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communiqué

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

Opening of Public Hearings

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

The public hearings in the above-mentioned advisory proceedings will open in the Peace Palace, The Hague, on Monday, 8 February 1971, at 3 p.m.

The Court will be composed as follows:

President: Sir Muhammad Zafrulla Khan; Vice-President Ammoun;
Judges Sir Gerald Fitzmaurice, Padilla Nervo, Forster, Gros, Bengzon, Petrán, Lachs, Onyeama, Dillard, Ignacio-Pinto, de Castro, Morozov and Jiménez de Aréchaga.

The following organizations and States have announced their intention to submit written statements:

Secretary-General of the United Nations:

Mr. C.A. Stavropoulos, Under Secretary-General and Legal Counsel,
United Nations;

Organization of African Unity:

Mr. T.O. Elias, Attorney-General and Commissioner for Justice,
H.E. Mr. A. El-Erian, Ambassador of the United Arab Republic
in France;

Finland:

Mr. E.J.S. Castrén, Professor of International Law in the
University of Helsinki;

India:

Mr. M.A.C. Chagla, Member of Parliament, Former Minister for
Foreign Affairs,
H.E. Mr. J.N. Dhamija, Ambassador of India to the Netherlands,
Mr. S.P. Jagota, Director, Legal and Treaties Division in the
Ministry of External Affairs;

Netherlands

Netherlands:

Mr. W. Riphagen, Legal Adviser, Ministry of Foreign Affairs;

Nigeria:

Mr. T.O. Elias, Attorney-General and Commissioner for Justice;

Pakistan:

[The name of the representative is not yet known];

Republic of Viet-Nam:

Mr. Le Tai Trien, Attorney-General, Supreme Court;

South Africa:

Mr. J.D. Viall, Legal Adviser to the Department of Foreign Affairs,
Mr. D.P. de Villiers, S.C., Advocate of the Supreme Court,
Mr. E.M. Grosskopf, S.C., Member of the South African Bar,
Mr. H.J.O. van Heerden, Member of the South African Bar,
Mr. R.F. Botha, Member of the South African Bar,
Mr. M. Wiechers, Professor of Law in the University of South Africa,
Mr. F.D. Tohill, Member of the Department of Foreign Affairs,
Mr. C.H.S. von Bach, Member of the Department of Foreign Affairs;

United States of America:

Mr. J.R. Stevenson, Legal Adviser, Department of State.

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Hereunder will be found a few factual details concerning the case now before the Court:

A 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);
- 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);
- 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).

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. 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 claim.

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)).

By resolution 284 (1970) of 29 July 1970, the Security Council decided, on the recommendation of the ad hoc sub-committee, to request an advisory opinion of the International Court of Justice 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)?"

Pursuant to Article 66, paragraph 2, of the Statute of the Court (see Annex 1 herewith), the President caused the one hundred and thirty-two States entitled to appear before the Court to be notified that the Court was prepared to receive their written statements or to hear their oral statements relating to the question.

Within a time-limit fixed at 5 August 1970 and later extended to 19 November, the following States have submitted written statements: Czechoslovakia, Finland, France, Hungary, India, Netherlands, Nigeria, Pakistan, Poland, South Africa, United States of America and Yugoslavia. A written statement has also been submitted by the Secretary-General of the United Nations.

By Orders of 26 January 1971, the Court decided not to accede to the objections raised by South Africa in its written statement concerning the participation of the President and of Judges Padilla Nervo and Morozov in the proceedings.

After having heard the representatives of South Africa at a closed hearing on 27 January 1971, the Court decided by an Order of 29 January to reject the request of that State for the appointment of a judge ad hoc.

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.

NOTE FOR THE PRESS AND THE PUBLIC

1. Public hearings of the International Court of Justice are held in the main Courtroom of the Peace Palace. As a general rule, they take place on Mondays, from 3 p.m. to 6 p.m. (with a brief adjournment at 4.20 p.m.), and on Tuesdays, Wednesdays, Thursdays and Fridays from 10 a.m. to 1 p.m. (with a brief adjournment at 11.20 a.m.). Statements made in French are simultaneously interpreted into English and vice versa.

Members of the Press are entitled to attend all public sittings, on presentation of an admission card which may be obtained upon application. Tables are reserved for them on the left side of the courtroom.

Photographs may be taken before the opening of each sitting. A special permit is however necessary for the taking of shots or films intended for showing in cinemas or on television.

A Press Room is reserved for members of the Press on the ground floor of the Peace Palace (Room 5) and there are six telephone booths in the Post Office, located in the basement.

2. Press communiqués are issued whenever the next public sitting is to be held on a date other than the following working day, or when called for by special circumstances.

3. Copies of the verbatim transcript of each sitting, in the original language, are available in the Press Room at the beginning of the morning following the sittings on Tuesdays, Wednesdays, Thursdays and Fridays, and at the beginning of Tuesday afternoon in the case of Monday sittings. Copies will also be available at the International Press Centre, "Nieuwspoort", Hofsingel 12, The Hague, in the evening of the day of sittings on Tuesdays, Wednesdays, Thursdays and Fridays, and at lunchtime on Tuesday in the case of Monday sittings. Translations of the verbatim transcripts are available to members of the Press at the same places approximately 48 hours later.

4. The Court has authorized the written statements relating to the present advisory proceedings and the verbatim transcript of the hearing of 27 January 1971 to be made accessible to the public as from 5 February 1971. In consequence, sets of these documents (and/or of their translation) have been deposited in the following places:

- Press Room in the Peace Palace (Room 5). Members of the Press are requested not to take them away, as the Registry has available only a limited number of copies;
- Library of the Carnegie Foundation, Peace Palace, The Hague (open from 10 a.m. to 5 p.m.);
- Library of the International Press Centre, "Nieuwspoort", Hofsingel 12, The Hague;
- Dag Hammarskjöld Library, United Nations Headquarters, New York;
- Library

- Library of the Office of the United Nations, Palais des Nations, Geneva;
- United Nations Information Centre, 14-15 Stratford Place, London WIN 9AF;
- United Nations Information Centre, 26 Avenue de Ségur, Paris VII^e.

5. The printed publications of the Court concerning the cases mentioned in the present communiqué, including the two volumes Pleadings, Oral Arguments, Documents relating to the case decided in 1966, may be obtained from:

- Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10, Switzerland;
- Sales Section, United Nations, New York, N.Y. 10017, U.S.A.;
- A.W. Sijthoff's Publishing Company, P.O. Box 26, Leyden, Netherlands;

or from any bookseller selling United Nations publications.

6. Mr. A. Pillepich, First Secretary of the Court (telephone extension No. 54), is available to deal with any request for information by members of the Press.
