (1-7)	21,230
B. *Labourers (incl. "Unspecified")*	
1. Farm labourer	68,400
2. Other labourer	30,539
3. Unspecified	6,678
Sub-total B (1-3)	105,617
C. *Farmer, farm manager*	40,497
D. Total economically active population (A-C)	167,344

Source: Information obtained from the Bureau of Statistics.

110. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

28 September 1965.

Sirs,

The next witness and expert to be called by Respondent in the *South West Africa* cases after Mr. L. A. Pepler concludes his evidence, will be Dr. H. J. Van Zyl[1].

Particulars of Dr. Van Zyl and points to which his evidence will be directed, were set out in the relative annexure to my letter of 30 July last to the Deputy-Registrar of the Court, copy of which he transmitted to you, but for the sake of convenience I repeat them hereunder:

[See No. 103, p. 593, supra.]

For your information I may add that Dr. Van Zyl will not deal with education at the University level. University education will be dealt with by Professor Rautenbach.

Dr. Van Zyl will, in the course of his testimony, refer to an article by Professor K. Ampon Darkwa, entitled "Education for cultural integrity: the Ghanaian Case", in *New Era*, March 1965, Vol. 46, No. 3, at p. 69, and to the test conducted in the Philippines which is recorded in Unesco *Education Abstracts*, April-May 1958—Vol. X—Nos. 4-5, pp. 43-44.

Yours faithfully,

(Signed) R. McGregor.

[1] See **XI**, pp. 251-326.

111. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

30 September 1965.

Sirs,

After Dr. H. J. Van Zyl completes his evidence the next witness and expert to be called by Respondent in the *South West Africa* cases will be Professor C. H. Rautenbach [1].

Particulars of Professor Rautenbach and points to which his evidence will be directed are as follows:

[See No. 103, p. 592, supra.*]*

Points to which evidence will be directed:

He will testify on higher education, and the consequences of applying a policy involving an absence of separation in the said sphere. He will also make a comparison between policies regarding higher education in South Africa and recent trends elsewhere.

Professor Rautenbach will, in the course of his testimony, refer to *Staffing African Universities* by A. M. Carr-Saunders (A Development Pamphlet published by the Overseas Development Institute, London); a report of a United Nations conference at Geneva on the Application of Science and Technology in developing countries, appearing in *Universiteit en Hogeschool,* Nr. 5, April 1963 (Kemink en Zoon N.V., Utrecht); and an extract from an address entitled "The Diversity of Universities", by Sir Eric Ashby at the 10th Conference of Associations of the Universities of the Commonwealth on 15 July 1963, appearing in the *Tydskrif vir Rass-Aangeleenthede—Journal of Racial Affairs,* No. 1, Vol. 16, January 1965 (Sabra, Pretoria).

Yours faithfully,

(Signed) R. McGREGOR.

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112. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

2 October 1965.

Sirs,

The witness and expert who will follow after Professor C. H. Rautenbach completes his evidence, will be Mr. K. Dahlmann [2].

Particulars of Mr. Dahlmann and points to which his evidence will be directed are as follows:

[See No. 103, p. 589, supra.*]*

Points to which his evidence will be directed:

(1) The nature, programmes and activities of, and the extent of support for non-White political parties in South West Africa.

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[1] See **XI**, pp. 326-455.

[2] *Ibid.*, pp. 455-574.

(2) The relations between such parties.
(3) Circumstances and conditions which materially influence political developments amongst the non-White inhabitants in the Territory.

Yours faithfully,

(Signed) R. McGREGOR.

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113. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

4 October 1965.

Sirs,

Further to my letter of the 2nd instant, I have to inform you that Mr. Dahlmann will, in the course of his testimony, refer, in addition to documents already before the Court, to the following documents:

Press Statement by Moses K. Katjiuongua, SWANU representative in Dar-es-Salaam, dated 10 September 1964.

U.N. Doc. A/AC. 109/Pet. 371/Add. 4. 14 September 1965. Petition from Mburumba Kerina, Party Chairman, NUDO, to the Chairman, United Nations Special Committee on Colonialism.

U.N. Doc A/AC. 109/Pet. 368. 13 April 1965, Petition from Chief H. S. Witbooi and Mr. J. D. Gertze, President, South West Africa United National Independence Organisation (SWAUNIO), concerning South West Africa.

Report of the Commission of Enquiry into the occurrences in the Windhoek location on the night of 10 to 11 December 1959, and into the direct causes which led to those occurrences. (U.G. 23-'60.).

Yours faithfully,

(Signed) R. McGREGOR.

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114. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

9 October 1965.

Sirs,

I have to inform you that General S. L. A. Marshall[1] will be the next witness and expert to be called by Respondent after Mr. K. Dahlmann completes his testimony.

Particulars of General Marshall and points to which his evidence will

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[1] See XI, pp. 574-599.

be directed are set out in the relative annexure to my letter of 30 July last to the Deputy-Registrar of the Court, copy of which he transmitted to you, but for the sake of convenience I repeat them hereunder.

[See No. 103, p. 591, supra.*]*

Yours faithfully,

(Signed) R. McGregor.

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115. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

11 October 1965.

Sir,

After General Marshall completes his testimony the next witness and expert to be called by Respondent will be Prof. C. A. W. Manning[1].

Particulars of Professor Manning and points to which his evidence will be directed are as follows:

[See No. 103, p. *590,* supra.*]*

Points to which evidence will be directed:

On the basis of Professor Manning's studies and reflections in the sphere of International Relations, he will testify as to the importance of the sociological phenomenon of group personality, particularly in the case of ethnic and tribal groups, and particularly in relation to promotion of such groups and their members.

He will illustrate the theme with reference to practical examples pertaining, *inter alia,* to the Polish nation, British Guiana, Mauritius, India, Pakistan, the former Ruanda-Urundi, Cyprus, Canada, Belgium, the United Kingdom, and South Africa. Against this background he will consider the effects of the application of a suggested rule of non-differentiation in South West Africa.

In the course of his testimony Professor Manning will refer to the following publications which are not yet on record:

A Preliminary Report of the Royal Commission on Bilingualism and Biculturalism

The London *Times* of 25 September 1965.

(Signed) R. McGregor.

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[1] See **XI**, pp. 599-642.

116. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

14 October 1965.

Sirs,

I have to inform you that Respondent's last witness and expert will be Professor S. T. Possony[1]. He will be called after Professor Manning.

Particulars of Professor Possony and points to which his evidence will be directed are as follows:

[See No. 103, p. 592, supra.*]*

The list of documents to which Professor Possony will refer in the course of his testimony, cannot as yet be completed and will be furnished as soon as possible.

Yours faithfully,

(Signed) R. McGREGOR.

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117. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE AGENTS FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

16 October 1965.

Sirs,

With reference to my letter of the 14th instant, I enclose herewith a list of the documents to which Professor Possony will refer in the course of his testimony.

You will recall that in our conference with the President yesterday we intimated that Professor Possony's evidence may not cover the total field indicated in our letter under reference. I can now inform you that his testimony will not be directed to the matter set out in paragraph *(c)* of the points mentioned in the penultimate paragraph of my letter under reference.

Yours faithfully,

(Signed) R. McGREGOR.

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118. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

21 October 1965.

Sir,

I have the honour to refer to your letter of 2 July 1965, under cover of which you forwarded to me a copy of a letter dated 30 June 1965, from the Agent for the Applicants together with a memorandum and supporting documents. Inasmuch as Respondent wishes to deal with the matters raised by Applicants in the said memorandum, I enclose herewith 30 copies of a memorandum by Respondent in reply [1]. It is intended that counsel for Respondent, in the course of argument, will explain the relevance of the said memorandum.

I also enclose herewith, for your information, copy of a letter this day addressed to the Agent for the Applicants in which are set forth particulars of U.N. documents which will be dealt with by counsel in the course of further argument [2].

I have, etc.,

(Signed) R. McGREGOR.

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119. THE DEPUTY-REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA [3]

Sir,

I have the honour to inform you that the Court will hold a public sitting in the *South West Africa* cases at 3 p.m. on Monday, 29 November in order to give its decision on the request for an inspection *in loco* [4].

I have, etc.,

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[1] See Part III, p. 491.

[2] Not reproduced. See also **X**, pp. 77 and 84 and **XI**, p. 456.

[3] The same communication was sent to the Agents for the Governments of Liberia and South Africa.

[4] *I.C.J. Reports 1965*, p. 3.

120. THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA TO THE DEPUTY-REGISTRAR

28 March 1966.

Sir,

It is my sad duty to inform you that Professor J. P. verLoren van Themaat, one of the Agents of the Government of the Republic of South Africa in the *South West Africa* cases, died at Pretoria on 27 March 1966.

I have, etc.,

(Signed) R. F. BOTHA.

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121. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF ETHIOPIA[1]

8 July 1966.

Sir,

In accordance with Article 58 of the Statute, I have the honour to inform you that the International Court of Justice will hold a public sitting at the Peace Palace, The Hague, on 18 July 1966, at 3 p.m., for the delivery of the Judgment in the *South West Africa* cases (Ethiopia *v.* South Africa; Liberia *v.* South Africa)[2].

I have, etc.,

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122. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[3]

1er septembre 1966.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'arrêt rendu par la Cour le 18 juillet 1966 dans les affaires du *Sud-Ouest africain* (Ethiopie c. Afrique du Sud; Libéria c. Afrique du Sud) (deuxième phase).

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

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[1] The same communication was sent to the Agents for the Governments of Liberia and South Africa.

[2] *I.C.J. Reports 1966*, p. 6.

[3] La même communication a été adressée à tous les autres Etats Membres des Nations Unies et aux Etats non membres des Nations Unies qui sont parties au Statut de la Cour ou auxquels la Cour est ouverte aux termes de l'art. 35, par. 2, du Statut.

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