INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

LEGAL CONSEQUENCES FOR STATES OF THE CONTINUED PRESENCE OF SOUTH AFRICA IN NAMIBIA (SOUTH WEST AFRICA) NOTWITHSTANDING SECURITY COUNCIL RESOLUTION 276 (1970)

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COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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WRITTEN STATEMENT OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

1. On 29 July 1970 the Security Council of the United Nations adopted a resolution requesting the International Court of Justice to give an advisory opinion on the following question:

> "What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"

By Order of 5 August 1970 the President of the International Court of Justice fixed 23 September 1970 as the time-limit within which written statements may be submitted in accordance with Article 66, paragraph 2, of the Statute of the Court.

2. The question submitted to the Court raises many legal issues of great complexity. The Netherlands Government is not in a position to submit for the consideration of the Court, within the time-limit fixed by the President, a comprehensive view on all those issues. The present statement, therefore, must limit itself to the presentation of a few general observations which in no way pretend to give an exhaustive opinion on the legal questions involved.

3. In respect of the fact of "the continued presence of South Africa in Namibia" it would seem useful, as a point of departure, to distinguish between three legal relationships, viz: *(a)* the legal relationship between South Africa and the United Nations (as regards the territory originally called South-West Africa); *(b)* the legal relationships between South Africa and other individual States, and *(c)* the legal relationship between the Government of South Africa and the peoples of Namibia.

4. With respect to the legal relationship between South Africa and the United Nations as regards the territory, the Netherlands Government is in full agreement with the legal opinions expressed by the Court in its Advisory Opinion of 11 July 1950 (*International Status of South-West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128) to the effect that: "The terms of this Mandate, as well as the provisions of Article 22 of the Covenant and the principles embodied therein, show that the creation of this new international institution *did not involve any cession of territory or transfer of sovereignty* to the Union of South Africa. The Union Government was to exercise *an international function* of administration on behalf of the League, with the object of promoting the well-being and development of the inhabitants" (*ibid.* at p. 132; italics added) and that ". . . the General Assembly of the *United Nations* is legally qualified to exercise the *supervisory functions* previously exercised by the League of Nations with regard to the administration of the Territory . . ." (*ibid.* at p. 137; italics added).

Furthermore, the Netherlands Government is of the opinion that the international régime, established under the League of Nations and continued under the United Nations, is based upon the right of self-determination of peoples, and that the functions of the United Nations organization as such under this régime include the power to put an end to a mandate on the ground of non-compliance by the mandatory power with the essential obligations ensuing from the mandate agreement, in particular the obligation to allow and promote

the exercise of the right of self-determination by the peoples of the territory concerned. Consequently the Netherlands Government was among the 114 States which voted in favour of General Assembly resolution 2145 (XXI) of 27 October 1966, by which the General Assembly decided "that the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is . . . terminated".

It followed from the above that the territory now called Namibia has never lost the *international status* it acquired at the end of the First World War, when the former sovereign, Germany, renounced all its rights and titles in respect of the territory, and the international régime referred to in Article 22 of the League of Nations Covenant was established. The *object and purpose* of this international régime is still essentially the same, though the *functions* under this régime, originally entrusted to the League of Nations, have legally devolved on the United Nations, and the *functions* originally entrusted to the Union of South Africa have legally come to an end.

The primary legal consequence of this situation, as regards the legal relationship between South Africa and the United Nations is, obviously, that South Africa, which was originally entrusted with certain powers in relation to the territory, is now under the legal duty to end its *de facto* exercise of those powers (its "presence" in Namibia) and to allow the United Nations and its agents effectively to fulfil within and with respect to that territory the functions necessary to achieve the object and purpose of the international régime (the "presence" of the United Nations in Namibia).

It would seem that, from the legal point of view, the relationship between South Africa and the United Nations under the international régime relating to the territory, can *not* simply be equated with the relationship, under the general rules of international law, between two sovereign States in relation to a particular territory, in respect of which each claims to be entitled to exercise sovereign rights. The "functional" approach underlying the establishment of an international régime for the territory with the object and purpose of promoting the eventual exercise of the right of self-determination of the peoples of the territory, does not admit the analogous application of rules of international law based on a quite different approach. Accordingly (and apart from other legal objections) from a strictly legal point of view it would seem erroneous to consider the continued presence of South Africa in Namibia as constituting vis-à-vis the United Nations a "threat or use of force against the territorial integrity" of a foreign State, or as constituting "occupation" of the territory of a foreign State. Nevertheless, the obvious non-compliance by South Africa with its legal duty towards the United Nations effectively to transfer to the latter the exercise of its powers under the Mandate, constitutes a serious violation of the international régime instituted for the area. In conformity with the functional approach underlying this international régime it is in the first instance for decision *of the competent organs of the United Nations*, which consequences shall be attached by the United Nations to this violation. This is a matter of political judgment to be exercised within the legal framework of the powers given to the Organization by its Charter, and in the light of the object and purpose of the international régime established for the territory concerned.

5. The question, submitted to the Court, refers to ". . . the continued presence of South Africa in Namibia, *notwithstanding Security Council resolution 276 (1970)*".

This formulation could seem to imply that, *from the legal point of view*, that resolution *as such* is relevant for the determination of the legal consequences referred to in the question. It should be noted, however, that the operative part

of that resolution is couched in exhortatory rather than mandatory terms. It would seem, therefore, that the resolution does not purport to impose any legal duty on any State nor to legally affect any right of any State.

6. Passing now to the second group of relationships, referred to above (under 3), viz., the legal relationships between South Africa and other individual States, it would seem that the fact of "continued presence" of South Africa in Namibia also entails some legal consequences for these relationships.

In itself, the circumstance that South Africa no longer has any *legal* title to administer the territory does *not* release it from its obligations and responsibilities under international law towards other States in respect of the exercise of its powers in relation to this territory, so long as it *de facto* continues to administer the territory as before.

On the other hand, the absence of a legal title of South Africa to administer the territory releases the other States from any obligations *they* might have towards South Africa (either under the general rules of international law, or under international agreements entered into with South Africa *before* the termination of the Mandate) in respect of the recognition or support of South Africa's administration of the territory.

Here again, however, the paramount importance of the international régime for the territory should be taken into account. In particular, the non-recognition of South Africa's *de facto* administration of the territory should not result in depriving the peoples of Namibia from any advantage derived from international co-operation, so long and in so far as the United Nations is not yet in a position effectively to ensure equivalent advantages. Admittedly, in the circumstances of the case, this exception may be largely of a theoretical character.

7. With regard to the third relationship, mentioned under 3 above, i.e., the legal relationship between the Government of South Africa and the peoples of Namibia, it should be noted that the rules of present-day general international law impose on the government of every State the legal duty to respect and promote the exercise of the right of self-determination of peoples in so far as this is within its effective power. Obviously the circumstance that the mandate of South Africa has been legally terminated and that, accordingly, the Government of South Africa has no longer any legal title to administer the territory, does not release that Government from its legal duty to allow and promote the exercise, by the peoples of Namibia, of their right of self-determination. This nowadays is a universal duty, irrespective of the existence of an international régime with regard to a particular territory or any obligation entered into through a treaty; it applies to the peoples of any territory, whether that territory is *de iure* or only *de facto* administered by a given government.

As regards the *legal consequences of non-compliance* with this duty it would seem that the international practice of States has not as yet developed into a pattern which could be considered as the expression of universal acceptance of a set of rules of *law*. Indeed the attitudes of individual States with respect to such non-compliance by another State are divergent according to the peoples, the territory and the government involved in a particular situation. Those attitudes range from attempts to persuade the government in default to comply with its duty, through action taken against such government, to direct support of the peoples concerned in their resistance against that government. A *legal* duty of all States *individually* to adopt any of those attitudes does not appear to be part of present-day customary international law.

On the other hand, *collective* action may be taken by the United Nations under its responsibility to promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race,

sex, language or religion (Art. 55 under *(c)*, United Nations Charter). Furthermore, non-compliance by a government with its duty to respect and promote the exercise of the right of self-determination of peoples under its effective power *may* in fact contribute to the creation of a situation which, under the provisions of the United Nations Charter, empowers the United Nations to take decisions which the Members of the United Nations are *obliged* to carry out.

8. In conclusion the Netherlands Government would like to stress the particular character of the question submitted to the Court. This question refers to the *legal* consequences for States of the continued *presence* of South Africa in Namibia.

It does *not* refer to the *policy* pursued by South Africa within and with respect to Namibia, nor does it refer to the *policy* best suited eventually to arrive at a situation in which the peoples of Namibia can freely determine their political status and freely pursue their economic, social and cultural development. While there is no doubt that South Africa's policy is contrary to its legal duties and that, consequently, States have a legal right to react to such conduct individually and collectively through the United Nations, their legal *obligation* to do so and the *means* they may apply are still subject to the general rules of international law, in particular to the provisions of the United Nations Charter.

28 August 1970.

WRITTEN STATEMENT OF THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC

The United Nations has been dealing with the problem of Namibia for more than 20 years. In the course of detailed considerations, which took place in different organs of the Organization, all the elements of the problem of Namibia, including the legal status of the Territory and its population, had been clearly defined. The decisions of the United Nations concerning Namibia have been based on firmly established political and legal principles.

Of fundamental importance is the resolution of the General Assembly 1514 (XV) of 14 December 1960, i.e., the Declaration on the Granting of Independence to Colonial Countries and Peoples. This Declaration is applicable to non-self-governing territories, trusteeship territories and all other territories which have not yet attained independence. The General Assembly, a few days after the adoption of the Declaration, recognized that Namibia (Territory of South West Africa) had an inalienable right to independence and to the exercise of its full national sovereignty (resolution 1568 (XV) of 18 December 1960).

On 27 October 1966 the General Assembly adopted a resolution in which it recognized that the administration of the mandated territory by South Africa had been conducted in a manner contrary to the Mandate, the Charter of the United Nations and the Universal Declaration of Human Rights (resolution 2145 (XXI)). As a consequence, the General Assembly decided to terminate the Mandate of South Africa over the Mandated Territory of South West Africa. Henceforth, the Territory of South West Africa (now Namibia) came under the direct responsibility of the United Nations.

Since that time the presence of South Africa in Namibia has become illegal. This has been also confirmed in several resolutions by the Security Council, *inter alia*, in the resolution 276 (1970) of 30 January 1970.

The Government of the Polish People's Republic fully recognizes and supports the above-mentioned decisions of the General Assembly and the Security Council as being in full accordance with the Charter of the United Nations and is of the opinion that the following legal consequences arise therefrom:

(1) reaffirmation of the right of the people of Namibia to freedom and independence and of the legitimacy of their national liberation struggle,
(2) restatement of the illegality of the presence of the South African administration in Namibia,
(3) imperative rule for an immediate withdrawal of South Africa's authorities from Namibia.

The standpoint of the Government of the Polish People's Republic on the question of Namibia was expressed, *inter alia*, in a statement made by the representative of Poland in the Security Council on 30 January 1970. The Government of the Polish People's Republic fully maintains that standpoint as corresponding to the legal situation.

WRITTEN STATEMENT OF THE GOVERNMENT OF PAKISTAN

Pakistan submits the following written statement in relation to the question referred for advisory opinion:

1. Namibia (formerly South West Africa) was a German colony. The Allied and Associated Powers at Versailles in 1918 were concerned with the disposition of the former German overseas territories, whose people were regarded at that time as being unable to stand by themselves. Since the Allies had publicly announced opposition to territorial annexation, as a legitimate end of victory, it was considered that some form of international administration of the conquered lands should be established under the aegis of the League of Nations. The mandates system, as ultimately given expression to in Article 22 of the Covenant of the League of Nations, represented a victory for the opponents of the principle of annexation. Namibia was classified as a "C" group Mandate, that is to say, one which was regarded as appropriate to be administered as an integral portion of the mandatory's territory, and it was allotted to His Britannic Majesty for and on behalf of South Africa. Under Article 2 of the Mandate, South Africa was required to promote to the utmost the material and moral well-being and the social progress of the inhabitants and under Article 6, agreed to submit reports annually to the League Council. Thus, South Africa, by accepting the Mandate, became the effective authority in Namibia and assumed the duty to transform the legacy of poverty into the condition of well-being and social progress.

2. South Africa, accordingly, submitted annual reports to the Council of the League of Nations, beginning with a report for 1919. A separate body, the Permanent Mandates Commission, was entrusted by the League Council with responsibility for reviewing the reports, along with those of other Mandatory Powers, and advising the Council as to the course of administration in the mandated territories. Although South Africa was not at first hostile towards the Permanent Mandates Commission, nevertheless she from the outset viewed the Mandate as tantamount to annexation. During the period between 1920 and 1939, the Permanent Mandates Commission felt obliged on more than one occasion to call South Africa to task with respect to its attitude towards the legal status of the territory.

3. When the League of Nations ceased to exist, the United Nations established an international trusteeship system under Article 75 of the Charter of the United Nations, which, *inter alia*, applied to territories held under mandate.

4. The United Nations, in accordance with Article 75 of the Charter, established a trusteeship for dependent territories, and invited the former Mandatory Powers to enter into trusteeship arrangements in respect of the mandated territories. On 14 December 1946, the General Assembly passed the resolution recommending that mandated territories of South Africa be placed under international trusteeship agreement and invited the Government of South Africa to propose for the consideration of the General Assembly a trusteeship agreement for the aforesaid territory. (General Assembly resolution No. 65 (I) of 14 December 1946.) South Africa refused to heed this resolution and did not place her territory under trusteeship. She proposed, instead, that the Mandate over Namibia should terminate and the territory be incorporated into South Africa. Although the proposal was rejected by the General Assembly, South Africa,

continuing to ignore the trusteeship proposal, declared in 1947 that it would continue to administer Namibia in the spirit of the 1920 Mandate and would be prepared to submit an annual report to the United Nations as it had done to the League of Nations. Except in 1947, South Africa has never submitted any reports thereafter to the Secretary-General.

5. During the period from 1946 to 1949, the policy of the Government of South Africa, in respect of the Mandate, underwent a marked change. In the beginning, South Africa conceded the existence of the Mandate and her obligations thereunder, including that of rendering reports to the United Nations. By the end of the period, South Africa referred to the Mandate as "the previous Mandate since expired", insisting that the administration of the territory was a matter solely of internal concern, and refused to render reports to the United Nations. By the end of 1949, it was obvious that South Africa's concept of her legal obligations under the Mandate was diametrically opposed to that of the United Nations Members. Accordingly, the General Assembly sought the advisory opinion of the International Court of Justice relating to the above attitude of South Africa. The Court rendered three Advisory Opinions: the basic Opinion is that of 11 July 1950, and the other two were delivered on 7 June 1955 and 1 June 1956. Each of those Advisory Opinions was accepted by the General Assembly by appropriate resolution. In the Advisory Opinion of 11 July 1950, the International Court of Justice held that Namibia was a territory under the international mandate and the territory had an international status. The Court rejected South Africa's contention that the Mandate had lapsed with the discontinuance of the League. The Court confirmed the powers of the General Assembly to exercise supervisory functions and to receive the annual reports. The Court was further of the opinion that South Africa, with the consent of the United Nations, could modify the international status of the mandated territory but could not unilaterally modify the international status of the territory. The Court was however of the opinion that South Africa was not bound to place the territory under the United Nations trusteeship system. South Africa denounced the Opinion of the International Court of Justice. The General Assembly made efforts to obtain implementation of the Opinion by means of negotiation and appeal, but to no avail. Two more references were made in 1955 and 1956 to find out as to whether the United Nations would be competent to receive reports and whether "the Committee on South West Africa" established by the General Assembly could hear petitions and petitioners. In both cases again the International Court of Justice supported the view-point of the United Nations as against South Africa, with the result that it was clearly established that the international obligations continued. Notwithstanding this, the attitude of South Africa continued to be cantankerous and contumacious. Eventually, on 4 November 1960, Ethiopia and Liberia filed concurrent Applications in the International Court of Justice, having regard to Article 80 of the United Nations Charter, asserting, among others, contraventions of the Mandate by South Africa. The two States sought a judgment of the Court to require South Africa to cease the alleged violations and to carry out its obligations under the Mandate. In November 1961 South Africa filed preliminary objections contesting the jurisdiction of the Court to hear the dispute brought by the said two States. The Court, in its Judgment of 21 December 1962, dismissed the objections raised by South Africa and concluded, by eight votes to seven, that Article 7 of the Mandate was a treaty or convention still in force within the meaning of Article 37 of the Statute of the Court and that the dispute was one which was envisaged in the said Article 7 and which could not be settled by negotiations. It held that it had jurisdiction

to adjudicate upon the merits of the dispute. However, after almost six years of contentious proceedings, the Court, by the then-President's casting vote, concluded that the above States could not be considered to have established any "legal interest" appertaining to them in the subject-matter of the present claims, and that, accordingly, the Court must decline to give effect to them. It is respectfully submitted that having regard to Articles 59, 60 and 61 of the Statute and the well-recognized doctrines of international law, the Judgment of 1962 was *res judicata* and being final was binding on the Parties in respect of the particular cause and could not be revised in 1966 without there being circumstances or conditions which required revision.

6. The Afro-Asian countries in 1966, therefore, took the matter to the General Assembly of the United Nations which on 27 October 1966 resolved to terminate the South African right to administer the territory (General Assembly resolution 2145 (XXI)). In the resolution the Assembly declared that South Africa had failed to fulfil its obligation in respect of the administration of the mandated territory and to ensure the moral and material well-being and security of the indigenous inhabitants of Namibia, and in fact had disavowed the Mandate. As a result of these findings, it decided that "the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is therefore terminated, that South Africa has no right to administer the territory and henceforth South West Africa comes under the direct responsibility of the United Nations". To implement this resolution, the General Assembly established an *Ad Hoc* Committee for Namibia, consisting of 14 States, to recommend the practical means by which Namibia should be administered so as to enable the people of the territory to exercise the right of self-determination and to achieve independence. On 19 May 1967 the Assembly resolved to establish an 11-member council to take over the administration of Namibia from South Africa.

7. In March 1969 the Security Council met to consider the Namibian question and for the first time explicitly recognized the General Assembly's decision to terminate the Mandate (resolution 264 (1969) of 20 March 1969). In the resolution the Council called upon South Africa "to immediately withdraw its administration from the territory", and decided to meet again in the event of South Africa's failure to comply, in order "to determine upon necessary steps or measures". South Africa rejected the above resolution of the Security Council. On 12 August 1969 the Council reaffirmed its March resolution and declared that South Africa's defiance "constitutes an aggressive encroachment on the authority of the United Nations, a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia" (resolution 269 (1969)). It called for South Africa's withdrawal from the territory by 4 October 1969 and again warned that further measures would be decided upon should South Africa refuse to comply. Upon South Africa's refusal to withdraw from Namibia, the General Assembly adopted three resolutions and condemned the South African Government for its persistent refusal to withdraw its administration (General Assembly resolutions 2498 (XXIV) of 31 October 1969, 2517 (XXIV) of 1 December 1969, and 2518 (XXIV) of 1 December 1969). The Security Council by its resolution 276 (1970), *inter alia*, recognized the decisions of the General Assembly to terminate the Mandate and by resolution 284 (1970) decided to submit the question aforesaid to the International Court of Justice.

8. South Africa's persistent refusal to withdraw its administration from Namibia would constitute "a threat to the peace" in terms of Article 39 of Chapter VII of the Charter of the United Nations. The Security Council's

recognition and confirmation of the termination of the Mandate is clearly binding on South Africa by virtue of Article 25 of the Charter, which reads that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter.

9. The continued presence of South Africa in Namibia is illegal, and the only course open to the Security Council is to take action in terms of Article 42 of the Charter, as the measures listed in Article 41 of the Charter have already been taken by the Security Council to restore peace. The termination of the Mandate, the call on all States to ensure that industrial enterprises owned or controlled by them cease all dealings with South Africa, may be treated as "measures", within the meaning of Article 41, to restore peace.

10. South Africa has continued its defiance of the United Nations and the world public opinion. South Africa has violated persistently the resolutions of both the General Assembly and the Security Council. The general tenor of South Africa's action in the territory has become more and more oppressive of the people of Namibia. Tension has mounted and punitive measures have increased in scope and severity. Thus the situation resulting from South African recalcitrance is not only subversive of an international order based on law but also constitutes "a threat to peace".

11. The defiance of South Africa of the General Assembly and Security Council resolutions would attract Article 6 of the Charter dealing with the expulsion of a Member of the United Nations.

12. In conclusion, it is respectfully submitted that the Court may be pleased to answer the question referred to it in the following manner:

Notwithstanding Security Council resolution 276 (1970), the legal consequences for States of the continued presence of South Africa in Namibia are as under:

(i) The termination of the Mandate by the General Assembly, and recognized and confirmed by the Security Council, is binding on South Africa and all the Members of the United Nations are bound to accept and carry out the decisions of the Security Council under Article 25 of the Charter.

(ii) The continued presence of South Africa in Namibia is illegal.

(iii) The continued flagrant refusal of South Africa to comply with the decisions of the Security Council demanding its immediate withdrawal constitutes a "threat to peace", and the Security Council is competent to make appropriate recommendations and to take decisions under Article 39 of the Charter.

(iv) All the resolutions adopted by the Security Council in this behalf, especially resolutions 264 (1969), 276 (1970) and 284 (1970), and the decisions, calls and recommendations contained therein, are covered by Article 41 of the Charter and are valid and justified.

(v) The Security Council is competent to take action under Article 42 of the Charter, as the measures taken and/or suggested have proved to be inadequate.

(vi) For having violated the principles contained in the Charter, South Africa is liable to be expelled from the United Nations by the General Assembly upon the recommendations of the Security Council in accordance with Article 6 of the Charter.

WRITTEN STATEMENT OF THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC

The Embassy of the Hungarian People's Republic presents its compliments to the International Court of Justice and with reference to the latter's Orders of 5 and 28 August 1970 (*I.C.J. Reports 1970*, pp. 359 and 362), as well as to Article 66, paragraph 2, of the Statute of the Court, upon instructions of its Government, has the honour to make the following statement:

The continued presence of South Africa in Namibia, in defiance of the will of the international community, gravely violates international law.

Resolution 2145 (XXI) of 27 October 1966 of the General Assembly of the United Nations reaffirmed the inalienable right of the people of Namibia to self-determination, freedom and independence in accordance with the Charter of the United Nations, General Assembly resolution 1514 (XV) of December 1960 and earlier Assembly resolutions concerning the mandated territory of South West Africa. The General Assembly by the same resolution 2145 (XXI) terminated the Mandate and pronounced that the Republic of South Africa has no other right to administer this territory. Hence the legal basis of the presence of the Republic of South Africa in Namibia has ceased to exist.

The Security Council by its resolution 276 (1970) of 30 January 1970 reaffirmed General Assembly resolution 2145 (XXI) and declared that the continued presence of the South African authorities in Namibia is illegal. The Security Council declared also that consequently all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid.

Member States of the United Nations are expected to respect and accept this resolution of the Security Council in accordance with the Charter, and they are obliged to give the United Nations every assistance in any action it takes in order to make the termination of the Mandate effective.

The Republic of South Africa, whose rights based upon the Mandate have been terminated, is under the clear obligation to discontinue its illegal presence in Namibia and withdraw its administration therefrom.

The obligation of the Republic of South Africa to withdraw from the Territory of Namibia is essentially of the same character as those obligations under contemporary international law, which are listed in the Judgment of the International Court of Justice of 5 February 1970. The Judgment of the Court mentions obligations deriving from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. (*I.C.J. Reports 1970*, p. 32, para. 34.) The Court held that in view of the importance of the rights related to these obligations, all States can be held to have a legal interest in their protection and the obligations in question are obligations *erga omnes* (*ibid.*, para. 33).

The continued presence of the Republic of South Africa in Namibia notwithstanding the termination of the Mandate, establishes its responsibility vis-à-vis all States. Its obligation to withdraw is an obligation *erga omnes*. The interests of the international community as a whole are violated by the illegal presence of South Africa in Namibia and from this fact States can draw the appropriate conclusions individually and collectively. States are especially entitled to appeal

to the Security Council and request that it should adopt decisions of a mandatory character on various ways of bringing political, economic and military pressure to bear on the Republic of South Africa. States can propose—as has been done by the USSR—that the Security Council should adopt a decision to the effect that the governments of countries whose nationals and companies are engaged in industrial, financial and trade activities with the Republic of South Africa, should take the necessary legislative, administrative and other steps to prohibit these activities until such time as the Republic of South Africa complies with the resolutions on Namibia (S/9863).

States Members of the United Nations can consider whether the conduct of the Republic of South Africa does not amount to a persistent violation of the principles of the Charter of the United Nations.

States are naturally bound not to recognize any acts of the Government of South Africa made on behalf of or concerning Namibia after the termination of the Mandate, in accordance with the above-mentioned resolution of the Security Council.

In this connection, reference is made to the statement of Mr. Károly Csatorday, representative of the Hungarian People's Republic, then President of the Security Council, which he made on 20 March 1969. Among other things, he pointed out the following:

> "The Government of South Africa up to this very day occupies and illegally administers Namibia . . . The most elementary rights of self-determination of this African people are thus suppressed. Those who resist the colonial rule of the Pretoria Government are treated as criminals by the oppressive colonial régime. . . .
>
> It is a most regrettable state of affairs that the peoples of Namibia, . . . have to wage their fight for self-determination, for their most elementary human rights, not only against their direct oppressors, but also against the might of powerful monopolies which have allied themselves with their masters. The substantial financial and military assistance provided to South Africa, for instance, against the clearly expressed wish of the United Nations as reflected in resolutions of the General Assembly by some major Powers shows convincingly the tragic line-up of forces.
>
> But to present a true picture of these forces we must add that the people of Namibia does not have to fight alone against such overwhelming forces. The peoples of many continents and many countries support them in their just cause. The socialist countries have always been in the forefront of those which have offered meaningful support to the peoples fighting for their national independence. The Hungarian People's Republic is duty bound to offer its support to the people of Namibia . . . threatened by the inhuman *apartheid* policies, . . . we have believed for a long time that the Security Council must take effective measures against South Africa should it continue its defiance of the United Nations and world conscience." (S/PV.1465, pp. 63-67).

The Embassy of the Hungarian People's Republic avails itself of this opportunity to renew to the International Court of Justice the assurances of its highest consideration.

16 November 1970.

LETTER FROM THE AMBASSADOR OF THE CZECHOSLOVAK SOCIALIST REPUBLIC TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

16 November 1970.

Mr. President,

Referring to the letters of the International Court of Justice Nos. 50143 and 50224 dated 5 and 28 August 1970 I have the honour to inform you about the position of the Government of the Czechoslovak Socialist Republic concerning the continued occupation of Namibia by South Africa.

The Czechoslovak Socialist Republic insists in the fulfilling of all resolutions of the United Nations accepted in that case, especially in the unconditional withdrawal of all military and police units and administration of South Africa from the territory of Namibia and in the abolition of all acts of discrimination against the people of Namibia.

Accept, etc.,

(Signed) Václav MALÝ.

EXPOSÉ ÉCRIT DU GOUVERNEMENT FRANÇAIS

A l'occasion du vote par l'Assemblée générale et le Conseil de sécurité de résolutions relatives au Territoire du Sud-Ouest africain, auquel l'ONU a donné en 1966 le nom de Namibie, les représentants français ont plusieurs fois marqué que leur gouvernement faisait des réserves sur le fondement de ces textes au regard du droit international. En conséquence, ils se sont abstenus sur les textes en question.

Le Gouvernement français considère maintenant comme opportun de développer les raisons qui sont à la base de ses réserves et de ses abstentions. Aussi présente-t-il les remarques suivantes, qui ne porteront que sur quelques-uns des aspects du problème posé à la Cour.

* * *

A titre liminaire, le Gouvernement français entend souligner que, au-delà de la formulation de la question adressée à la Cour, le débat n'est pas de savoir si l'Afrique du Sud s'est rendue coupable d'infractions aux obligations du Mandat accepté par elle pour le Sud-ouest africain, ni à celles qu'elle a assumées en devenant Membre des Nations Unies, ou si encore l'Afrique du Sud a agi contrairement aux normes énoncées dans la Déclaration universelle des droits de l'homme. Pour le Gouvernement français, il ne fait pas de doute que le Gouvernement de l'Afrique du Sud a très réellement et systématiquement contrevenu à ces règles et à ces obligations. C'est là un point que les représentants français au sein de divers organes des Nations Unies ont fréquemment souligné et qui doit être précisé à nouveau de manière catégorique.

Mais il s'agit de déterminer si l'ONU, en sanctionnant ces infractions par le retrait du Mandat et en prenant d'autres mesures qui peuvent être considérées comme des conséquences de cette décision de retrait, ne fait qu'exercer des compétences attribuées par la Charte et, dans l'affirmative, lesquelles.

Les commentaires ci-après ne porteront donc pas sur le fait, tenu pour acquis, que l'Afrique du Sud a failli à des normes internationales et contrevenu à des obligations conventionnellement acceptées par elle, mais sur l'étendue de la compétence de l'ONU à l'égard de la sanction de ces manquements.

* * *

La question posée par le Conseil de sécurité à la Cour vise les conséquences pour les Etats Membres de la non-application par l'Afrique du Sud d'une résolution du Conseil de sécurité. Bien que, de l'avis du Gouvernement français, il soit fort souhaitable que la Cour ne conçoive pas sa tâche d'une manière trop étroitement limitée, et notamment ne se dispense pas d'examiner les liens entre la résolution en question et d'autres résolutions votées par l'Assemblée générale, en particulier la résolution 2145 (XXI), la Cour doit en tout cas répondre à cette question précise.

Au sujet de celle-ci, on observera que le fait même qu'elle soit posée paraît impliquer de la part des Etats qui ont voté en faveur de ce texte, qu'il existe, au sujet des obligations que comporterait la résolution n° 276 pour les Etats Membres, un doute sérieux ou une divergence d'opinions quant à son caractère de « décision ».

En effet, si cette résolution réglait par voie de « décision » au sens technique

du mot la situation juridique du Sud-Ouest africain et la conduite des Etats à l'égard de ce territoire et de l'Afrique du Sud, à la façon dont la résolution 232 (1966) a ordonné aux Etats un certain nombre de conduites à l'égard de la Rhodésie du Sud, les obligations des Membres des Nations Unies seraient très claires: ces Etats Membres auraient le devoir d'appliquer ladite décision, à moins qu'ils ne soutiennent que celle-ci n'a pas été prise conformément à la Charte. Or les conditions dans lesquelles la question a été posée par le Conseil de sécurité à la Cour, aussi bien que le libellé même de cette question, indiquent que telle n'est pas l'hypothèse et que le Conseil de sécurité demande à être éclairé sur une situation qui n'est pas celle qui se produirait au cas où il y aurait non-application d'une « décision » du Conseil se présentant comme telle. Il faut donc en conclure que le Conseil n'affirme pas catégoriquement avoir jusqu'à présent statué par voie de décision quant à la conduite qui doit être celle des Etats à l'égard du maintien de l'Afrique du Sud dans le territoire contesté.

Que le Conseil n'ait pas eu jusqu'à présent l'intention de prendre une telle décision à l'égard de la conduite des Etats Membres se déduit du libellé même des résolutions correspondantes aussi bien que des débats qui ont conduit à leur adoption.

S'agissant de la terminologie utilisée par ce dernier, on observera que cet organe n'a pas employé, pour définir les conduites qu'il attend des Etats Membres, les expressions caractéristiques d'une décision, d'un ordre donné par lui, semblables aux expressions qu'il a utilisées dans le cas des sanctions à l'égard de la Rhodésie du Sud.

Dans sa résolution n° 276, le Conseil n'emploie le mot « décide » qu'à l'égard de mesures de procédure le concernant lui-même. S'adressant aux Etats, il ne « décide » pas mais utilise le langage de la recommandation (pour les Etats Membres autres que l'Afrique du Sud) ou de la déclaration (en ce qui concerne ce dernier pays). Or le Conseil s'est servi, il y a peu de temps, du langage de la décision. Quand il a voulu décider des sanctions à l'égard de la Rhodésie, il a prescrit aux Etats leurs conduites dans des termes sans équivoque. C'est ainsi qu'il a « requis » les Etats Membres d'avoir à prendre certaines mesures (alors qu'il se bornait à « demander instamment » aux Etats non membres de se conformer à une attitude déterminée). De plus il a tenu à spécifier que la non-application par les Etats Membres des mesures requises constituerait de leur part une infraction aux obligations telles qu'ils les ont assumées en acceptant l'article 25.

Du reste, les termes utilisés par la résolution 276 à l'égard des Etats Membres, tout en se situant à l'intérieur de la gamme des expressions normalement employées dans les recommandations, ne sont même pas particulièrement énergiques si on les compare à d'autres expressions visant, par exemple, le cessez-le-feu au Moyen-Orient qui, bien que n'étant pas lui non plus « décidé », a fait cependant l'objet de mentions plus pressantes.

Les indications fournies par le langage même de la résolution votée sont corroborées à l'évidence par les procès-verbaux des débats qui ont permis son adoption et des consultations entre délégations qui ont précédé ce vote.

On peut donc conclure de la terminologie employée et du débat dont la résolution est la conclusion que le Conseil n'a pas cherché à imposer aux Etats par voie de décision certaines conduites à l'égard du Gouvernement sud-africain à raison du comportement de ce gouvernement dans le territoire que l'Assemblée générale a rebaptisé « Namibie ». Il n'a donc pas voulu, du moins jusqu'à présent, que les Etats Membres, sous peine d'être en contravention avec la Charte, soient juridiquement contraints de tirer certaines conséquences du comportement de l'Afrique du Sud, puisqu'il les a seulement invités à les tirer.

* * *

Toutefois il s'agit là du contenu de la résolution relatif aux conduites des Etats Membres autres que l'Afrique du Sud. Mais il faut également évaluer la portée des mentions que ce texte comporte à l'égard de l'Afrique du Sud.

Deux mentions doivent alors être examinées: l'une se référant à la résolution 264 et l'autre à la résolution 269.

a) La résolution 264, tout d'abord, est « réaffirmée » par la résolution 276. Par là le Conseil réaffirme sa « reconnaissance » de ce que l'Assemblée générale a privé l'Afrique du Sud de son Mandat. Le Conseil n'a donc pas revendiqué le droit de prononcer une telle déchéance, mais il se borne à prendre acte de ce que celle-ci a été prononcée par l'Assemblée générale et à en tirer des conséquences.

En effet — et à l'appui de ce refus du Conseil de se prononcer lui-même sur le retrait du Mandat — on ne voit rien dans la Charte qui autorise le Conseil de sécurité à décider de la dévolution d'un territoire, qu'*il* soit ou non sous mandat.

Certes, aux termes des dispositions relatives au règlement pacifique des différends, le Conseil de sécurité peut faire toutes recommandations, y compris celles qui porteraient sur les aspects territoriaux d'un règlement. Mais il ne peut s'agir que de propositions qu'il dépend des parties de reprendre ou non à leur compte. Il n'a, certes, été affirmé par personne que le Conseil pouvait, par exemple, dans le cas du conflit palestinien, « décider » de l'attribution de territoires d'une manière juridiquement obligatoire pour les Etats.

Même dans le cas des tutelles soumises au contrôle du Conseil, la Charte ne donne pas à cet organe le droit théorique de mettre fin à une tutelle stratégique, alors même que dans la pratique ce droit ne pourrait s'exercer qu'avec l'accord du pays intéressé.

b) La seconde mention intéressant les rapports entre l'Afrique du Sud et le territoire contesté est constituée par le rappel de la résolution 269 par la résolution 276. Quelle en est la portée?

On notera tout d'abord que si la résolution 276, dans un de ses considérants, « rappelle » la 269, elle ne la réaffirme pas, au contraire de ce qu'elle fait pour la 264. Cela n'est sans doute pas fortuit.

Quant à la résolution 269 ainsi rappelée, il est vrai qu'elle « décide » non seulement à propos de la procédure (par. 6 du dispositif) mais aussi sur le fond. En effet, le paragraphe 3 du dispositif

> « décide que l'occupation continue du Territoire de la Namibie par les autorités sud-africaines constitue une atteinte agressive à l'autorité de l'Organisation des Nations Unies, une violation de l'intégrité territoriale et une négation de la souveraineté politique du peuple de la Namibie ».

On peut donc se demander si on se trouve en présence d'une décision que le Conseil aurait voulu prendre sur la base de l'article 39 de la Charte.

Pour en juger, on peut observer que le Conseil s'est abstenu d'utiliser la terminologie de l'article 39. C'est ainsi qu'il ne mentionne pas une « agression » mais une « atteinte agressive ». De plus celle-ci s'entend non pas à l'égard d'un Etat mais de l'ONU. Il paraît clair que la Charte n'a pas envisagé cette catégorie d'agressions, non plus que le comité qui s'efforce actuellement de définir ce concept. Bien entendu les expressions relatives à la violation de l'intégrité territoriale et à la négation de la souveraineté politique du peuple de Namibie sont encore plus loin de la terminologie de l'article 39. En revanche, elles évoquent l'article 2, paragraphe 4, à cela près qu'elles substituent la notion de peuple à celle d'Etat.

Or le Conseil a utilisé en toute clarté la terminologie de l'article 39 à propos

de sa résolution déjà citée sur la Rhodésie du Sud. En effet, après avoir pris soin de préciser qu'il agissait conformément à l'article 39 (et à l'article 41), il a « constaté » qu'il existait une menace à la paix.

On peut donc en conclure que le Conseil dans sa résolution n° 276 ne paraît pas avoir, même à propos de ce point particulier, effectué une constatation au sens de l'article 39 de la Charte.

* * *

Le Conseil n'a donc ni « décidé » des conduites des Etats sur la base des articles 41 ou 42 ni même « décidé » d'effectuer, sur la base de l'article 39, la constatation préalable qui est juridiquement nécessaire.

Toutefois, il a fait plus que d'esquisser un schéma selon lequel le Conseil, à partir de la décision de retrait du Mandat prise par l'Assemblée générale, constaterait que cette décision n'est pas exécutée et que la Puissance administrante demeure dans un territoire qui est pour elle désormais étranger. Ce maintien serait alors assimilé à une agression et le Conseil deviendrait compétent pour décider de sanctions contre l'agresseur.

De surcroît, on pourrait avancer que, les compétences de deux organes excluant leur contrôle réciproque, le Conseil de sécurité n'a pas à juger de la légitimité de la décision prise par l'Assemblée générale, mais seulement à en tirer les conséquences. Ce raisonnement pourrait être tenu non seulement à propos du sort d'un territoire sous mandat mais à propos de toute décision que l'Assemblée générale s'arrogerait le droit de prendre dans le domaine territorial ou même en dehors de celui-ci.

Il est bien clair qu'une telle construction, nettement esquissée à propos de la présente affaire, comme le manifestent les textes votés et les débats qui les ont entourés, impose d'examiner non seulement l'action du Conseil de sécurité mais celle, antérieure, de l'Assemblée générale dont le Conseil de sécurité deviendrait une sorte de « bras séculier ». Ainsi la situation juridique dans laquelle la résolution 276 met les Etats Membres ne peut être évaluée que si l'on se réfère en même temps aux résolutions de l'Assemblée générale qui lui ont servi de base, et particulièrement celle qui, en 1966, a entendu mettre fin au Mandat de l'Afrique du Sud sur le Sud-Ouest africain. La Cour ne peut apprécier la situation juridique des Etats à propos de la résolution n° 276 du Conseil sans se prononcer sur le point de savoir si la résolution 2145 (XXI) de l'Assemblée générale qui en est le fondement a été prise conformément aux dispositions de la Charte. Seule une discussion simultanée de la valeur de la résolution du Conseil et de celle de l'Assemblée générale ci-dessus mentionnée permettrait à la Cour, pour répondre à la question concrète qui lui a été adressée, de statuer d'abord sur le problème plus vaste et plus grave qui se pose à l'ensemble des Etats à propos du territoire en question et de l'action conjuguée de l'Assemblée générale et du Conseil à son sujet.

* * *

Convaincu que la solution du problème posé implique un jugement sur le bien-fondé de la résolution 2145 (XXI) de l'Assemblée générale, le Gouvernement français note que cette résolution, pour mettre fin au Mandat de l'Afrique du Sud, prend motif de ce que ce pays s'est mis en infraction avec les principes du Mandat, les principes de la Charte et la Déclaration universelle des droits de l'homme (par. 5 du préambule de la résolution). De plus, la résolution 1514 (XV) est invoquée dans le préambule (par. premier) et dans le dispositif (par. premier) comme justifiant également le retrait du Mandat.

Mettant à part le cas de la résolution 1514 (XV), le Gouvernement français

rappelle ce qui a été dit plus haut, à savoir qu'il considère que le Gouvernement sud-africain s'est mis en contradiction de façon systématique avec les normes de la déclaration des droits de l'homme, les principes de la Charte, les obligations du Mandat. Mais la question est pour lui de déterminer si la sanction de ces manquements prouvés peut bien être celle que l'Assemblée générale a choisie, à savoir le retrait du Mandat. Pour cela, il convient de reprendre les différents motifs invoqués par l'Assemblée générale et rappelés ci-dessus.

a) Le manquement aux normes inscrites dans la Déclaration universelle des droits de l'homme ne peut de toute évidence déclencher une telle sanction. Le texte de cette déclaration ne lie pas par lui-même les Etats, il n'a pas un caractère conventionnel et, du reste, les textes conventionnels qui, en le prenant pour fondement, ont établi des obligations et des mécanismes de sanctions à l'égard des Etats n'ont pas été jusqu'à donner à l'Assemblée générale, et de loin le pouvoir dont elle prétend faire usage dans l'affaire du Sud-Ouest africain.

b) La question de la compétence qu'aurait l'Assemblée générale pour prononcer la déchéance du Mandat en cas de non-respect des termes de ce mandat mérite évidemment plus de développement.

A cet égard on rappellera que la Cour, par son avis de 1950 accepté par l'Assemblée générale, a admis non seulement que subsistait le Mandat de l'Afrique du Sud sur le Sud-Ouest africain, mais encore que les pouvoirs de contrôle et de surveillance exercés antérieurement par le Conseil de la SdN étaient recueillis par l'Assemblée générale. En outre, la Cour a posé deux principes relatifs à ce contrôle et à cette surveillance: le degré de surveillance à exercer par l'Assemblée générale ne saurait dépasser celui qui a été appliqué sous le régime des mandats et, d'autre part, cette surveillance devrait être conforme, autant que possible, à la procédure suivie en la matière par le Conseil de la SdN.

De plus, depuis lors, et notamment par son avis de 1955, la Cour s'est préoccupée de résoudre différents problèmes relatifs à l'application des deux principes posés par elle en 1950, qu'elle a interprétés mais sur lesquels elle n'est pas revenue.

C'est ainsi que les juges de la Cour se sont demandé si le fait que les décisions au sein de l'Assemblée générale étaient prises pour les questions importantes à la majorité des deux tiers alors que les questions relatives à la surveillance du Mandataire étaient soumises à la règle de l'unanimité au sein du Conseil de la SdN pouvait être considéré comme un accroissement de la surveillance qui eût été incompatible avec la règle posée par l'avis de 1950. Il est caractéristique que les débats de la Cour ont porté sur le point de savoir si *à l'intérieur des fonctions de surveillance* telle ou telle procédure ou mesure de contrôle correspondait à une aggravation de cette surveillance qui, comme telle, eût été contraire aux principes de l'avis de 1950. Il n'était pas question qu'il pût être ajouté à ces fonctions de surveillance et de contrôle si cela signifiait attribution d'un pouvoir que n'avait pas eu le Conseil de la SdN. Lors même, en 1956, que la Cour a interprété son avis de 1950 comme signifiant que l'ONU recueillait les pouvoirs non pas seulement effectivement utilisés par le Conseil de la SdN mais aussi bien ceux qu'il n'avait pas mis en œuvre bien qu'ils lui fussent théoriquement conférés, elle n'a pas un instant admis que les pouvoirs des Nations Unies (et singulièrement de l'Assemblée générale) à propos du Mandat puissent être radicalement plus étendus que ceux du Conseil de la SdN. Or il est bien clair que c'est cependant à cette conclusion que l'on arrive si l'on admet que l'Assemblée générale a le droit de priver un mandataire de son mandat.

Il est certain en effet que le Pacte n'avait pas donné au Conseil de la SdN compétence pour mettre fin à un mandat. Il n'est pas possible non plus d'admettre

qu'il aurait pu s'agir d'une compétence implicite car il eût fallu, pour qu'elle ait un effet pratique, qu'une dérogation fût expressément prévue à la règle de l'unanimité qui prévalait au sein du Conseil comme de l'Assemblée. S'agissant de cette règle, si des doutes ont pu parfois être exprimés sur le point de savoir si la voix de l'Afrique du Sud aurait dû être comptée dans cette unanimité, même ceux qui exprimaient ces doutes ne contestaient pas que l'unanimité ne fût exigée de tous autres Etats Membres du Conseil. On ne peut donc admettre que le pouvoir de mettre fin à un mandat est un pouvoir du Conseil de la SdN recueilli par l'Assemblée générale. La Cour, par exemple dans son avis fondamental de 1950, si elle n'a pas eu à prendre expressément position sur l'existence d'une telle compétence de retrait du mandat, parce que personne ne proposait de la reconnaître ni au Conseil de la SdN ni à l'Assemblée générale des Nations Unies, l'a cependant implicitement mais clairement exclue en ne mentionnant que des pouvoirs de surveillance et de contrôle.

Le fait que la Cour ait considéré que la sévérité même de cette surveillance ne devait pas être substantiellement aggravée exclut que cette haute juridiction ait pu consentir à ce qu'on y ajoute aussi substantiellement qu'on le ferait en dotant l'Assemblée générale du pouvoir de prononcer la déchéance du mandataire.

Sur la base de ces prises de position de la Cour (que ne contredisent pas sur ce point celles des juges ayant exprimé une opinion dissidente) comme de sa constatation du caractère conventionnel du mandat, il ne paraît pas possible de conclure que l'Assemblée générale est compétente pour prononcer la fin du Mandat.

c) La résolution 2145 (XXI) invoque enfin pour mettre fin au Mandat les manquements de l'Afrique du Sud à l'égard des principes de la Charte.

Mais le cas de mépris systématique de la part d'un Etat à l'égard des principes de la Charte est formellement couvert par une disposition spécifique de celle-ci. Il s'agit, comme l'on sait, de l'article 6. Or ce texte prévoit que, si un Membre de l'Organisation enfreint de manière persistante les principes énoncés dans la Charte, il peut être exclu de l'Organisation par l'Assemblée générale sur recommandation du Conseil de sécurité. Il est donc bien clair que ce texte, s'il permet éventuellement une procédure visant à l'exclusion de l'Afrique du Sud, ne peut pas être utilisé pour priver ce pays de son mandat sur le Sud-Ouest africain.

D'une manière plus générale, on ne peut trouver dans l'énoncé des fonctions de l'Assemblée générale, tel qu'il figure dans l'article 10, aucune mention d'une compétence permettant à cet organe de « décider » de l'appartenance de tel territoire à tel ou tel Etat, du transfert de responsabilités territoriales d'un pays Membre à un autre, mais seulement, à propos de toutes questions ou affaires rentrant dans le cadre de la Charte, un simple pouvoir de recommandation.

Si l'on observe que l'Assemblée générale a cependant voté une résolution « mettant fin » au Mandat, qu'elle a trouvé suffisant pour cela de s'appuyer sur des textes qui ne lui donnaient pas cette compétence, qu'elle a invoqué en même temps des textes conventionnels (la Charte, le Mandat) et des résolutions votées par elle (la Déclaration des droits de l'homme, la résolution 1514 (XV)), on peut en conclure que l'Assemblée générale s'est conduite comme si elle se considérait comme investie d'un pouvoir législatif à l'échelon universel l'habilitant à la fois à formuler des normes juridiques obligatoires pour tous, même si elles ajoutent à la Charte ou modifient celle-ci, et à assortir ces règles d'un pouvoir de sanction.

Cela revient à refuser le principe fondamental selon lequel les restrictions à la souveraineté des Etats ne se présument pas mais doivent être consenties par eux.

Il va de soi qu'une telle construction n'est pas acceptable et que le fait qu'elle se manifeste, dans le cas en question, à propos d'un gouvernement dont la politique raciste est justement critiquée n'est pas un motif suffisant pour se dispenser de la dénoncer.

Le Gouvernement français ne peut que répéter à cet égard ce qu'il écrivait à la Cour en date du 15 février 1962 à propos de l'avis consultatif sur *Certaines dépenses des Nations Unies*:

> « Les Etats Membres des Nations Unies ont souscrit, qu'il soient membres originaires ou non, aux engagements de la Charte mais rien de plus. La Charte est un traité par lequel les Etats n'ont aliéné leur compétence que dans la stricte mesure où ils y ont consenti. Depuis le début du fonctionnement des Nations Unies, il n'a pu se créer de règles coutumières ou de pratiques contraires à la Charte que si ces règles coutumières ou ces pratiques ont été constantes et non controversées. »

Comme il va de soi qu'en matière de retrait d'un mandat on ne peut parler de pratique constante, et que la résolution 2145 (XXI) a été contestée, notamment par la France [1], on se trouve dans le cas d'une décision de l'Assemblée générale prise *ultra vires*.

* * *

Le fait que l'Assemblée générale, sans être compétente pour décider du retrait du Mandat de l'Afrique du Sud, ait cependant voté avec une très large majorité la résolution 2145 (XXI) comporte deux sortes de conséquences quant à l'effet de cette résolution sur la conduite des Etats Membres.

1. Tout d'abord, cette résolution est dépourvue de force obligatoire pour l'ensemble des Etats Membres. Ceux-ci ne sont pas juridiquement contraints de l'appliquer sous peine de manquer à leurs obligations en tant que Membres des Nations Unies.

a) On notera que la Charte, qui mentionne explicitement l'obligation d'appliquer les décisions *stricto sensu* du Conseil de sécurité, ne dit rien de tel de celles de l'Assemblée générale. Cela s'explique aisément si l'on considère que celle-ci doit agir à l'égard des Etats Membres par voie de recommandation et non de décision. Mais même si on admettait qu'elle puisse prendre des « décisions », celles-ci ne sauraient être obligatoires, par analogie avec celles du Conseil, que si elles étaient en conformité avec la Charte. Lorsque, comme dans le cas présent, cette conformité n'existe pas, la décision, de toute manière, ne pourrait être obligatoire.

b) Il va de soi que cette conclusion, même si on souhaitait la nuancer en ce qui concerne les pays qui ont voté pour la décision de l'Assemblée générale, demeurerait tout à fait valable pour ceux qui n'ont pas accepté de voter en faveur du texte en question. Pour ceux-là, en tout état de cause, il est bien évident que la décision ne peut leur être opposable.

c) Mais même en ce qui concerne ceux qui ont voté en faveur de la résolution en question, on notera que certains Etats ont soutenu qu'un tel vote, tout en exprimant un accord des volontés des Etats en question, ne signifiait pas

[1] La position de la France à l'égard de la résolution 2145 (XXI) a fait l'objet de déclarations de M. R. Seydoux (doc. A/PV.1439, p. 17 à 19 et doc. A/PV. 1454, p. 31. Depuis lors, les réserves françaises ont été rappelées maintes fois, notamment par M. Bérard devant le Conseil de sécurité (doc. S/PV.1464, p. 46 à 52) et M. Chay et devant le même organe (doc. S/PV. 1495, p. 21 à 23), etc.

que le contenu de cet accord était reconnu en tant que norme de droit international ni qu'avait donc disparu le droit d'appréciation individuelle des Etats.

2. Toutefois l'absence de force obligatoire ne signifie nullement l'absence de toute force. Une résolution comme celle qui est en question peut avoir non seulement une valeur politique certaine mais encore des effets juridiques substantiels bien qu'indirects.

L'importance du soutien que la résolution a obtenu justifie clairement sa valeur politique; une expression aussi générale doit tout naturellement requérir de tous les Etats l'examen le plus attentif.

En y procédant, les Etats pourront être sensibles au fait que la résolution cherche à combler une insuffisance, apparue au regard de l'évolution historique du dispositif institutionnel en ce qui concerne un mandataire en infraction avec les obligations de son mandat. Sans doute a-t-elle le tort, de l'avis du Gouvernement français, de chercher à remédier à cette insuffisance en dotant l'Assemblée générale de pouvoirs qui ne lui ont pas été confiés. Mais, enfin, bien que d'une manière juridiquement mal fondée, elle s'efforce de traduire un sentiment légitime, à savoir le souhait de voir sanctionner un mandataire systématiquement défaillant. Or, dans cet état d'insuffisance de l'organisation internationale, les Etats individuels demeurent libres, dans l'exercice de leur souveraineté, d'apprécier les conséquences de la conduite de l'Afrique du Sud sur le plan de leurs relations avec cet Etat.

En tirant ces conséquences, ils doivent tout naturellement attacher un grand prix à l'opinion de l'Assemblée générale. N'étant pas contraints de s'y soumettre ils sont en revanche tenus d'y prêter attention. Bien entendu, ce faisant, ils tiendront compte d'autres éléments tels que l'effectivité de l'exercice des compétences par l'Afrique du Sud, le souci de ne pas priver en fait les populations du territoire en question de la possibilité de participer à la vie internationale. Une fois ces différents facteurs évalués, ils peuvent, et doivent, sous leur responsabilité, tirer leurs propres conclusions quant à leur position à l'égard de la présence de l'Afrique du Sud dans le territoire contesté.

Selon le poids relatif qu'ils auront attribué aux diverses considérations en cause, cette conclusion peut être conforme ou non au contenu de la résolution des Nations Unies. Dans un cas comme dans l'autre, il s'agira de l'exercice par chaque Etat de son droit de juger la situation en question et de sanctionner éventuellement ce qui lui paraîtrait un manquement au droit international.

WRITTEN STATEMENT OF THE GOVERNMENT OF FINLAND

I. INTRODUCTORY REMARKS

1. Although the question on which an Advisory Opinion from the Court has been requested is worded briefly, its scope is rather extensive. Having taken the initiative leading to this request, the Government of Finland therefore deems it appropriate to explain in greater detail the essence of the question on which the Court is requested to pronounce itself. The observations made by the representatives of Finland and a number of other countries in the Security Council and the *ad hoc* sub-committee established in pursuance of Security Council resolution 276 (cf. especially the sub-committee report S/9863), give considerable, although perhaps not conclusive guidance in this respect. The opinion of the Court is requested on the legal consequences for States arising from the situation resulting from South Africa's continued presence in the Territory of Namibia in spite of the fact that already several years ago the Territory by an almost unanimous decision of the United Nations General Assembly was placed under the administration and direct responsibility of the Organization. The Assembly took this decision because it was convinced that South Africa had conducted itself in a manner which was contrary to the Mandate entrusted to it, contrary to the Charter of the United Nations and contrary to the Universal Declaration of Human Rights. Significantly, South Africa's presence there has continued in spite of the fact that the General Assembly and the Security Council on several occasions, after the decision to revoke the Mandate had been taken, have requested its authorities to withdraw from the Territory.

2. In the opinion of the Government of Finland the Court's Opinion should make it clear that South Africa lost its Mandate over South West Africa precisely because it acted contrary to its aforementioned international obligations, thereby violating the legal status of the Territory. The decision taken by the United Nations General Assembly to revoke the Mandate and assume direct responsibility for the Territory has been described as final and irrevocable by the overwhelming majority of United Nations member States. It was precisely because of the nature and character of the administration of the Territory that South Africa—in the view of the United Nations—violated the international status of the Territory, which resulted in the revocation of the Mandate.

3. In way of introduction, the Finnish Government wishes to make some brief remarks on the question of the transfer of administration of the Territory. In its Advisory Opinion of 11 July 1950, on the *International Legal Status of South West Africa*, the Court considered that the Union of South Africa was not under an obligation to place the Mandated Territory of South West Africa under the trusteeship system of the United Nations. However, no less than 6 of the 14 Members who participated in the decision were of a different opinion. Some of them felt that the Union of South Africa at any rate had an obligation to enter into negotiations on converting the Territory into a trust territory. It is furthermore worth recalling that at that particular time the question of whether the Union of South Africa had violated its obligations under the Mandate was not at issue. What was at issue, was whether of not the Territory should be converted into a trust territory on the basis or Article 77 (1) *(a)* of the Charter of the United Nations. On the other hand the Court considered unanimously

in its Opinion of 1950 that the Union of South Africa had no right to change the international legal status of the Territory without the consent of the United Nations. A sizeable majority (12-2) was furthermore of the opinion that the Union of South Africa was bound by the international obligations contained both in Article 22 of the Covenant of the League of Nations and in the Mandate and in addition obligated to forward the petitions of the population of the Territory as well as its own annual reports on the Territory to the United Nations, which now had to perform the obligations (formerly entrusted to the League of Nations) pertaining to the supervision of the Territory. The authority of the United Nations over the South West Africa Mandated Territory was placed beyond any doubt in two subsequent Opinions rendered by the Court on 7 June 1955, and 1 June 1956.

It is finally worth noting that the Court in its Judgment on 21 December 1962, on the case brought before it by Ethiopia and Liberia, rejected the preliminary objections made by South Africa and established that Article 7 concerning, *inter alia*, modification of the South West African Mandate Agreement was still in force. In its final Judgment on the case on 18 July 1966 the Court did not pronounce itself on the question whether South Africa had violated the Mandate or other international obligations but dismissed the case on grounds of lack of *locus standi*. Neither did the Court at the time express views different from those contained in its previous Opinions on South West Africa.

4. The situation has changed since the afore-mentioned judgment by the Court. The General Assembly of the United Nations, in dealing with the question at its twenty-first regular session, established in its resolution 2145 (XXI) that South Africa had administered the Territory in violation of the Mandate and certain other international obligations thereby also violating the international legal status of the Territory. The Assembly consequently declared that South Africa on these grounds had forfeited its rights under the Mandate. Later the Security Council confirmed the decision of the General Assembly, declared South Africa's presence in the Territory illegal and requested its authorities to leave the Territory.

With the exception of South Africa almost the entire United Nations membership shares the opinion that South Africa has violated its international obligations under the Mandate. France, which on many occasions has abstained from voting in the United Nations on matters concerning the Territory, declared at the Security Council meeting on 29 July 1970, that "there can be no doubt that the mandatory Power (South Africa) disregarded its obligations and that the measures which it is planning to adopt, or has adopted, are in contradiction with the commitments emanating from Article 22 of the Covenant of the League of Nations" (S/PV.1550, p. 87). Differences of opinion have, in fact, been expressed only with regard to whether such violations should cause the loss of the rights under the Mandate. Neither the Covenant of the League of Nations nor the South West African Mandate Agreement contain any provisions on this matter. Article 22, paragraph 1, of the Covenant states, however, that ". . . the well-being and development of such peoples [in the mandated territories] form a sacred trust of civilization . . .". Paragraph 2 of the same Article states that the State entrusted with this function acts on behalf of the League of Nations. These provisions in themselves show that no mandates—not even the ones belonging to category "C", as did the Mandate over South West Africa—were intended to be permanent. In addition the mandatories had a number of important obligations, which were supervised by the League of Nations. Although the category "C" Mandates, according to Article 22, paragraph 6, of the League Covenant, ". . . can be best administered under the laws of the Mandatory as

integral portions of its territory . . .", this could not be interpreted to imply that the mandatory was not obliged to respect the special international legal status of the territory in question. In legal doctrine various views have been advanced as to whom the sovereignty of such a territory belonged. The most prevalent opinion was that the sovereignty either belonged to the League of Nations or was for the time being latent.

5. It seems natural, as is obviously the case of South Africa, that if the mandatory continuously violates its obligations, the organization that supervises the administration may declare the mandate forfeited. South Africa has not fulfilled the sacred trust of civilization which was its duty under the Mandate. Instead of providing for the welfare of the population of South West Africa and developing its people, it has, on the contrary, violated the human rights of the population, which are under the special protection of the United Nations. It is indisputable, moreover, that South Africa continuously has neglected its duty to submit reports and this alone gives sufficient grounds to terminate the Mandate. Authoritative support for the legitimacy of the action taken by the General Assembly and the Security Council is also given by a late Member of the Court. Thus *Traité de Droit international public* I:2 (Paris 1925) by Bonfils-Fauchille, which thoroughly examines questions concerning mandates, states on page 887: "un mandat international est susceptible d'être révoqué lorsque le mandataire se rend coupable d'un manquement grave à ses obligations, et c'est le conseil, qui . . . prendra à cet égard une décision". In his work *Legal Effects of United Nations Resolutions* (New York and London 1969) Castañeda deals (p. 128) with the South West African question. He refers to general principles of law, according to which treaty relations imply that if either party does not carry out its obligations, the other party may consider the treaty terminated. Consequently, the General Assembly had the right to cancel the South West African Mandate. This principle is also upheld by Article 60 of the Convention on the Law of Treaties, adopted in Vienna on 22 May 1969. One Member of the Court (Alvarez), in his dissenting opinion in the case concerning the *International Status of South West Africa, inter alia*, expressed the view that in case the mandatory did not fulfil the obligations arising from the mandate, the United Nations General Assembly could by virtue of Article 10 of the Charter, make admonitions to the mandatory and, if necessary, revoke the mandate (*I.C.J. Reports 1950*, p. 182, para. 8).

6. The revocation of the Mandate has changed the situation and special legal consequences have arisen for States. The Government of Finland believes that these legal consequences should be defined, and that the International Court of Justice is the most competent and authoritative international legal organ to give an advisory opinion in the matter. Having participated in the decision by the United Nations Security Council to request the International Court of Justice for such an advisory opinion, the Finnish Government, therefore, considers it appropriate to give its views on the legal character of the question of Namibia.

7. The Security Council resolution containing the request for an advisory opinion refers to the legal consequences for States, i.e., *all* States. The legal and factual position of States differs, however, with regard to this question. Therefore, the legal obligations of South Africa, of the other Members of the United Nations and of the States not members of the Organization are dealt with under separate headings.

II. THE LEGAL CONSEQUENCES FOR SOUTH AFRICA

8. In the preceding section, the question of the transfer of the administration of the South West African Mandated Territory has been examined. It is maintained that by acting in a manner contrary to its obligations under the Mandate South Africa has lost its rights under the Mandate. General Assembly resolution 2145 (XXI) of 27 October 1966 contains a declaration to this effect. The Security Council later concurred in this opinion, in resolution 264 (1970), in which it calls upon South Africa to withdraw its administration from South West Africa. In the Advisory Opinion of 1950 to the General Assembly of the United Nations, the International Court of Justice stated by a majority of its Members that the supervisory duties over the South West African Mandated Territory had been transferred to the United Nations after the dissolution of the League, but that the international status of the Territory in other respects remained unchanged. Since the United Nations had succeeded the League, the supervisory duties of the United Nations include, *inter alia*, the right to terminate the Mandate and to place the territory in question under its own administration if the Mandatory has violated its obligations under the Mandate. This has indisputably been the case with South West Africa. In this connection it must be emphasized—in addition to what has been stated in the preceding section—that the possibility to dismiss a mandatory and revoke a mandate is a necessary part of the supervision, since otherwise the necessary sanctions would be lacking. In case there is no such possibility, the provisions in the Covenant of the League of Nations and in the mandate agreement itself, dealing with the protection of the interests and development of the Territory and its population, lose their significance.

9. Since the demand to relinquish the administration of Namibia has been made on the basis of the decision taken by the General Assembly to revoke the Mandate, South Africa should conform with that demand and withdraw its administration from the Territory. The South African Government has, however, defied this demand, contrary to its obligations under the Charter. Consequently—as is stated in operative paragraph 2 of Security Council resolution 276 (1970)—the continued presence of the South African authorities in Namibia must be considered illegal and all measures which the South African Government has taken on behalf of, or concerning Namibia after the termination of the Mandate, equally illegal and void. Such measures may bear upon the Territory itself or natural and juridical persons in the Territory. In this case nationality does not have conclusive significance. Admittedly there are acts which cannot be retroactively annulled. But if in such cases damage has ensued, the obligation of compensation arises as a result of South Africa's international responsibility in the matter.

III. THE LEGAL CONSEQUENCES FOR OTHER MEMBERS OF THE UNITED NATIONS THAN SOUTH AFRICA

10. In dealing with the legal consequences for other Members of the United Nations than South Africa the Government of Finland considers it necessary to deal with the Security Council resolution 276 and resolution 283 (1970) since certain parts of the latter resolution are closely connected with operative paragraph 5 of resolution 276 (1970) and clarify the special measures arising from that paragraph.

11. Operative paragraphs 2 and 5 are the significant paragraphs of resolution 276 (1970). The illegality and voidance of the measures taken by South Africa in Namibia are established in paragraph 2, and member States have to take this

into account. Paragraph 5 which is a corollary to paragraph 2 seeks to implement that paragraph. States, particularly those which have economic and other interests in Namibia, are called upon to refrain from any dealings with the Government of South Africa.

12. In endeavouring to define the exact implications of operative paragraphs 5 and 2 they should be read together. As a consequence of these paragraphs States should adopt an attitude of non-recognition with respect to South African claims to authority on Namibia. In matters concerning this Territory, member States should deal only with the United Nations. Member States are not to participate in any activities of South Africa in Namibia or concerning that Territory, or to give any support to such activities. They have to endeavour to isolate Namibia from foreign contacts.

The situation in the case of Namibia is somewhat similar to that which exists between States which have not recognized each other, but the duty to refrain from any contact is still more comprehensive. It seems that the courts of member States should not accord legal validity to decisions or measures by South Africa concerning Namibia. A different question is whether member States also should *prohibit and prevent their nationals and other persons, including juridical persons*, from having dealings with the authorities now in power in Namibia and insist that these should refrain from any activity in Namibia. This depends primarily on what the Security Council will decide. The Council has already defined this in the resolution 283 (1970) which will be analysed below. Prior to this it is, however, necessary to refer to operative paragraph 7 of resolution 276 (1970), in which, *inter alia*, the States are requested to give the *ad hoc* sub-committee, established in operative paragraph 6 of that resolution, information and other assistance that sub-committee may require in the performance of its task.

13. The provisions of Security Council resolution 283 (1970) concerning acts against South Africa are to be understood primarily as recommendations. Operative paragraphs 1-3, which deal with the diplomatic, consular and other relations with South Africa in regard to Namibia form a whole. All these acts are in conformity with the principles expressed in operative paragraphs 2 and 5 of resolution 276 (1970).

14. In operative paragraph 1 of resolution 283 (1970) States are requested to refrain, in addition to diplomatic and consular relations, also from other kinds of relations which would, *directly or indirectly, imply the recognition of the* authority of South Africa over Namibia. Such other relations are understood to comprise, e.g., the dispatching of special missions or political agents to Namibia. All official relations with this Territory are thus to be severed. It is also logical that those member States which have diplomatic or consular relations with South Africa, declare officially to the South African Government that they do not recognize its authority over Namibia and that they will recall the diplomatic, consular or other representatives they may have in that Territory, as is determined in operative paragraphs 2 and 3.

15. Operative paragraphs 4-6 deal with the termination of commercial and financial relations with Namibia. Here it is primarily a question of acts by the States themselves, some of which will affect their nationals as well as firms and enterprises of their nationality. States are entitled to regulate these matters at will. In the subsequent (7) paragraph States are called upon to discourage their nationals or firms not under direct governmental control from investing or obtaining concessions in Namibia. States shall withhold protection of such investment against possible claims of a future *de jure* government of Namibia. There are of course no fundamental or legal obstacles to such measures and according to international law a State may at will decline diplomatic protection

of its nationals, including juridical persons. This is a right belonging to the State and not to those who could be protected.

16. In operative paragraph 8 States are invited to study all bilateral treaties between themselves and South Africa and to review the treaties in as far as they contain provisions which apply to Namibia. The purpose is presumably to avoid applying them to Namibia. Since it is assumed that Namibia does no longer come under South African jurisdiction, the logical consequence is that the treaties concluded by South Africa with foreign countries have ceased to be in force in Namibia. Such an attitude is in conformity with both the Security Council resolution 276 (1970) and with the main principle of the territorial application of treaties expressed in Article 29 of the 1969 Vienna Convention on the Law of Treaties. In addition reference can be made to the generally applied principle of movable treaty boundaries, according to which the territorial application of treaties changes correspondingly if the boundaries of the State are moved.

17. In operative paragraph 11 States are called on to discourage the promotion of tourism and emigration to Namibia, which they can do, as far as their own nationals are concerned.

18. Finally, according to operative paragraph 13 the States are requested to report to the Secretary-General of the United Nations on measures they have taken in order to give effect to the provisions mentioned above.

19. It appears from the above that all the most important acts for the implementation of operative paragraphs 2 and 5 of resolution 276 (1970) are contained in resolution 283 (1970). This is particularly the case in regard to the relations of the States themselves. The stipulations concerning individuals are of a secondary nature. Only the question of their economic and financial activities has been touched upon to a greater extent. During the debates in the Security Council and the *ad hoc* sub-committee a proposal was made according to which foreign firms active in Namibia should pay taxes to the United Nations Namibia Council and not to the South African authorities. This suggestion, however, would have been difficult to put into practice. Operative paragraph 5 of resolution 276 (1970) is worded rather broadly and thus gives the Security Council a possibility to propose, within the scope of the paragraph, such additional steps which may be deemed necessary.

IV. THE LEGAL CONSEQUENCES FOR STATES NOT MEMBERS OF THE UNITED NATIONS

20. Resolutions 276 and 283 (1970) of the Security Council are also directed to States not members of the United Nations. Their effectiveness depends upon whether and to what extent all States take part in the efforts to isolate Namibia. Some States not members of the United Nations have replied to the enquiry made in the spring of 1970 by the *ad hoc* sub-committee of the Security Council concerning their relations with Namibia, but this does not mean that these States would be ready or would consider themselves bound to carry out the measures stipulated by the Security Council. The Charter of the United Nations presupposes, e.g., in Article 2, paragraph 6, that also States not members of the Organization should act according to the principles embodied in the Charter. The most important of these principles is the maintenance of international peace and security. It is, however, doubtful whether it can be considered that the pertinent provisions of the Charter, although dealing with States in general or expressly with States not members of the Organization (as in Art. 2, para. 6), are binding. In jurisprudence the view has been put forward that even an almost

universally accepted treaty as the Charter, is binding only on the contracting parties, i.e., the member States. This view has found support in Articles 34-37 of the Vienna Convention, on the Law of Treaties dealing with third States. Similar obligations, as those based on treaty, may, of course, arise for third States from the general principles of international law, i.e., customary law. This has been taken into consideration in the Vienna Convention (Art. 38). It can therefore be stated with good reason that the prohibition of the use of force in the relations between States already is a part of general international law. The maintenance of peace and security, mentioned in Article 2, paragraph 6, of the Charter of the United Nations may, however, comprise many other things, e.g., active measures for the maintenance of peace, the performance of which in no case can be imposed upon States outside of the Organization.

21. Despite what has been said above, States not members of the United Nations, should not entirely ignore the almost unanimous decisions as well as the statements pronounced and the measures indicated therein. According to the view of the Organization, the South African administration in Namibia is illegal and belongs for the time being to the Organization until the Territory becomes independent and is itself in a position to take over the responsibilities. Since South Africa still has the *de facto* power, a conflict has ensued. The States not members of the United Nations are certainly not bound to recognize the formal transfer of the territorial sovereignty to the Organization but on the other hand they have the right to do so and in that case their stand on the Namibian question puts them to some extent in the same position as the Members of the Organization.

22. Finally it should be mentioned that should States not members of the Organization, both those that have, and those that have not recognized the transfer of the administration of Namibia to the Organization, continue their activities in Namibia in spite of the resolutions adopted by the Organization, they do so at their own risk. If also the *de facto* administration of the Territory should be transferred to the Organization, the new authorities are not compelled to approve such rights and privileges which have been accorded during the South African illegal administration to these States and to their nationals.

LETTRE DU SECRÉTAIRE D'ÉTAT SUPPLÉANT AUX AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE SOCIALISTE FÉDÉRATIVE DE YOUGOSLAVIE À LA COUR INTERNATIONALE DE JUSTICE

Le 18 novembre 1970.

Messieurs,

Me référant à la lettre de la Cour internationale de Justice n° 50143 du 5 août 1970, dans laquelle est posée la question des conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie, nonobstant la résolution 276 (1970) du Conseil de sécurité, j'ai l'honneur de vous informer que le Gouvernement de la République socialiste fédérative de Yougoslavie considère que le Mandat de l'Afrique du Sud en Namibie a juridiquement pris fin en vertu des résolutions de l'Assemblée générale des Nations Unies et du Conseil de sécurité, si bien que son administration en Namibie est aujourd'hui illégale.

Le Gouvernement sud-africain continue à refuser opiniâtrement d'accepter les décisions, règlements et recommandations de l'ONU, ne reconnaît pas le Conseil des Nations Unies pour la Namibie, ne se retire pas du Territoire de la Namibie, mais étend à ce territoire et y renforce sa politique d'*apartheid*. Cette politique du Gouvernement de la République sud-africaine ne menace pas seulement la paix et la sécurité sur le continent africain, mais la paix dans le monde et représente un obstacle sérieux à la coopération entre les Etats. Elle porte aussi gravement atteinte à l'efficacité de l'Organisation des Nations Unies.

Cette présence de la République sud-africaine revêt tous les aspects d'occupation contraires aux principes fondamentaux de la Charte des Nations Unies. Pour ces raisons, le Gouvernement de la RSF de Yougoslavie tient à souligner une nouvelle fois qu'il soutient toutes les mesures, y compris celles d'ordre juridique, ayant pour objectif de mettre fin à l'occupation de la Namibie par la République sud-africaine, ainsi que toutes les mesures qui aboutiraient dans le meilleur délai possible à la liberté et à l'indépendance du peuple de Namibie et celles prévues par les articles 41, 42 et 43 de la Charte des Nations Unies.

Le Gouvernement de la République socialiste fédérative de Yougoslavie est donc d'avis qu'il existe, en plus des conséquences prévues par la Charte en cas d'inobservation des décisions des Nations Unies, une conséquence juridique certaine que l'Afrique du Sud ne saurait en aucun cas, ni par rapport à l'ONU ni par rapport aux Etats tiers, se prévaloir du paragraphe 7 de l'article 2 de la Charte des Nations Unies relatif à l'ingérence dans les affaires intérieurs en ce qui concerne ses procédés sur le Territoire et à l'égard du peuple de la Namibie.

Veuillez agréer, etc.

(Signé) Dr. Anton VRATUŠA.