



ARCHIVES

INTERNATIONAL COURT OF JUSTICE

Peace Palace, The Hague · Tel. 39 23 44 · Cables: Intercourt, The Hague

communiqué

unofficial
for immediate release

Number of addresses : 890.

No. 70/7
6 August 1970

Legal Consequences for States of the Continued Presence
of South Africa in Namibia (South West Africa) notwithstanding
Security Council Resolution 276 (1970)

The following information is communicated to the Press by the Registry of the International Court of Justice:

On 5 August 1970, the President of the Court fixed 23 September 1970 as the time-limit within which the 126 Member States of the United Nations may submit written statements in regard to the advisory opinion recently requested by the Security Council (see Press communiqué No. 70/6 of 30 July 1970).

These States have been notified of the question by means of a special and direct communication.

The subsequent procedure has been reserved.

*

Resolution 284 of 29 July 1970 by which the Security Council requested an advisory opinion of the Court reads as follows:

"The Security Council,

Reaffirming the special responsibility of the United Nations with regard to the territory and the people of Namibia,

Recalling Security Council resolution 276 (1970) on the question of Namibia,

Taking note of the report and recommendations submitted by the Ad Hoc Sub-Committee established in pursuance of Security Council resolution 276 (1970),

Taking further note of the recommendation of the Ad Hoc Sub-Committee on the possibility of requesting an advisory opinion from the International Court of Justice,

Considering that an advisory opinion from the International Court of Justice would be useful for the Security Council in its further consideration of the question of Namibia and in furtherance of the objectives the Council is seeking,

1. Decides

1. Decides to submit in accordance with Article 96 (1) of the Charter, the following question to the International Court of Justice with the request for an advisory opinion which shall be transmitted to the Security Council at an early date:

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

2. Requests the Secretary-General to transmit the present resolution to the International Court of Justice, in accordance with Article 65 of the Statute of the Court, accompanied by all documents likely to throw light upon the question."

The Mandate for South West Africa was conferred upon South Africa at the time of the League of Nations. Since the dissolution of the League of Nations (1946), this territory has been the subject of lengthy discussions in the United Nations.

At the request of the General Assembly of the United Nations, the Court has given three advisory opinions on the following questions:

- International status of South West Africa (opinion requested on 27 December 1949, given on 11 July 1950)¹;
- Voting procedure in the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa (opinion requested on 6 December 1954, given on 7 June 1955)²;
- Admissibility of hearings of petitioners by the United Nations Committee on South West Africa (opinion requested on 22 December 1955, given on 1 June 1956)³.

The

¹References:

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

²References:

Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa, Advisory Opinion, I.C.J. Reports 1955, p. 67;
I.C.J. Pleadings, Voting Procedure on Questions Relating to Reports and Petitions concerning the Territory of South West Africa

³References:

Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion, I.C.J. Reports 1956, p. 23;
I.C.J. Pleadings, Admissibility of Hearings of Petitioners by the Committee on South West Africa.

The Court has also delivered two Judgments (Preliminary Objections, 21 December 1962; Second Phase, 18 July 1966) in a contentious case brought by Ethiopia and Liberia against South Africa. In an Application dated 4 November 1960, Ethiopia and Liberia had inter alia requested the Court to find that South Africa had been in breach of certain obligations under the Mandate. The Court found that it had jurisdiction in the case, but that the Applicants could not be considered to have established any legal right or interest appertaining to them in the subject matter of the claim¹.

On 27 October 1966, the General Assembly of the United Nations resolved that the Mandate for South West Africa conferred upon South Africa was terminated and that the United Nations "must discharge those responsibilities with respect to South West Africa" (resolution 2145 (XXI)). Subsequently the General Assembly confirmed this resolution in various other resolutions in which inter alia it proclaimed "that, in accordance with the desires of its people, South West Africa shall henceforth be known as 'Namibia'".

On 20 March 1969 the Security Council called upon the Government of South Africa "to immediately withdraw its administration from the territory" (resolution 264 (1969)). On 12 August 1969 the Council called upon the Government of South Africa to withdraw "in any case before 4 October 1969" (resolution 269 (1969)). On 30 January 1970 it decided inter alia to establish an ad hoc sub-committee to study, in consultation with the Secretary-General, ways and means by which the relevant resolutions of the Council could be effectively implemented (resolution 276 (1970)).

It was on the report of the Ad Hoc Sub-Committee (United Nations document S/9863, dated 7 July 1970) that the Council adopted inter alia the resolution reproduced above by which it decided to request an advisory opinion of the Court.

*

The text of the chief Articles of the Charter of the United Nations and of the Statute of the Court applicable to advisory proceedings will be found in the annex to the present communiqué.

*

The printed publications of the United Nations and of the Court concerning this question may be ordered from the Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10 (Switzerland), the Sales Section, United Nations, New York, N.Y. 10017 (U.S.A.), or from any bookseller selling United Nations publications. -

¹References:

- South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 319;
South West Africa, Second Phase, Judgment, I.C.J. Reports 1966, p. 6;
I.C.J. Pleadings, South West Africa, Vols. I-XII.

CHARTER OF THE UNITED NATIONS

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

STATUTE OF THE COURT

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any State entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such State entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such State may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other States or organizations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other States and of international organizations immediately concerned.
