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**THE UNITED NATIONS AND NAMIBIA: IMPLICATIONS FOR INSTITUTIONAL
DEVELOPMENT OF THE ORGANIZATION AND THE CREATION OF NORMS
OF INTERNATIONAL BEHAVIOR**

City University of New York

PH.D. 1986

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THE UNITED NATIONS AND NAMIBIA: IMPLICATIONS FOR
INSTITUTIONAL DEVELOPMENT OF THE ORGANIZATION AND
THE CREATION OF NORMS OF INTERNATIONAL BEHAVIOR

by

MAHMOUD F. EL-SAID

A dissertation submitted to the Graduate Faculty in
Political Science in partial fulfillment of the
requirements for the degree of Doctor of Philosophy,
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1986

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INTRODUCTION

When the United Nations was founded in 1945, the issue of non-self-governing territories and colonies was prominent in the debate that preceded the signing of the United Nations Charter. Advocates of the rights of colonial peoples, as represented by Afro-Asian and Soviet bloc countries, could not obtain a clear condemnation of colonialism and an endorsement in the Charter of the immediate exercise of peoples around the world of the right to self-determination. Yet, the final Charter that emerged in San Francisco included numerous provisions reflecting the anti-colonial thinking and gave great significance to self-government and self-determination.

Fifteen years later, as a clear reflection of the change of the political complexion of the world Organization mainly in membership as a result of rapid decolonization, the General Assembly, in its historical resolution 1514 (XV) of 1960, called for the immediate granting of independence to colonial countries and peoples. By 1970, the world was essentially decolonized. Yet, the status of one Territory, South West Africa/Namibia¹, with which the General Assembly was concerned from its very first session in 1946, remained unresolved.

¹In June 1968, the General Assembly proclaimed that in accordance with the wishes of the people of the Territory, it would henceforth be known as Namibia.

The Territory of South West Africa was occupied by Germany between 1884 and 1890. Following Germany's defeat in World War I, it became a League of Nations Mandate, category "C" under South African administration. Today, more than six decades later, South Africa still occupies the Territory against the will of the international community as represented in the United Nations General Assembly. South West Africa represents one of the last remnants of colonialism.

The fact that the Territory has remained in the hands of South Africa in spite of United Nations efforts has set up a situation in which the advocates of Namibian independence have found it necessary to resort to a variety of means to further their goal. These means included pushing the General Assembly into taking positions on structural matters on which it hitherto had not taken positions. These positions were manifested in the Assembly's decisions to assume direct responsibility for the Territory and to establish an unprecedented autonomous subsidiary body to administer it.

As a result of the refusal of the colonial Power, South Africa, to cooperate with the United Nations towards the achievement of South West Africa's independence, the General Assembly in 1966 unilaterally terminated South Africa's mandate over the Territory. In 1967, it created the United Nations Council for Namibia (UNCN). The creation of this council was an unprecedented institutional development insofar as it was entrusted with the task of administering the Territory as a de jure government until independence.

Due to South Africa's refusal to cooperate with the UNCN, the Council and the United Nations until today have failed to bring independence to Namibia. Such failure prompted the General Assembly to

adopt a new attitude towards the means to implement the right to self-determination. Through the UNCN, the United Nations has been financing, supervising and conducting a massive program for the preparation of Namibian people for independence and assistance to its refugees. Thus, the United Nations has given the right of self-determination and the drive for decolonization a new dimension and a concrete real content.

Yet the performance of the UNCN of its role has been subject to criticism. On the political aspect, the Council seems to have been dominated by a minority of Soviet bloc and radical Third World countries. Also, the management of assistance programs for Namibians has been controversial. The Council was established as a de jure government of the Territory, the first inter-governmental body within the United Nations to be given the task of challenging the occupation by a colonial power of a dependent territory. It has a unique and unprecedented status within the United Nations. Thus, the first issue will be to assess the Council, its performance, policies and politics, after almost twenty years of its establishment.

The United Nations General Assembly termination of South Africa's mandate over Namibia was unprecedented. Since most General Assembly resolutions are non-binding recommendations, such an action by the Assembly raises some serious questions about its role and authority. The action by the Assembly was a pressure tactic on South Africa. However, it could be viewed as a contribution by the Assembly in establishing new norms of international behavior.

The traditional approach of the General Assembly towards questions of decolonization has been to adopt resolutions reaffirming

the right of all peoples to self-determination and calling upon colonial Powers to implement them. Yet, South Africa's refusal to implement General Assembly resolutions concerning Namibia prompted the Assembly to reaffirm the legitimacy of the armed struggle for independence by Namibians. This principle was affirmed earlier concerning Portuguese colonies but was contested by some members. The Assembly also recognized the most militant Namibian party, namely South West Africa People's Organization (SWAPO), as the sole and legitimate representative of the Namibian people and granted it an observer status. Furthermore, the Assembly created the UNCN initially to "administer" the Territory, but more practically to push for the speedy implementation of this right.

The General Assembly's affirmation of the legitimacy of armed struggle by national liberation movements to achieve independence is regarded by some as a violation of the Charter's prohibition of the use of force in international relations; they consider that the use of violence by such movements constitutes an act of terrorism. It has been argued by others that such affirmation, although it goes beyond the Charter, is in harmony with its spirit and that there is a basic difference between genuine and legitimate armed struggle on the one hand and terrorism on the other. Also, the assertion of the General Assembly that SWAPO is the "sole and legitimate representative of the Namibian people" has been challenged by most of the Western countries as arbitrary and undemocratic because it was not elected by its people. These actions by the Assembly have clearly gone beyond the traditional norms of international behavior and helped create new norms that are widely, but not universally, accepted.

The General Assembly, in its pursuit of Namibian independence, has transformed itself from a universal forum into a direct party in an international conflict concerning the implementation of the right of self-determination. Such a change of role has come as a reflection of the change in the priorities and concerns of its majority since the sixties. Efforts to carry out this role have revealed the limitations of the United Nations as an international organization, which have been discussed in other studies. Also, as it became a party in the conflict itself, the Assembly has deprived itself of its primary function as a global forum for negotiation of resolutions and reconciliation of positions. On the other hand, such transformation has led the Assembly to endorse, almost entirely, the position of SWAPO with regard to Namibian independence.

Thus, the second issue that arises from the examination of the actions of the General Assembly in its efforts to achieve universal decolonization, in general, and the independence for Namibia, in particular, is what are their significance and effect in the creation of new norms of international behavior. Has colonialism been delegitimized? The argument of South Africa for the incorporation of the contiguous Territory on the basis of its security concerns has been completely rejected by the overwhelming majority of the General Assembly. Also, the General Assembly has legitimized the use of force by peoples struggling for independence. Furthermore, by granting national liberation movements an observer status at the United Nations, the General Assembly has legitimized such movements and elevated them to the status of quasi-states. Were such actions by the Assembly appropriate or not and what is their broader impact on SWAPO, Namibia

and the United Nations itself?

However, the fact remains that the intensification of political struggle for Namibian independence in the sixties did not start from a vacuum. The concept of self-determination has been evolving for several decades into a universally accepted principle. The Charter of the United Nations referred to the principle of self-determination of peoples as one of the principles on which friendly relations among nations should develop. Yet, the United Nations has gone a long way since its early days of accepting the notion of colonialism as an actual state of affairs to be only supervised by the world Organization to the point when it called colonialism a violation of human rights and called for the immediate and universal decolonization. When such call was not heeded in the case of Namibia, the United Nations itself became a party in the dispute with South Africa.

Norms of international behavior or international customs are the most flexible source of international law. They develop from state practice "leading to the formation of habitual compliance, which, after being recognized by the international community, is explicitly (through treaty) or tacitly (through custom) declared as law."² Thus, the basic prerequisites for the emergence of an international norm are an evidence of state practice and a demonstration of acceptance by a large number of states. The General Assembly provides a forum in which states can demonstrate their acceptance of new norms through the process of voting and through subsequent actions.

²Christopher C. Joyner, UN General Assembly Resolutions and International Law: Re-thinking the Contemporary Dynamics of Norm-Creation," California Western International Law Journal, 2 (Summer 1981): 462.

Four basic issues arise from the analysis of the role of the United Nations in the issue of Namibian independence. The first question involves the concept of self-determination and its evolution to a universally recognized principle and the efforts of the United Nations to enable the Namibian people to exercise this right. The second question is the role of the UNCN--its background, mandate and performance. The third is the question of the struggle for national liberation of Namibia. The fourth question will involve the broader issues of the new role of the United Nations and its impact on the creation of new norms of international behavior.

An analysis of the question of Namibia and the United Nations and its implications for the Organization itself and the creation of new norms of international behavior must first consider the conceptual background of the main issue underlying this subject, namely the right of peoples to self-determination. The period in which the conflict over Namibia arose and intensified could be called the age of decolonization. Thus, the first chapter will briefly consider the conceptual background for the question of Namibian independence and the right of its people to self-determination. It was the evolution of this concept which set the stage for the role of the United Nations in this conflict to develop into an active direct party to the conflict.

Chapter II reviews the efforts by the United Nations to secure a trusteeship status for Namibia. Such efforts, in the face of South Africa's refusal to place Namibia under the Trusteeship System, have developed into a call for the Territory's immediate independence. All the main organs of the world Organization have been involved in these efforts. The primary body at the United Nations which has been seeking

Namibian independence for almost two decades is the UNCN. Its composition, activities and political orientation will be the subject of the third chapter.

Today, SWAPO enjoys the political and financial support of the General Assembly in spite of strong reservations of some Member States. SWAPO also plays an active role in determining the outcome of deliberations in United Nations bodies dealing with the question of Namibia.

Chapter IV will examine the role of SWAPO inside Namibia and its struggle for achieving independence. I will also discuss the internal political situation inside Namibia today in order to assess the validity of the United Nations recognition of SWAPO as the sole legitimate representative of the Namibian people.

The question of Namibia and the general issue of self-determination have had clear impact on the role of the United Nations. I will discuss in Chapter V the question of the General Assembly and armed struggle. In this regard, I will argue that armed struggle by national liberation movements, within certain confinements, is legitimate and in conformity with the Charter. This recognition was that of the majority. Chapter VI will examine the new role of the United Nations in the creation of new norms of international behavior. In this regard, I will examine the system of majority voting in the Assembly and its impact on the prospects of implementation of resolutions. Certain resolutions, even if they are adopted by a large majority and address themselves to certain principles, such as in the case of Namibia, contribute to the initiation, legitimization and creation of norms of international behavior. However, as the system of

international organization is based upon the principle of sovereignty of states, only resolutions adopted by consensus and that have the support of major Powers have the best chance of being implemented.

I will attempt to present an objective analysis and assessment of the United Nations involvement in the question of Namibia apart from the political process of adopting resolutions that are not implemented. Most of the scholarly works on the United Nations and the question of Namibia provide us with, in various degrees, a detailed review of the Organization's handling of the issue. No study, to my knowledge, has been written on the impact of the quest by the United Nations to achieve Namibian independence, as a result of the change of the political complexion of the United Nations and on the Organization itself, its role, decision-making and its contribution to the development of new norms of international behavior. This study will try to explain this impact which could lead to a better understanding of the United Nations and assessment of its future role in world politics.

The main hypotheses to be examined are the following:

1) The United Nations, in pursuing the case of Namibia, has developed new institutions and new norms of international behavior that are desirable, legitimate and consonant with the Charter.

2) The evolution of the right of self-determination has become a universally recognized principle. The campaign for Namibian independence has benefited from that evolution and made a further contribution to its validity.

3) The UNCN is an important, unprecedented innovation in the institutional development of the United Nations. It has not been able to achieve its goal of de facto administration of Namibia but, despite

certain defects, it has made significant contributions towards preparing the Namibian people for independence.

4) The General Assembly's recognition of SWAPO as the sole legitimate representative of the Namibian people and its endorsement of SWAPO's participation in United Nations meetings and programs have afforded that organization both legitimacy and concrete support. This role of the General Assembly is both desirable and in accordance with the purposes and principles of the United Nations Charter.

5) The General Assembly's endorsement of armed struggle for national liberation is justified and legitimate under the United Nations Charter. The evolution of this principle and actions by the General Assembly have resulted in new norms of international behavior.

CHAPTER I

SETTING THE STAGE: THE AGE OF DECOLONIZATION

In 1966 the General Assembly, in an unprecedented action unilaterally terminated South Africa's mandate over South West Africa/Namibia (General Assembly resolution 2145 (XXI)). More importantly, the Assembly declared that the Territory of South West Africa would henceforth come under the direct responsibility of the United Nations itself. A year later, the General Assembly created a body to administer it. These actions by the Assembly represented a change in the attitude of the General Assembly towards issues of decolonization. Moreover, they brought about new institutional developments and helped to establish new norms of international behavior.

The process that culminated in the unprecedented General Assembly resolution with regard to South West Africa has been evolving since the adoption of the Charter in 1945. To understand how the United Nations reached the point of taking such a step, it is necessary to first look into the evolution of the United Nations attitude towards colonialism and decolonization. This chapter is concerned with the underlying concept behind the drive towards universal decolonization, namely the concept of self-determination for all peoples which had been gaining increasingly wider recognition particularly since World War I,

thus setting the stage for the unique involvement of the United Nations in the case of Namibia.

The General Assembly actions with regard to the question of decolonization, in general, and the issue of Namibia, in particular, did not arise from a vacuum. On the contrary, the principle of self-determination had been gaining increasing significance and support since the Assembly's first session. However, its eventual development into an international norm took several decades and had to pass through major tests so as to demonstrate that the basic requirements of a legal norm had been met. The General Assembly, in this regard, has clearly accelerated this development. Thus, when the Assembly's majority took an active direct role in the issue of Namibia it was reflecting its determination to work for the respect and implementation of an internationally legally binding norm.

The Evolution of the Concept of Self-Determination

The concept of self-determination, like almost all other political and social concepts, has been subject to controversy and disagreement since the beginning of its use, and particularly at the beginning of this century, when it acquired greater significance in world politics. However, although there is not much agreement on several questions which the term raises, there is almost an overwhelming agreement on its utmost significance in contemporary international politics.

The first question which is to be considered in any serious attempt to understand the term concerns to whom it should apply. A

generally accepted answer is that "every ethnic cultural group constituting the majority in a particular area has the right of creating a national state of its own."³ Thus, it is the right of any nation to choose freely and without external interference to establish its own state. The term nation "is either synonymous with a state or its inhabitants, or else it denotes a human group bound together by common solidarity--a group whose members place loyalty to the group as a whole over any conflicting loyalties."⁴ Scholars provide a variety of characteristics in their attempts to define and explain nationhood. Objective characteristics might include several factors like geography, history, language, and economic structure while subjective characteristics might include factors such as consciousness, loyalty and will.

The principle of self-determination has acquired a great significance in international politics during the past four decades. Its use as a basis for claims for independence has greatly increased in the past two decades. It has become the basis upon which people under colonial domination wage their struggle for independence.

The term "self-determination" has been used since 1840s when it appeared in the writings of radical German philosophers. In the second half of the eighteenth century, the American Revolution had a significant impact on the development of the concept of self-determination. The opening sentence of the American Declaration

³Salo W. Baron, Modern Nationalism and Religion (New York: Harper, 1947), p. 5.

⁴International Encyclopaedia of the Social Sciences, 1968 ed., S.v. "Nation," by Dankwart A. Rustow.

of Independence gives one of the earliest expressions of this concept when it states "when in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal status to which the Laws of Nature and Nature's God entitle them..."⁵ The concept gained more impetus through the French Revolution a few years later as the Declaration of the Rights of Man and of the Citizen clearly stated that "men are born and remain free and equal in rights.... The aim of all political associations is the preservation of the natural and imprescriptible rights of man."⁶ Thus, the concept since such an early stage became an outgrowth and a corollary of the ideal of democracy.

Much more attention was given to the expression when it was used by President Woodrow Wilson as one of the principles upon which the new world order should be based. President Wilson articulated the principle as a norm to be applied in the post-First World War settlement. Thus, he included the principle of self-determination in his Fourteen Points for such a settlement.

The principle also gained momentum by the outbreak of the Bolshevik Revolution which advocated the principle as the basis for the establishment of peace. Soon after its establishment, the Bolshevik Government in Russia issued the "Decree of Peace" on November 8, 1917, in which it declared "its desire for an immediate peace based on the

⁵Benjamin Rivlin, "Self-Determination and Dependent Peoples," International Conciliation No. 501 (January 1955): 195.

⁶Ibid.

principle of self-determination of all peoples."⁷

In the aftermath of First World War, the principle was used, almost entirely, in reference to national minorities in eastern and central Europe. It was perceived as a basic principle in the establishment of a peaceful settlement because it was evident that this problem was a major cause of the war.

Although the principle of self-determination was meant by its advocates to apply to all territorial questions in the post World War I, it was confined in practice mainly to the borders settlement in Europe. As far as colonial territories were concerned, colonial Powers strongly objected to granting independence or even autonomy to their overseas colonies. Such Powers insisted on maintaining full domination over their overseas colonies. Besides, in such colonies, it was not the criteria of ethnicity upon which boundaries were to be delineated as was the case in eastern and central Europe. Boundaries between colonies were artificially delineated by colonial Powers as a result of either agreements or wars. Thus, granting independence or self-government to distinct ethnic groups was unfeasible.

General Smuts of South Africa advocated the simple solution of annexing such territories to the metropolitan power. This view was supported by several Allied Powers. On the other hand, President Wilson called upon the allies to respect their pledge to apply the principle of self-determination on a universal basis. The compromise that was reached was a clear setback for the hopes for a general

⁷W. Ofuatey-Kodjoe, The Principle of Self-Determination in International Law (New York: Nellen Publishing Company, Inc., 1977), p. 69.

application of the principle of self-determination. The call of Wilson to establish an institution to apply this principle was answered in the creation of the Mandate System of the League of Nations while colonialism continued to be the norm. Yet, this system was the beginning of the chipping away at the concept and institutions of colonialism.

The League of Nations and the Mandate System

The Covenant of the newly created League of Nations established an internationally supervised system to administer territories taken from the defeated Powers and not yet ready for self-government. Such territories were to be placed under the tutelage of "advanced nations". The administration of these territories was to be exercised by them as "Mandatories" on behalf of the League. Each Mandatory was to apply "the principle that the well-being and development of such peoples form a sacred trust of civilization."⁸ This was not a reflection of the right of self-determination but that of imperialist theories of the white-man's burden.

The territories placed under mandate fell into three categories. Territories formerly belonging to the Turkish Empire were considered nearly ready for self-government and came to be known as "A" Mandates, all of which achieved full independence between 1932 and 1947 with the exception of Palestine. The former German colonies in Central Africa were considered to be further from the attainment of self-rule

⁸Article 22 of the Covenant of the League of Nations.

and were classified as "B" Mandates. The "C" Mandates were considered to be incapable of self-rule in the foreseeable future, and because of contiguity to administering Powers or unreadiness for independence, the administering Powers were permitted to administer them as integral parts of their territories. This category included the former German colonies of South West Africa placed under South African supervision; the Marianas, Caroline, and Marshall Islands assigned to Japan; New Guinea and Nauru under the aegis of Australia; and Western Samoa under the control of New Zealand. The terms of each Mandate were agreed upon between the Mandatory and the Council of the League.

The Council of the League was the main body responsible for undertaking the primary responsibility of supervising the implementation of the system by the Mandatories. It also served as the principal link between the League and the mandated territories.⁹

To assist the Council in supervising the Mandates System, a Permanent Mandates Commission was constituted. The Commission was composed of experts nominated by the Council and, in order to ensure their independence and impartiality, no one in a government role was considered for appointment. Each mandatory was required to submit an annual report on each territory to the Council. The Permanent Mandates Commission, rather than the Council, actually received these reports and supplemented the information through questioning representatives of the administering authority, often the governors of the territories. This useful and enlightening procedure served as a precedent and

⁹Daniel S. Cheever and H. Field Haviland, Jr., Organizing for Peace: International Organization in World Affairs (New York: Houghton Mifflin Co., 1954), pp. 284-285.

carried over into the practice of the United Nations Trusteeship Council.

In spite of several handicaps, the Permanent Mandates Commission was remarkably successful in its efforts. The commission possessed no real authority and had to rely upon its reputation for thoroughness and impartiality to secure a high degree of cooperation from all parties affected by its work. The annual reports by the mandatory and the interrogation of responsible administrators were the main sources of information on which the commission could base its reports to the League Council. No right of inspection by visiting missions existed. The administering states were the channels through which any petitions were screened and forwarded to the Commission. No right of petition was specified in the Covenant, but the right was sanctioned in the Commission's practice.

The Mandate System had strict limitations. However, it was "a long and important stride in the direction of international supervision of non-self-governing peoples."¹⁰ Yet, the fact remained that the League itself was in essence a club of the great Powers. Almost all of them controlled overseas territories. The quest for independence by colonial peoples was not yet strong. Furthermore, the United States itself, which championed the call for self-determination, did not join the League. Thus, it was inconceivable for the League to take any dramatic action for achieving self-government for colonial peoples. Therefore the conceptual foundation of the Mandate System was to provide a very limited international supervision on territories placed

¹⁰Ibid., p. 289.

under the system in conformity with the common belief that it was the white-man's burden to bring colonial peoples to civilization. Even this was applied only to former colonies of the defeated Powers whereas colonies of the Allies remained under their full control without any international supervision.

The United Nations and Decolonization: The Initial Years

Self-determination was one of the principles envisaged by the Allies in their program for the re-organization of international order in the post-World War II era. They had used the principle during the wartime in order to instigate rebellion in areas controlled by the Axis Powers. The position of the Allies concerning the principle of self-determination was articulated and developed gradually during the war years.¹¹

World War II greatly hastened the process of decolonization. The war undermined the objective circumstances and the pattern of international relations which made colonialism flourish. Several major Colonial Powers, namely France, Belgium and The Netherlands, were defeated by Nazi and Japanese troops and lost their overseas colonies. This resulted in the breakdown of "the administrative chain of command between metropolitan areas and their colonies."¹² Furthermore, especially because of initial Japanese victories, "the war destroyed

¹¹For further details on the subject, see Ofuatey-Kodjoe, pp. 97-113 and Yassin El-Ayouty, The United Nations and Decolonization: The Role of Afro-Asia (The Hague: Martinus Nijhoff, 1971), p. 5.

¹²Rivlin, "Self-Determination and Dependent Peoples," p. 197.

the myth of white supremacy and revealed the hitherto unpublicized defects of the colonial regimes."¹³ Colonial territories were even requested to play an active part in fighting the Axis Powers.

Besides, the colonial Powers, in order to fight Nazi Germany and Japan in Europe and overseas, needed the assistance of other countries, particularly the United States. It was evident that a restoration of the colonial system that prevailed prior to the war was not in the national interest of countries like the United States. This was due to several factors, namely, the emergence of the United States as a great Power with its own ambitions for world influence politically, economically, commercially and strategically restricted by the increasingly weaker old empires, and the anti-colonial ideology that prevailed in the United States. As Professor Rivlin argued

Traditionally, colonialism has been repugnant in American thought if not in action. Perhaps the most famous protest against colonial status in man's struggle for freedom is the American Declaration of Independence, and its invocation of the principles of equality, self-determination and self-government.¹⁴

Meanwhile, nationalistic movements in several colonies were gathering momentum. National leadership in such colonies were openly challenging colonial rule and demanding self-government encouraged by the Axis propaganda. The tremendous advance in mass communications and modern means of transportation played an important role in awakening nationalistic feelings in colonial territories and exposing their

¹³El-Ayouty, The United Nations and Decolonization, p. 5.

¹⁴Benjamin Rivlin, "The United States and Moroccan International Status, 1943-1956: A Contributory Factor in Morocco's Reassertion of Independence from France," The International Journal of African Historical Studies 15 (1982): 76.

peoples to liberal ideas.

The war had also enfeebled colonial Powers. After the end of the war, nationalistic unrest in their colonies made the restoration of their colonial domination an expensive exercise. This undermined the economic value of the colonial system. Besides, internal opposition was becoming strong within the metropolitan Powers themselves. Thus 1945 marked a beginning of the end of a colonial era.

When the victorious nations met in San Francisco, April 25 to June 26, 1945, to draft the Charter of the "United Nations", national interests of colonial Powers, on one side, and socialist countries and mostly Latin American, African and Asian nations, on the other, sharply conflicted with regard to the definition and application of the principle of self-determination.¹⁵ It was only through arduous and difficult negotiations and continuous process of compromise that the formulae on this principle and the future of non-self-governing territories were reached. While colonial Powers argued for a rather narrow definition and limited application of the principle, other nations called for a broad definition of the principle of self-determination and an immediate application that would lead to the independence of non-self-governing territories based upon the equality of nations.

It is noteworthy that during World War II the United States

¹⁵The Soviet Union had been advocating the need to apply the right of self-determination as a "matter of principle". However, it is clear that after World War II it sought to apply this principle to Western colonies in Africa and Asia in order to weaken the West in general. The West had also used the principle of self-determination after World War I in Europe in order to achieve a more favorable strategic balance in the European continent.

took the lead in urging the extension of the practice and rights of self-determination to the peoples living under colonial rule in any post-war settlement. President F. D. Roosevelt called for the universal application of the Atlantic Charter of 1941 calling for, inter alia, the respect for the "right of all peoples to choose the form of government under which they will live."¹⁶ This was strongly opposed by almost all the major colonial Powers.

The Charter, as it emerged, was a clear, if not complete, success for proponents of self-determination and equality of peoples. Article 1 of the Charter which specified the purposes of the United Nations stipulated that one of its purposes was

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

Furthermore, the Charter reemphasized the importance of the principle of self-determination in several other locations. Article 55 of Chapter IX on "International Economic and Social Cooperation" speaks again of the "respect for the principle of equal rights and self-determination of peoples" as a basis for peaceful and friendly relations among nations. Benjamin Rivlin has noted, "the phrase 'self-determination' became incorporated in the Charter although not, curiously enough, in connection with dependent peoples."¹⁷ However, Article 73(b) concerning non-self-governing territories stipulates that Members of the United Nations administering such territories would do

¹⁶Rivlin, "The United States and Moroccan International Status, 1943-1956," p. 77. See also Y. El-Ayouty, The United Nations and Decolonization, pp. 16-28.

¹⁷Rivlin, "Self-Determination and Dependent Areas," p. 198.

so taking due account of "the political aspirations of the peoples." Thus, the Charter can be called a charter for decolonization although it envisaged an evolutionary approach to achieve this goal, and that "the passage of several generations would be required before much of the colonial world would change its status."¹⁶

The Charter dealt with the problem of non-self-governing territories in two different ways. On one hand, it outlined the principles that should be respected and followed in non-self-governing territories. These principles and guidelines were enumerated in a separate chapter of the Charter, Chapter XI, entitled "Declaration Regarding Non-Self-Governing Territories". On the other hand, the Charter established what it called the "International Trusteeship System". This system was to apply to three categories of territories: territories that were under the old League of Nations Mandate System; territories that were detached from "enemy states" as a result of the war; and territories under colonial rule voluntarily placed under the System.¹⁹

The drafters of the Charter hoped that all mandatory Powers would willingly place territories of the first category under the new Trusteeship System. Yet, the language used to refer to states' obligation to place mandate territories under the new system was deliberately vague. South Africa's subsequent position on South West

¹⁸Leon Gordenker, "The United Nations and Its Members: Changing Perceptions," International Journal 39 (Spring 1984): 311.

¹⁹United Nations Charter, Chapter XII, "International Trusteeship System," Article 77(1). No colonial Power volunteered to do so.

Africa proved that this hope was unfounded, at least in the case of South Africa.

The United Nations was to enter into separate agreements with each "trustee" defining the terms under which each trust territory would be administered. The administering authority was invariably one of the victorious allies. However, it is noteworthy that Article 81 stipulates that the administering authority could be "... one or more states or the Organization itself." Thus, even at such an early stage, it was envisaged that, at least theoretically, the United Nations itself was competent to directly assume the direct administration of a trust territory. In all cases, according to Article 79, the terms of trusteeship of each territory were to "be agreed upon by the states directly concerned" meaning primarily the mandatory Power, and approved by the United Nations.

Ofuatey-Kodjoe argues that "the very fact that the principle of self-determination was written into the United Nations Charter is evidence of the acknowledgement on the part of the states that issues involving the principle were already falling within the realm of international politics."²⁰ Ofuatey-Kodjoe further argues that "the incorporation of the principle of self-determination into what was designed to be a legally binding treaty was, of course, an important step in the establishment of self-determination as a binding rule of international law."²¹

²⁰Ofuatey-Kodjoe, p. 113. This point will be fully discussed in Chapter VI.

²¹Ibid., p. 117.

The International Trusteeship System was the compromise reached at in the San Francisco Conference as the successor to the League of Nations Mandate System. The differences between the two systems amply manifest the change that has occurred in the international arena concerning colonialism and the stronger standing that the principle of self-determination has been acquiring. There is no doubt that the Trusteeship System gave the international organization a wider supervisory authority over the administration of the territories that were to be placed under the system. Besides, it also covered a wider range of territories.

It is clear that the Charter, by defining the objectives of the System, so as to develop the conditions in such territories towards self-government or independence, has shown greater awareness and respect for the rights of the peoples in territories to be placed under the system than was the case under the League of Nations Mandate System. These objectives also emphasized the obligation of the international community to exercise a greater role in supervising the administration of these territories by the countries entrusted with their administration.

The Charter created a main organ of the United Nations in order to carry out a primarily supervisory function with regard to the Trusteeship System. Thus, the Trusteeship Council was established consisting of members administering trust territories, permanent members of the Security Council, and "as many other members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer

trust territories and those which do not."²² The functions and powers of the Trusteeship Council were to consider reports submitted by each administering authority, accept petitions and examine them in consultation with the administering authority, and provide for periodic visits to the respective trust territories at times agreed upon with the administering authority.

There was no doubt that the annual reports submitted by the administering authority to the General Assembly, considered in detail by the Trusteeship Council, constituted "the backbone of the system of international supervision."²³ Such reports usually provided the basis for the Council to follow up on a wide variety of questions raised in petitions submitted by the inhabitants of territories or on the findings of the various visiting missions sent by the Council. These reports also showed what kind of action administering authorities had taken to carry out recommendations of the Council and the General Assembly.²⁴

However, here again, the norm was the legitimacy of colonialism. Certainly, it did not recognize colonialism as legitimate in perpetuity. At best, it seems to establish colonialism as a transitional process. But the Charter did not openly challenge this system of relations between a colonial Power and its colonies. It was left to the discretion of each of those Powers to guide the political

²²United Nations Charter, Chapter XIII "The Trusteeship Council," Article 86(c).

²³Leland M. Goodrich, Edward Hambro and Ann Patricia Simons, Charter of the United Nations: Commentary and Documents (New York: Columbia University Press, 1969), p. 525.

²⁴Ibid., pp. 525-526.

development of its colonies and decide whether a territory under its rule was ready or not for self-government. This was to be done with relatively little international supervision in the case of trusteeship territories and none whatsoever in the case of other non-self-governing territories.

The United Nations, almost immediately after it was founded, faced the challenge to live up to the principles and high ideals enshrined in its Charter. This challenge was manifested in the dispute over the former Italian Colonies--Libya, Eritrea, and the Somaliland. The problem was thrown at the General Assembly after the Big Four, France, the Soviet Union, the United States, and the United Kingdom, failed to agree on the future of the colonies as provided for in the Peace Treaty with Italy of 1947.

The successful handling of the question by the General Assembly in 1950, by reaching a compromise reaffirming the right of the peoples of the Colonies to self-determination and independence, generated much hope in the future effectiveness of the world Organization. It was the first time that the United Nations had succeeded where the most powerful sovereign states had failed. However, as early as 1950, Benjamin Rivlin, in his analysis of the United Nations handling of the Italian Colonies, stated what is still valid today more than three decades later. Professor Rivlin observed that "the General Assembly's handling of the Italian Colonies problem represents a unique and important example of the working of the United Nations as an international institution for the settlement of international disputes and problems." Yet, he continued, "in contemporary state of world affairs, however, it is unlikely that states will frequently accept the

General Assembly or the United Nations in general as a supreme legislative authority."²⁵ The key to the success of the General Assembly was that "the majority of the Members of the United Nations had direct or indirect interests in the problem and a decision required the consent of at least two-thirds of the Members. Obviously, compromise was necessary to achieve a result."²⁶ The fact that major Powers were among that majority was quite instrumental for the United Nations success. It has been the sad experience of the General Assembly in most of the subsequent disputes it handled that, on the one hand, states did not accept a settlement by the Assembly and, on the other hand, no genuine search for compromise was made.

The Transformation of the United Nations and Its Impact on
Decolonization

The anti-colonial camp, consisting mainly of African, Asian and Latin American states and the Soviet bloc, continued its attack on colonialism and call for its eradication. This camp used all the available machinery created by the Charter in order to expedite the process of decolonization. Thus, the provisions of Chapters XI, XII and XIII were broadly interpreted, far beyond their original meanings, so as to emphasize the accountability of both Mandatories and Administering Powers and to strengthen the supervision of the world community in this regard. Whenever frustrated by the limitations of

²⁵Benjamin Rivlin, The United Nations and the Italian Colonies (New York: Carnegie Endowment for International Peace, 1950), p. 79.

²⁶Ibid., pp. 80-81.

these Chapters, the anti-colonial camp resorted to the political organs of the United Nations, such as the Third and Fourth Committees of the General Assembly and even to the Security Council.²⁷ Yet, the anti-colonial camp at the United Nations was feeling more and more frustrated at what it perceived as the very slow pace of decolonization.²⁸ The Trusteeship System, with all its limitations, covered about one-tenth of the two hundred million dependent peoples at the time of its establishment. The other peoples were living in "non-self-governing territories" that were not Trust Territories. The supervisory powers of the United Nations over the policies of the Administering Powers of such territories were even more limited than in the Trust Territories.²⁹

The struggle of this camp reached its climax in 1960. During its fifteenth session, the General Assembly, after admitting seventeen new Member States, adopted a historical resolution 1514 (XV) of 14 December 1960, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples". This resolution has been widely considered a landmark in the development of the right to self-determination and United Nations efforts for decolonization and a clear sign of the transformation of the Organization itself. The General Assembly in this resolution declared that colonialism, in any form, constitutes a denial of human rights, is contrary to the Charter

²⁷Rivlin, "Self-Determination and Dependent Areas," p. 269.

²⁸In fact, the process of decolonization was proceeding at an unprecedentedly fast pace. In 1960, seventeen new countries gained independence and joined the United Nations. Sixteen of these new Members were former African colonies.

²⁹Cheever and Haviland, pp. 324-328.

and is an impediment to the promotion of world peace and that all peoples have the right to self-determination. The Assembly also called for the immediate transfer of all powers to the peoples in trust and non-self-governing territories.³⁰

It is relevant to note that the resolution was adopted by a majority of 90 votes in favor, none against, and 9 abstentions. Thus, the resolution could be considered as reflecting the stated views of the then overwhelming majority of the United Nations. There is no doubt that the increase in the membership of the United Nations, since 1960, almost exclusively of newly independent states, provided yet more support for the principle of self-determination by the United Nations.

The new emerging majority was strongly antagonistic to colonialism and determined on its elimination. A most important forum to do so which was available to these countries was the United Nations. Thus, they were set to use its machinery to the utmost and even to push it beyond its traditional limitations as an Organization of sovereign states.

While General Assembly resolution 1514 (XV) is celebrated by most scholars as the most important landmark in the United Nations march towards comprehensive decolonization, Ofuatey-Kodjoe argues that resolution 1541 (XV) adopted by the General Assembly one day later during the same session is rather more significant in this regard than resolution 1514 (XV). In resolution 1541 (XV), the General Assembly approved the report of the Special Committee of the Six on the Transmission of Information under Article 73 of the Charter, appointed

³⁰See Annex 1.

a year earlier. Most importantly, the report stated, inter alia, that self-government could be achieved through any one of three alternatives: emergence as a sovereign independent state, free association with an independent state, or integration with an independent state.³¹ Resolution 1541 (XV), thus has spelled out a clear definition of the principle of self-determination even if it stated that independence is not the only result of the exercise of the right of self-determination as opposed to resolution 1514 (XV).

The adoption of both resolutions 1514 (XV) and 1541 (XV) was a clear manifestation of the drastic change that has taken place in the membership of the United Nations. These resolutions and many others were introduced to the General Assembly mainly by the large group of Member States which have emerged from colonial status and were subsequently admitted into the Organization. Since their admission, they have been strongly advocating a more militant stance by the United Nations against colonialism and a stronger effort towards its complete elimination.

Some scholars argue that these resolutions "clearly indicate that the great majority of states in the United Nations believe that a legal right of self-determination exists...."³² Added to the rejection of claims of colonial Powers that such questions fall under the category of domestic affairs, "it therefore seems inescapable that self-determination has developed into an international legal right, and

³¹Principle IV, Section V, Part B of the report, annexed to the resolution.

³²Rosalyn Higgins, The Development of International Law Through the Political Organs of the United Nations (New York, New York: Oxford University Press, 1963), p. 103.

is not an essentially domestic affair."³³ The Declaration itself and the following practice of the United Nations since the Declaration's adoption substantiate this view.

Whether a resolution by the Assembly establishes a legal norm remains controversial. Yet, such resolutions, particularly on questions pertaining to decolonization, have put the whole Organization to the test. In the case of the refusal of the colonial Power to abide by the Assembly's calls, the majority found itself increasingly frustrated by the Organization's inability to ensure the respect for its resolutions due to constitutional limitations. This has led to the adoption of yet harsher resolutions and eventually to the dramatic shift in approach by the majority as its handling of the question of South West Africa clearly illustrates.

The principle of self-determination has been further reemphasized in almost every resolution adopted by the General Assembly dealing with questions pertaining to decolonization or relations among nations. A clear example of this fact is General Assembly resolution 2625 (XXV) of 24 October 1970 entitled "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among Nations in Accordance with the Charter of the United Nations". This resolution is of particular significance because it was intended to be more of a legal document rather than a statement of policy or aspirations. The title of the resolution and its final paragraph clearly emphasize this fact.³⁴ The resolution was adopted by

³³Ibid.

³⁴The final paragraph of this resolution provides that the "principles of the Charter which are embodied in this Declaration constitute basic principles of international law."

consensus which gave it even a greater significance.

The first paragraph under the heading of the "Principle of Equal Rights and Self-Determination of Peoples" stipulates that

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

The United Nations practice in the field of decolonization has been consistently in support of the exercise of the right to self-determination by non-self-governing peoples. The accelerated pace of the process of decolonization has resulted in more than tripling the original membership of the Organization.³⁵ New members now constitute a clear majority at the United Nations. This practice has led several international law scholars to argue that self-determination has become not only a political right but also a legal one with a legal obligation on states to respect.

Goodrich acknowledges that "the practice of the United Nations organs has been to regard self-determination as a 'right', and to discuss matters involving issues of self-determination despite the claim of domestic jurisdiction of Member States."³⁶ Numerous General Assembly resolutions and declarations confirm this view.

The following years witnessed a great proliferation of bodies and committees dealing with one aspect or the other of the question of decolonization. In addition to the Trusteeship Council, the General

³⁵The original membership of the United Nations was 51 Member States while today the membership has reached 159 Member States.

³⁶Goodrich, et al, p. 31.

Assembly and its own Fourth Committee, and the Security Council debated the subject. Besides, there were the Committee on Information which supervised the administration of non-self-governing territories, and other committees dealing with South Africa's policy of apartheid, with South West Africa, and with territories under Portuguese administration. However, the main focus of the United Nations effort for decolonization became the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples established by resolution 1654 (XVI) of 27 November 1961.

The Committee was initially composed of seventeen members then enlarged the following year to twenty-four members,³⁷ twelve of whom were African or Asian, four from the communist bloc, three from Latin America, and five Western countries. It was evident, by its mere composition, that the Committee has a strong anticolonial attitude.

By its resolution 1970 (XVIII) of 16 December 1963, the General Assembly decided to make the Special Committee the focal body in the United Nations efforts to end colonialism. Thus, the General Assembly decided to dissolve the Committee on Information from Non-Self-Governing Territories and requested the Special Committee to take over the functions of that Committee.

The Committee started its work in 1962 in an attempt to implement the mandate it received from the General Assembly, namely, to seek ways for the speedy and total application of the Declaration, to make recommendations on each Territory not yet independent and to

³⁷United Nations General Assembly resolution 1810 (XVII) of 17 December 1962.

notify the Security Council on any developments in those Territories which might threaten international peace and security. Since 1965 the Committee has focused its attention on the status of small territories.

As Professor S. M. Finger noted

The history of the Special Committee of 24 indicates why a new approach is the necessary prelude to positive results. The decade from 1961 to 1970 corresponds to the period during which the Special Committee of 24 was active. While in the previous two decades 40 countries with a combined population of almost 800 million people attained independence, during the time that the committee was active 25 countries with 67 million people attained independence.³⁸

However, the work of the Committee, almost from the beginning was marked by antagonism and suspicion towards its Western members. This led both the United Kingdom and the United States, in January 1971, to decide to "discontinue participation in the Special Committee of 24."³⁹ The United States, along with other Western members, argued that

Resolutions have normally been worked out by a group of communist members and anti-western African and Arab states. The latter, being militant and persistent, dominate the twelve-member Afro-Asian caucus of the committee. With the twelve Afro-Asian and four communist members committed there is little disposition to compromise or negotiate within the committee.⁴⁰

Thus, the result was the passage of recommendations by the Special Committee and subsequently they became resolutions of the General Assembly. Although such resolutions were usually adopted by substantial majorities, they clearly lacked the respect and cooperation

³⁸Seymour M. Finger, "A New Approach to Colonial Problems at the United Nations," International Organization 26 (Winter 1972): 143.

³⁹Ibid.

⁴⁰Ibid., p. 144

of "these countries which would have to take action in order to obtain the objectives of self-determination" for the Territories these resolutions were concerned with.⁴¹

By 1970, the world was essentially decolonized. Colonialism almost came to its inevitable end "largely through nonviolent means and, in most cases, with the acquiescence--ready or reluctant--of the administering Powers."⁴² The Special Committee has since focused its attention on the status of remote small islands mostly in the Pacific and the Caribbean regions. In January 1985, Australia, a member of the Special Committee, informed the President of the General Assembly that it was withdrawing from the Committee by the end of the month due to the fact that "the work of the Special Committee has been reduced considerably because of the success of the decolonization process..." and that it was unlikely that any other Western country would be willing to replace it.⁴³

Analysis

From its inception, the United Nations had laid a great significance on the movement towards self-government. The years following its establishment witnessed an accelerated process of decolonization. This was primarily due to the rise of nationalism in non-self-governing territories, the effects of World War II as

⁴¹Ibid.

⁴²Ibid.

⁴³United Nations General Assembly Document A/40/92 of 21 January 1985.

mentioned earlier, the increasing cost of maintaining most of colonies which make colonialism in its traditional form uneconomic, and the emergence of both the United States of America and the Soviet Union as super-Powers which, for their own self-interests, encouraged the dismemberment of old colonial empires. Yet, the role of the United Nations General Assembly and the availability of an international framework for the supervision of colonial administration have clearly hastened the process of decolonization and made it achievable mostly with little violence.

After a long period of evolution and as a clear reflection of the change of the political complexion of the world Organization as a result of rapid decolonization and the subsequent increase in its membership, the General Assembly called for the immediate granting of independence to colonial territories and peoples during its fifteenth regular session. Although the same General Assembly during the same session envisaged two other alternatives for the realization of self-government, independence has become a synonym for the exercise of the right to self-determination. All this was a clear departure from the gradual long-term process towards self-government envisaged in the Charter. As Rupert Emerson states, "the earlier assumption that each colonial Power should at its own discretion and in an unhurried way lead its dependent peoples to well-being and self-government gave way to the proposition that colonialism was an intolerable and illegitimate abuse to be done away with as speedily as possible by the international community."⁴⁴

⁴⁴Rupert Emerson, "Colonialism, Political Development, and the United Nations," International Organization 19 (1965): 486.

Today, the whole world is basically decolonized. The only major exception in this regard is Namibia, with which the United Nations has been plagued since its establishment. The role of the United Nations in the process of decolonization is debatable. There is no doubt that the world Organization has generated enough political pressure, which combined with other factors pertaining to colonial Powers and colonial peoples themselves, helped accelerate the process of decolonization. During this process, the United Nations was always the open forum for negotiation of declarations and resolutions, conciliation of various positions, pressure and ultimately for passing political judgments in the form of resolutions. Yet, independence for colonial territories was often achieved peaceably, with some clear exceptions. The shift of the United Nations role in and attitude towards the issue of decolonization has taken fifteen years after its establishment. During those years, the General Assembly passed one resolution after another calling for the progressive development of free political institutions in colonial territories towards the goal of self-government. It was not until 1960, when seventeen newly independent states joined the United Nations, that the General Assembly called for the immediate independence for all territories which have not yet attained a full measure of self-government. This call was clearly in the making for a long time. All previous efforts by the United Nations to achieve a speedy decolonization had paved the way for such call. The United Nations had succeeded in generating an almost universal acceptance of the right to self-determination as a norm in international relations. Some scholars argue that it has even become a legal norm binding to all states. This point will be discussed in

Chapter VI.

The General Assembly's resolution 1514 (XV) of 1960 clearly demonstrated impatience with the remnants of colonialism. The Assembly moved towards taking a more active role for the achievement of universal decolonization in general and more specifically with regard to South West Africa.

CHAPTER II

THE UNITED NATIONS AND THE QUESTION OF NAMIBIA: A BRIEF REVIEW

Having examined the evolution of the General Assembly's concern for decolonization which affected the mandated territory of South West Africa, we now turn to examine how the United Nations chose to deal with the question of this Territory's status.

Soon after the United Nations was established its mechanism for international supervision envisaged in the Trusteeship System was put to the test. Several Mandate territories gained independence and the rest were placed under Trusteeship agreements between the United Nations and each administering Power. The only exception was South West Africa, which was under South African administration.

South West Africa is a vast, semi-arid territory in the extreme south western part of the African continent, bordered by the Atlantic Ocean on the west, Angola on the north, Zambia on the northeast, Botswana on the east and South Africa on the south. The territory consists of 318,260 square miles, equal to the combined areas of the United Kingdom and France and has a population of more than 1 million, the vast majority of which are blacks. The Territory's capital is Windhoek.⁴⁵

⁴⁵See S. C. Saxena, Namibia: Challenge to the United Nations (Delhi: Sundeep Prakashan, 1978), pp. 1-5; Namibia: The Facts (London: International Defence and Aid Fund, 1980), pp. 5-6; South West Africa/Namibia Today (Windhoek: South West Africa/Namibia Information Service, 1979), pp. 4-9; and UN Chronicle 20 No. 3 (1983): 17-18.

South West Africa is rich in natural resources, including diamonds, uranium, copper, lead, zinc and manganese, which have been exploited for decades by South Africa and other foreign economic interests. Because of the Territory's large desert areas, commercial farming is largely confined to the central plateau region. There is also some commercial fishing. Soon after the establishment of the United Nations, South Africa refused to place the Territory under the Trusteeship System thus creating the first major challenge to this system and the authority of the new world Organization. The case of South West Africa involved a complicated series of legal and political questions. Almost all United Nations political and legal organs were used in order to settle the case of Namibia.

The details of the United Nations efforts to attain the placement of South West Africa under the Trusteeship System have been sufficiently discussed in other studies.⁴⁶ Such studies clearly illustrate the constitutional and political limitations of the United Nations with regard to its ability to guarantee the respect for and implementation of its resolutions against the will of a Member State. The purpose of this chapter though is to briefly illustrate the impact of the evolution of the Organization on its attitude towards and ability to deal with issues as complicated and intricate as that of South West Africa. This evolution was clearly manifested in the shift of United

⁴⁶For details about the United Nations efforts to secure trusteeship status for the Territory and negotiations with South Africa to establish a supervisory machinery, see Saxena, *Ibid.* and L. P. Singh, The United Nations and Namibia (Nairobi: East African Publishing House, 1980) and Geisa Maria Rocha, In Search of Namibian Independence: The Limitations of the United Nations (Boulder, Colorado: Western Press, Inc., 1984).

Nations efforts from attempting to secure trusteeship status for the Territory into an unequivocal demand for its independence. Such shift coincided with and clearly resulted from the transformation of the United Nations as a result of the change of the structure of its membership and thus its orientation.

The study of these efforts also demonstrate the interaction between the various organs of the United Nations. As a result of the constitutional structure of the United Nations, the proponents of Namibian independence, soon after the revocation of the Mandate, focused their efforts on the Security Council in order to obtain a binding decision to force South Africa to relinquish its control over the Territory. However, the role of the Security Council has been hindered by the refusal of its Western permanent members to recognize the situation in Namibia as a threat to international peace and security or that South Africa's occupation is an act of aggression. Thus, they rejected the calls for imposing mandatory economic sanctions on South Africa.

The Western position with regard to Namibia has led the majority to advocate and promote increasingly militant positions in the General Assembly where the veto right does not exist. The same Western position, advocating further negotiations with South Africa while several decades of such negotiations proved futile, led the General Assembly to establish an unprecedented subsidiary body to be devoted to the pursuit of Namibian independence, to recognize SWAPO as the sole legitimate representative of the Namibian people and to endorse its armed struggle to achieve independence.

Notwithstanding the fact that the United Nations has so far

failed to achieve independence for the Territory, the Organization has been able to overcome the patterns of behavior which, among other factors led to such failure. This point will be discussed in the following chapter. In this chapter I will examine the early efforts by the General Assembly to negotiate a trusteeship agreement with South Africa. I will also examine the impact of the Assembly's failure in this regard on its subsequent approach to the conflict, the endeavors of the majority to mobilize all United Nations organs, including the International Court of Justice (ICJ) to achieve their goals, and the constitutional and structural implications on the United Nations for the future.

The General Assembly and the Question of South West Africa/Namibia

The territory of South West Africa was occupied by Germany between 1884 and 1890. Following Germany's defeat in World War I, it became a League of Nations Mandate category "C" under South African administration as mentioned before. In 1946, the General Assembly recommended that South West Africa be placed under the Trusteeship System. It invited the then Union of South Africa to propose a trusteeship agreement for the Territory. South Africa had asked the Assembly to approve the incorporation of the Territory into the Union, stating that such was the wish of the majority of the inhabitants. South Africa also argued that this was appropriate due to the contiguity of the Territory to the Union and that it had been administered as an integral part of South Africa itself in accordance with the terms of the mandate. The Assembly however rejected that

proposal. The following year, 1947, South Africa informed the United Nations that it had decided not to proceed with the incorporation of the Territory into the Union but would maintain the status quo. This meant that it would continue to administer the Territory according to the Mandate System stipulations. However, it refused to acknowledge the jurisdiction of the United Nations as a successor of the League of Nations in this regard. Yet, South Africa submitted one report for 1946 in 1947 on its administration of the Territory for the information of the United Nations which was examined by the Trusteeship Council.

South Africa ignored the repeated calls of the General Assembly for it to propose a trusteeship agreement for the Territory. Furthermore, in 1949, South Africa informed the United Nations that it would no longer transmit information on its administration of the Territory on the grounds, inter alia, that the Mandate had lapsed with the demise of the League. This constituted one of the very first major defiances by a Member State to the newly established international Organization which put to the test the capability of the General Assembly to implement its resolutions and try to assure respect of the principles and provisions of the Charter.

The position of South Africa constituted a challenge to the newly established Organization. South Africa's position clearly manifested the limitations, constitutionally and politically, of the United Nations. Furthermore, it faced the United Nations with a legal question concerning the obligation of administering Powers under the Mandate System to place the territories they administer under the new Trusteeship System. South Africa's position proved that the assumption that all mandatory Powers would do so was unfounded.

The General Assembly's efforts to solve the problem by diplomatic means failed in the face of South Africa's refusal to recognize the United Nations jurisdiction and the Assembly's inability to impose its resolutions on South Africa. The Assembly had also to deal with the legal questions of the case. In 1949, the General Assembly sought an advisory opinion from the ICJ about the status of the Territory and the international obligations of South Africa arising therefrom. The Court delivered its advisory opinion on 11 July 1950 which ruled that the Mandate for South West Africa had not lapsed on the demise of the League of Nations; South Africa was legally obliged to account to the United Nations for her administration of South West Africa; South Africa was not legally obliged to place South West Africa under trusteeship; and that South Africa could only modify the international status of the Territory with the consent of the United Nations.⁴⁷

The advisory opinion of the ICJ did not lead to any breakthrough in the problem. Although it clarified the status of the Territory and South Africa's obligations, the advisory opinion did not place South Africa under the obligation to place the Territory under the Trusteeship System. South Africa refused to comply with even such an opinion. The General Assembly continued its efforts to negotiate with South Africa through a variety of special committees while adopting annual resolutions calling upon the Government of South Africa to place South West Africa under trusteeship. All these efforts failed to achieve the pronounced goal of placing the Territory under the

⁴⁷International Status of South West Africa, Advisory Opinion: International Court of Justice Reports, 1950.

Trusteeship System. This failure is due to the inability of the Assembly to enforce its resolutions and the refusal of the major Powers at the United Nations to apply enough pressure on South Africa to abide by those resolutions. The only success of the United Nations in this regard was preventing South Africa from incorporating the Territory.

The disappointment over the ICJ decision on Ethiopian and Liberian litigation against South Africa in 1966, which will be discussed later, prompted the General Assembly to take another course of action. Thus, the Assembly adopted resolution 2145 (XXI) of 1966 which marked a drastic change in the Assembly's handling of the problem. This resolution was adopted by an overwhelming majority of the General Assembly of 114 votes in favor, 2 against (Portugal and South Africa), and 3 abstentions (France, United Kingdom and Malawi). Yet this was a different General Assembly than that of 1945. A large number of African and Asian countries had already gained their independence and joined the United Nations. This had dramatically changed the structure and power centers in the General Assembly. It was no more dominated by Western Powers.

Having concluded that South Africa had failed to fulfil its sacred duty under the Mandate of ensuring the moral and material well-being of the people of the Territory, 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 therefore terminated, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations," and resolved that "in these circumstances, the United Nations must discharge those

responsibilities with respect to South West Africa."⁴⁸

The General Assembly had been trying to settle the dispute over the Territory with South Africa for two decades. Now, the United Nations itself had been through an essential transformation. The new majority had no patience for further delay. In such circumstances, calls for further negotiations sounded like an invitation for further procrastination. Thus, the Mandate was revoked and the Territory of South West Africa became the direct responsibility of the Organization. But how?

In previous cases when the United Nations administered non-self-governing territories, this was done through the agreement and cooperation of all concerned parties. Also, in the case of former Italian colonies, the major Powers had failed to reach an agreement and accepted the Assembly's decision. But in the case of Namibia, South Africa had made it abundantly clear that it did not even recognize the United Nations jurisdiction as a successor to the League of Nations and refused to abide by the Assembly's resolutions on the matter. South Africa, as expected disregarded the Assembly's termination of the Mandate as illegal.

Resolution 2145 (XXI) was itself a compromise. The Afro-Asian group called for the United Nations to assume direct responsibility for the Territory and establish an administering authority for the Territory. They also called upon the Security Council to take the necessary measures to enable such an authority to fulfil its

⁴⁸United Nations General Assembly resolution 2145 (XXI) of 27 October 1966. See Annex 2.

tasks.⁴⁹ Yet because of Western and Latin American reluctance to accept such a proposal as unrealistic, the original proposal was watered down. The proposal of taking over the Territory was deleted and the consideration of ways and means to administer South West Africa was referred to an Ad Hoc Committee for South West Africa. Also the call for the Security Council to take necessary measures was deleted. Nonetheless, in spite of Afro-Asian willingness to compromise in order to achieve an almost unanimous adoption of the resolution, France and the United Kingdom joined by Malawi abstained. Portugal, because of its own position on its African colonies, and understandably South Africa voted against the resolution.⁵⁰ The United States and most other Western countries voted in favor.

The Ad Hoc Committee met in order to "recommend practical means by which South West Africa should be administered." Yet, it failed to agree on one set of recommendations. Thus, three sets of proposals were included in its report to the Assembly, representing the Afro-Asian, Latin American and Western (Canada, Italy, United States) positions respectively. Eventually the Afro-Asian and Latin American proposals were merged and seventy-nine states sponsored it, which guaranteed its adoption by the Assembly.

The resolution as adopted revived the idea of an administering authority. Thus, the General Assembly established the "United Nations Council for South West Africa" and entrusted to it the following powers and functions to be discharged in the Territory:

⁴⁹United Nations Document A/PV.1419, 27 September 1966, pp. 6-7. See also for details Rocha, pp. 75-76.

⁵⁰See Saxena, pp. 174-181.

- (a) to administer South West Africa until independence with the maximum possible participation of the people of the Territory;
- (b) to promulgate such laws, decrees, and administrative regulations as are necessary for the administration of the Territory until a legislative Assembly is established following elections conducted on the basis of universal adult suffrage;
- (c) to take as an immediate task all the necessary measures, in consultation with the people of the Territory, for the establishment of a constituent assembly to draw up a constitution on the basis of which elections will be held for the establishment of a legislative assembly and a responsible government;
- (d) to take all the necessary measures for the maintenance of law and order in the Territory;
- (e) to transfer all powers to the people of the Territory upon the declaration of independence.⁵¹

The same resolution stipulated that "the Council shall entrust such executive and administrative tasks as it deems necessary to the United Nations Commissioner for South West Africa...."⁵²

Although this resolution was obviously unrealistic, it seemed to the majority as the only logical thing to do after the revocation of the Mandate.⁵³ No one believed that the Council would be able to evict South Africa from the Territory. As early as 1962, a Namibian petitioner in the Fourth Committee had warned that the mere revocation of the Mandate would not free Namibia.⁵⁴ Yet, the creation of a

⁵¹United Nations General Assembly resolution 2248(S-V) of 19 May 1967.

⁵²Ibid.

⁵³This point will be discussed in more detail in the following chapter.

⁵⁴Saxena, p. 179.

machinery to implement resolution 2145 (XXI) was essential to demonstrate that the United Nations was serious about taking a direct responsibility of the Territory.

The revocation of the Mandate and the establishment of the Council for South West Africa might seem as an emotional, however justifiable, reaction by the Afro-Asian Members of the United Nations. The Council was given an impossible task and no means to achieve it. The pattern of vote on resolution 2248 (S-V) illustrates the divergence of views in the United Nations on the matter. While eighty-five Members voted for the resolution, two voted against it (Portugal and South Africa again), with thirty abstentions including all major Western Powers and the Soviet Union.

When the United States representative, Ambassador Arthur J. Goldberg, described the Afro-Asian proposals as resorting "to immediate coercion rather than explore the possibilities of peaceful progress,"⁵⁵ it sounded to the sponsors as almost hypocritical. For more than twenty years the United Nations had been exploring such possibilities of peaceful progress to no avail. The Afro-Asians strongly felt that they should take matters in their own hands.

The United Nations Council for South West Africa was consciously distinguished from other usual bodies of the United Nations. Its Mandate looked almost like a constitution creating a political system. The Council had the competence to legislate by decree, to proceed to the Territory and assume control, establish a

⁵⁵USUN Press Release 49, April 20, 1967, cited in Seymour M. Finger, Your Man at the UN: People, Politics, and Bureaucracy in Making Foreign Policy (New York: New York University Press, 1980), p. 178.

constituent assembly, etc. The names of the Council and its officers were also carefully chosen. First, it was called a council and not a committee like other regular subsidiary organs of the Assembly. Second, it was the Council "for" and not "of" South West Africa. Third, it had a President, a title reserved for the chairing officer of the Assembly itself or the Security Council, and not a chairman as it is the case for committees. Fourth, it had a commissioner as its primary executive officer and not a secretary.

But how to implement its functions? This was almost irrelevant at the time. There was a dangerous vacuum following the ICJ negative ruling on the Ethiopian-Liberian litigation. The establishment of the Council served the political purpose of filling this vacuum. Nonetheless, in the subsequent years, the Council demonstrated a remarkable dynamism by realizing the impossibility of achieving its original mandate and focusing its attention and ever-increasing resources towards more feasible goals. The work of the Council will be examined in the following chapter.

The United Kingdom and some other Western countries expressed doubts about the legal competence of the Assembly to revoke the Mandate and establish an administering authority. Such doubts were clearly exaggerated. The Charter gives the Assembly a large spectrum of powers. More specifically, Article 81 of the Charter explicitly states that the Organization itself could be the administering authority of a trust territory as mentioned before. Later the ICJ unequivocally validated the Assembly's action.

The revocation of the Mandate paved the way, from the legal point of view for the United Nations to try to evict South Africa from

the Territory.⁵⁶ Yet, more importantly, from the constitutional and structural viewpoint, these actions have transformed the Assembly as an aggregate personality into a direct party in the conflict with South Africa over the Territory. The Assembly has come to identify itself almost totally, in spite of the opposition of some of its members, with the demands of the anti-colonial camp. Thus, the pursuit of Namibian independence has helped the evolution of the United Nations endorsement of the universal right to achieve decolonization into new dimensions.

Throughout the years since its establishment and as a result of its expected failure to implement its original mandate, the Council has been trying, with varying degrees of success, to carry out the following activities:

- (a) emphasizing the responsibility of the United Nations for Namibia until the achievement of genuine independence;
- (b) exposing the illegal presence and repressive policies and practices of South Africa in the Territory;
- (c) mobilizing international support for the liberation of the Territory;
- (d) assisting the people of the Territory by sponsoring education and training programs and providing travel and identity documents;
- (e) representing the Territory in international organizations and conferences;
- (f) promoting publicity on the question of South West Africa.⁵⁷

In June 1968, the General Assembly proclaimed that the Territory would henceforth be known as Namibia, that the Council would

⁵⁶Saxena, p. 181.

⁵⁷United Nations, Department of Public Information, United Nations Council for Namibia: What It Is, What It Does, How It Works, March 1982, (DPI/7 50-40316-March 1982-20M).

be redesignated the United Nations Council for Namibia, and that the United Nations Commissioner for South West Africa would be known as the United Nations Commissioner for Namibia.

The United Nations Council for Namibia serves as a de jure government with the United Nations Commissioner for Namibia as its Prime Minister. However, this is only in theory. South Africa, soon after the establishment of the Council announced that it considered it an illegal body and refused to deal with it, thus undermining its basic foundation as a United Nations machinery for the actual administration of the Territory.⁵⁸ The Council has also been sponsoring various programs for Namibian refugees, administered by the Office of the Commissioner. Some of these programs are of vital importance and represent the unspoken work by the United Nations system for the Namibian people in all aspects of life. The work of the Council will be discussed in detail in the following chapter.

Although the United Nations was twice before involved in the direct administration of a non-self-governing territory, the assumption by the General Assembly of direct responsibility for the administration of the Territory of Namibia was a watershed in the historical process of the interpretation by the General Assembly of its responsibilities according to the Charter. In the previous cases of Libya in 1949-1951 and West Irian in 1962, the United Nations had become a de facto as well as a de jure administering authority. Yet, in the case of South West Africa, the General Assembly unilaterally declared itself a

⁵⁸In April 1968, the UNCN tried to enter Namibia through Zambia, but South Africa denied landing clearance to the plane carrying the members of the Council. See Rocha, p. 68.

de jure administering authority. The only immediate consequence of this resolution was to make South African administration of South West Africa illegal, at least in the eyes of the majority of the General Assembly.

Previous United Nations administration of non-self-governing territories was secured by the consensus of all directly involved parties. In the case of Namibia, the decision to assume responsibility for the Territory was taken unilaterally by the Assembly at the urging of its new majority against the explicit opposition of the colonial Power, South Africa, and in the face of the strong reservations by almost all great Powers at the United Nations. Thus, the non-implementation of the resolution was certain. Yet, it has led to dramatic change in the United Nations handling of questions pertaining to decolonization. The new approach has given the United Nations efforts to achieve independence a new dimension and a concrete, real content. This will be illustrated through the discussion of the work of the UNCN.

The International Court of Justice and South West Africa

South Africa was the only Power in charge of a mandated territory that actually questioned the basic assumptions of the Trusteeship System. When the General Assembly rejected South Africa's proposal to incorporate the Territory of South West Africa into the Union, South Africa refused to acknowledge the jurisdiction of the United Nations as a successor of the League of Nations and claimed that it was under no obligation to conclude a trusteeship agreement with the

United Nations. The South African position created a dilemma for the General Assembly. The issues and questions raised by South Africa were taken for granted with regard to the status of other mandated territories. The General Assembly was faced with legal questions that it believed should be best answered by the International Court of Justice. Thus, on 6 December 1949, the General Assembly, by resolution 338 (IV), requested an advisory opinion of the ICJ on the status of the Territory of South West Africa.

The Court delivered its advisory opinion on 11 July 1950. After a detailed review of the structural background of the Territory and the terms of the Mandate System, the Court stated that it was unanimously of the opinion that "South West Africa is a Territory under international Mandate assumed by the Union of South Africa on December 17, 1920."⁵⁹ On the status of the Territory, the Court reached the conclusion by twelve votes to two that "the Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa...."⁶⁰ The Court also unanimously agreed that "the provisions of Chapter XII of the Charter are applicable to the Territory of South West Africa in the sense that they provide a means by which the Territory may be brought under the Trusteeship System." Yet, by eight votes to six, the Court stated that those provisions "do not impose on the Union of South Africa a legal obligation to place the

⁵⁹International Status of South West Africa, Advisory Opinion: International Court of Justice Reports, 1950, p. 143.

⁶⁰Ibid.

Territory under the Trusteeship System."⁶¹ Finally, the Court unanimously stated that "the competence to determine and modify the international status of the Territory rests with the Union of South Africa with the consent of the United Nations,"⁶² but not solely by South Africa.

Thus, although the advisory opinion of the Court has settled several legal arguments about the status of the Territory and the jurisdiction of the United Nations in this regard, it also left several questions unsettled. The most important of these questions was that the South African Government was under no legal obligation to conclude a trusteeship agreement with the United Nations and that South Africa had a say in determining and modifying the status of the Territory.⁶³

At this early stage of the conflict, it was primarily the issue of placing South West Africa under the Trusteeship System and not its independence. Thus, the questions submitted by the Assembly to the ICJ revolved around that issue. The Assembly itself did not even question future South African control of the Territory, only the terms of that control. The conflict revolved around the role and right of the Assembly in supervising South Africa's administration of the Territory and not the right of its people to self-determination.

During the following years, the General Assembly requested an advisory opinion from the ICJ on almost every issue concerning South West Africa. Thus, the Court in 1955, in response to a question by

⁶¹Ibid., p. 144.

⁶²Ibid.

⁶³For a more detailed assessment of the advisory opinion of the Court, see Saxena, pp. 58-61.

the Assembly, stated that "decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa shall be regarded as important questions," thus requiring a two-thirds majority for their adoption.⁶⁴ Again in 1956, in response to yet another question by the Assembly, the Court stated that it was of the opinion "that the grant of oral hearings to petitioners by the Committee on South West Africa would be consistent with the advisory opinion of the Court of 11 June 1950."⁶⁵

Faced with the inability of the General Assembly to enforce its resolutions on South Africa and the continued impasse over the issue, Ethiopia and Liberia instituted proceedings in the ICJ against South Africa in 1960. The purpose of the litigation was to acquire an explicit ruling from the Court that South Africa had violated the terms of the Mandate and should report and account to the United Nations. However, after a long legal battle that continued for six years, the Court, by its President's deciding vote--the votes being equally divided--rejected the suit by Ethiopia and Liberia, as it found "that the Applicants cannot be considered to have established any legal right or interest appertaining to them in the subject matter of the present claims, and that, accordingly, the Court must decline to give effect to them."⁶⁶ Thus, the Court declined to rule on the substance of the case

⁶⁴Voting Procedures on Questions Relating to Reports and Petitions Concerning the Territory of South West Africa, Advisory Opinion: International Court of Justice Reports, 1955, p. 78.

⁶⁵Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion: International Court of Justice Reports, 1956, p. 32.

⁶⁶South West Africa Cases (Ethiopia v. South Africa, Liberia v. South Africa) Second Phase, Advisory Opinion: International Court of Justice Reports, 1966, p. 51.

After several more years of a continuing impasse over the question, the Security Council, at an early stage of its involvement in the question of Namibia, decided also to seek legal clarifications on questions pertaining to the dispute. Thus, the Security Council, by resolution 284 (1970) adopted on 29 July 1970, requested an advisory opinion from the Court on "the legal consequences for states of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)."

This time the advisory opinion of the Court came out in unprecedentedly by clear terms. On 21 June 1971, the Court delivered the following opinion:

- (1) that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;
- (2) that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration;
- (3) that it is incumbent upon States which are not members of the United Nations to give assistance, within the scope of subparagraph (2) above, in the action which has been taken by the United Nations with regard to Namibia.⁶⁷

⁶⁷Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council resolution 276 (1970), Advisory Opinion: International Court of Justice, 1971, p. 58. For a detailed analysis of the significance of this advisory opinion, see Saxena, pp. 204-208. However, South Africa again rejected this opinion and refused to abide by it. See South West Africa Advisory Opinion 1971: A Study in International Adjudication, published by the Department of Foreign Affairs of the Republic of South Africa, 1972.

Although ICJ advisory opinions are not legally binding, the Court, at long last, settled the legal arguments around the question of Namibia and sent it back to the political arena.

So, only in 1970, several years after the Assembly had already terminated South Africa's Mandate over Namibia, did the Security Council address the core of the issue. The questions submitted by the Security Council did not address the terms of reference of a continued South African control of the Territory but the legality of that control itself. The Court, this time, declared that that control was illegal.

Also, it stated that all states were under obligation to deal with South African occupation of Namibia accordingly. By such a declaration, the Court unequivocally legally validated the Assembly's action in terminating South Africa's Mandate over Namibia. It delegitimized South Africa's position and declared all Member States under the legal obligation not to recognize South Africa's illegal occupation of Namibia. This declaration still constitutes until today the legal basis for the role and activities of the United Nations Council for Namibia.

The Security Council and Namibia

Proponents of Namibian independence have long realized that General Assembly resolutions could not bring about a settlement of the Namibian question. It was clear that the only organ of the United Nations that was competent and capable of taking "enforcement measures" against South Africa was the Security Council, hence the efforts to win a favorable judgment by the ICJ against South Africa, such as the

litigation by Ethiopia and Liberia. In such a case, South Africa's refusal to comply with this judgment would warrant the implementation of Article 94 para 2 of the Charter which gives the Security Council the authority to "make recommendations or decide upon measures to be taken to give effect to the judgment." The efforts to win a clear cut judgment from the ICJ have been long, arduous and frustrating.

Thus, efforts to involve the Security Council took various directions. At the early stages of the conflict, General Assembly resolutions repeatedly drew the attention of the Security Council to the situation in Namibia as a potential "threat to international peace and security" and appealed for Security Council intervention to meet its "primary responsibility for the maintenance of international peace and security as specified in Article 24 para 1 of the Charter."⁶⁸

Yet, the Security Council ignored these appeals in a clear indication that it did not agree with the General Assembly in its assessment of the situation with regard to Namibia. Furthermore, the Security Council did not even make any recommendations to give effect to the Court's ruling.

The Security Council was in other words declaring that it did not consider a conflict involving the implementation of the Trusteeship System as a threat or even a potential threat to international peace and security.

It was not until 1968 that the Security Council was indirectly involved in the conflict over Namibia. This was almost eight years after the adoption of resolution 1514 (XV) and less than two years

⁶⁸United Nations General Assembly resolutions 1702 (XVI) of 1961, 1899 (XVIII) of 1963 and 2074 (XXI) of 1966 for example.

after the termination of the Mandate. The Security Council had started to realize the transformation of the world Organization that had been taking place for several years. Decolonization and the implementation of the right of self-determination had gained prominence among the priorities of the new majority of the United Nations.

The transformation of the United Nations with regard to decolonization was clearly evident when fifty-three Member States requested the Security Council in January 1968 to consider, as a matter of urgency, the situation in Namibia resulting from South Africa's trial of 37 political activists. The basis of the complaint here seemed to be the violation of human rights, a question long cherished by the West, and not international peace and security. The Security Council considered the situation and adopted its first resolution relating to the question of Namibia, resolution 245 (1968), in which it called upon South Africa to release those Namibian political prisoners. South Africa's refusal to comply with the Security Council resolution resulted in yet another resolution by the Council, resolution 246 (1968), less than two months after its first one, unanimously censuring South Africa for its "flagrant defiance of the Council."

As it is clear from the essence of the resolution, the Security Council was dealing only with a secondary issue, namely, South Africa's repressive policies within Namibia and not the main issue of its occupation of the Territory. At that stage, it was easier for the Security Council to censure South Africa for its racist policy of apartheid and repressive occupation policies in Namibia than dealing with the core political issues. This was due to the position taken by

some Western Powers on the question of Namibia, which exercised great influence in the Security Council, either through the command of a majority within the body or because of the veto power which three of them--France, United Kingdom and the United States--enjoyed as permanent members. The majority of the Assembly understood this fact and thus the first involvement of the Security Council was on a matter that could clearly gain its unanimity. Once the Security Council was involved in the question it would remain ceased with it and its involvement would grow deeper at the prodding of the advocates of Namibian independence.

So once again, the Security Council met, upon the request of 40 Member States in March 1969, to examine the situation in Namibia, in general. At the end of its deliberations, the Council, by resolution 264 (1969), declared for the first time that it considered the continued presence of South Africa in Namibia illegal and contrary to the principles of the Charter and to United Nations decisions. It called upon the Government of South Africa to withdraw immediately its administration from the Territory. Furthermore, the Security Council even condemned South Africa's refusal to comply with its resolutions and those of the Assembly. However, South Africa again rejected this resolution as illegal.⁶⁹

The Security Council has thus taken an unambiguous position on the matter. Although several years later than the Assembly, the Security Council, defied by South Africa, reached the same conclusions as the Assembly. Now, the Council has become directly and deeply

⁶⁹United Nations Security Council Document S/9204 of 14 May 1969.

involved with the question, and the majority of the Assembly, particularly the African group was determined to keep it so.

Thus, later in the same year, the Security Council met in August 1969 and adopted resolution 269 (1969) in which it condemned South Africa for its refusal to comply with the Council's previous resolution, and declared that the continued occupation of Namibia by South Africa constituted an "aggressive encroachment" on the authority of the United Nations.

The Council was increasingly responding to the frustration of the General Assembly over its conflict with South Africa over Namibia. Therefore, after condemning South Africa once again in January 1970 for its refusal to comply with both General Assembly and Security Council resolutions pertaining to Namibia, it declared that "the continued presence of the South African authorities in Namibia is illegal."⁷⁰ It also called upon all States to take a wide range of economic and commercial measures against South Africa's occupation of Namibia. Later in the same year, the Security Council requested an advisory opinion from the ICJ about the South African presence in Namibia and its legal consequences for other States, notwithstanding its resolution 276 (1970). This time, as mentioned earlier, the ICJ, on 21 June 1971, stated in no ambiguous terms that "the continued presence of South Africa in Namibia, being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory." Furthermore, it stated that "States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia."

⁷⁰United Nations Security Council resolution 276 (1970).

The Court's opinion thus clarified legal questions. This put the Security Council at a dilemma. South Africa's position was illegal. It had defied both the Assembly and the Security Council. The Security Council had to respond to this situation. Thus, by resolution 301 (1971), it agreed with the Court's opinion, called once again on South Africa to withdraw from Namibia, declaring that any further refusal of South Africa to withdraw could create conditions detrimental to the maintenance of peace and security in the region.

Although the resolution did not state that such refusal would threaten international peace and security which would require the Security Council to take specific measures against South Africa, for the first time, the Council stated that South Africa's continued occupation of Namibia could eventually constitute a situation threatening international peace and security.⁷¹

The African group at the United Nations was exerting a constant pressure on the Security Council to take a more forceful position on the remaining remnants of colonialism in Africa, including Namibia. In a clear response to the African pressure, the Security Council held its meetings in Addis Ababa, Ethiopia, in February 1972. During those meetings, the Council adopted, inter alia, resolutions 309 and 310 (1972) on the question of Namibia. In resolution 309 (1972), the

⁷¹Resolutions of the Security Council with regard to international disputes fall under Chapter VI of the Charter entitled "Pacific Settlement of Disputes" including the determination of "whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security" (Article 34). Enforcement measures are "decided upon" by the Security Council in accordance with Chapter VII entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression" only after the Security Council had determined "the actual existence of any threat to the peace, breach of the peace or act of aggression."

Security Council invited the Secretary-General to initiate contacts with all the parties of the conflict "with a view to establishing the necessary conditions so as to enable the people of Namibia, freely and with strict regard to the principle of human equality, to exercise their right to self-determination and independence in accordance with the Charter of the United Nations." Resolution 310 (1972) strongly condemned South Africa's repressive measures against the people of Namibia.

The results of the Security Council meetings in Addis Ababa were disappointing to militant African countries. They wanted the Security Council to impose comprehensive mandatory sanctions on South Africa. They had lost patience and any hope in negotiations with South Africa. Yet, Western members of the Council were opposed to the imposition of sanctions on South Africa. From their point of view, there was no other alternative to a new round of diplomatic efforts, this time by the Secretary-General to reach an agreement with South Africa. Such an agreement, though, had to be based upon the right of the Namibian people to self-determination.

The Secretary-General's contacts, mandated by Security Council resolution 209 (1972) bore no concrete results. This did not surprise the Afro-Asian group at the United Nations who had expressed their doubt at the Secretary-General's approach in the first place due to South Africa's intransigent position. But the Security Council had no other alternative. The Western Powers were still opposed to sanctions. Thus, in December of the same year, the Security Council, in resolution 323 (1972) reaffirmed the inalienable and imprescriptable right of the people of Namibia to self-determination, national

independence and the preservation of their territorial integrity. It also invited the Secretary-General to continue his efforts on the basis of those resolutions. In the Spring of 1973, the Secretary-General reported to the Security Council that South Africa did not provide the complete and unequivocal clarification of its policy in regard to self-determination and independence for Namibia and thus questioned the utility of continuing contacts with South Africa.⁷² The Security Council, after considering the report of the Secretary-General, by resolution 342 (1973), unanimously decided to discontinue further efforts on the basis of its resolution 309 (1972). The Afro-Asians were clearly right in their distrust of South Africa. More than another year passed with no progress towards a settlement of the question of Namibia. So, once again, in December 1974, the Security Council unanimously adopted resolution 366 (1974) condemning "the continued illegal occupation" of Namibia by South Africa and its illegal and arbitrary application of racially discriminatory and repressive laws and practices in the Territory. This resolution was again an empty political pronouncement by the Security Council. It was known in advance that such a resolution would not change the situation. South Africa had already defied the Assembly and the Council for a long time.

In June 1975, the Security Council met once again to consider the situation in Namibia. Five African states introduced a draft resolution determining that the illegal occupation of Namibia by South

⁷²United Nations Security Council Document S/10921, Supp. April - June 1973.

Africa constituted "a threat to international peace and security" and deciding that all states should prevent any supply of arms and ammunition to South Africa for use by its armed forces and paramilitary organizations.⁷³ The draft was not adopted due to the use of veto by the three Western permanent members of the Council--France, the United Kingdom and the United States. The West, in general, and those three Powers, in particular, were increasingly perceived by the Afro-Asians as the protectors of South Africa if not its collaborators.

Again in January 1976, the Security Council unanimously condemned South Africa for its continued illegal occupation of Namibia and its failure to comply with the Security Council's resolution of 17 December 1974. It reiterated the demand that South Africa take the necessary steps to effect the withdrawal of its illegal administration in Namibia and to transfer power to the people of the Territory with the assistance of the United Nations.⁷⁴ As it had become clear that the Security Council was unable to take any enforcement action against South Africa, another ineffectual resolution was adopted.

In 1976, the Security Council twice condemned South Africa's aggression against neighboring African states.⁷⁵ However, when a draft resolution was introduced to the Council that would have determined that the illegal occupation of Namibia by South Africa constituted a threat to international peace and security and that would

⁷³Militant African countries demanded comprehensive mandatory economic sanctions, but the draft called only for arms embargo in an attempt to gain the West's approval.

⁷⁴United Nations Security Council resolution 385 (1976)

⁷⁵United Nations Security Council resolutions 387 (1976) and 393 (1976).

have decided that all states should prevent the supply to South Africa of arms, ammunition and all other types of military equipment, again the same three Western permanent members of the Council vetoed it.

In a clear reaction to the deterioration of the situation in southern Africa, the five Western members of the Security Council at the time, namely, France, United Kingdom, United States of America, Canada and Federal Republic of Germany, launched a diplomatic initiative in April 1978 with the purpose of initiating negotiations between the parties concerned aimed at implementing Security Council resolution 385 of 1976.⁷⁶ The initiative and subsequent proposal were accepted by the South African Republic soon after. Later the proposal was also accepted by SWAPO and Angola.⁷⁷ In June of the same year, the Security Council met to consider the situation in Namibia, having before it the settlement proposal of the Five. At the conclusion of its deliberations, the Council adopted two resolutions. First, resolution 431 (1978) requested the Secretary-General to appoint a Special Representative for Namibia "in order to ensure the early independence of Namibia through free elections under the supervision and control of the United Nations."⁷⁸ The second resolution, resolution 432 (1978), declared that Namibia's territorial integrity

⁷⁶Canada and the Federal Republic of Germany were non-permanent members of the Security Council at the time. However, they continued to serve as members of the Five Western Powers "Contact Group".

⁷⁷United Nations General Assembly, Thirty-Third Session, Supplement No. 23 (A/33/23/Rev. 1), Vol. II, Chapter VIII, Annex, paras 88-90 and 96.

⁷⁸The Secretary-General informed the Security Council that he intended to appoint Martti Ahtisaari, the United Nations Commissioner for Namibia at the time as his Special Representative.

and unity must be assured through the reintegration of Walvis Bay within its territory. This came in the face of South Africa's attempts to separate Walvis Bay from the Territory.⁷⁹

The initiative to engage South Africa in a diplomatic process with Namibian independence as its goal came this time from Western countries themselves. They had been long preaching to the world the necessity of exploring and exhausting all political means for a settlement of the Namibian question. Although the majority of the United Nations was doubtful of any prospects for success, they decided to give the Five a chance.

In accordance with resolution 431 (1978), the Secretary-General, in August of the same year, submitted to the Security Council a report based on the findings of the Special Representative based upon his earlier visit to Namibia. The report called for the establishment of a United Nations Transition Assistance Group (UNTAG) in Namibia in order to assist in the implementation of the Western settlement proposal for the independence of the Territory. The report also stated that the implementation of that proposal would be carried out in three stages: first, cessation of all hostilities by all parties, and the withdrawal, restriction or demobilization of the various armed forces; second, the conduct of free and fair elections to a constituent assembly; and third, the formulation and adoption of a constitution for Namibia by such assembly, to be followed by the achievement of the independence of Namibia. The Security Council, by

⁷⁹Walvis Bay was not part of the original South West Africa League Mandate.

resolution 435 (1978) approved the Secretary-General's report and requested him to report to the Council no later than 23 October of the same year on the implementation of the resolution. This resolution, along with resolution 385 (1976) enumerating the principles of a settlement continue to be the cornerstone for all negotiations aimed at the settlement of the Namibian question.

When the Council met again in November to consider the Secretary-General's report, South Africa had decided to proceed unilaterally with the holding of elections in Namibia within the framework of a plan for an internal settlement. This came while South Africa was still engaged in negotiations with the Five, which demonstrated its bad faith. Thus, the Security Council, by resolution 439 (1978) condemned South Africa's decision and stated that it constituted a clear defiance of the United Nations and, in particular, of the authority of the Security Council.

The Western Contact Group, in spite of its members' reservations over the General Assembly's recognition of SWAPO as the sole representative of the Namibian people, had to negotiate with this national liberation movement as the primary party representing the Namibian people. SWAPO has thus proved that it was a political and military force that had to be reckoned with. The Five's negotiations with SWAPO thus constituted a recognition of this fact.

After several years of intensive efforts by both the United Nations and the Western Contact Group, during which the initial proposals were amended several times to accommodate South Africa's demands and objections, the Secretary-General, in a report to the Security Council, stated that these efforts had succeeded in solving

"virtually all the outstanding issues."⁸⁰ Yet, he added that "the position of South Africa regarding the issue of the withdrawal of Cuban troops from Angola as a pre-condition for the implementation of resolution 435 (1978) still makes it impossible to launch the United Nations plan."⁸¹

The Reagan administration, consistent with its overall ideology of international politics, stressed from the beginning the importance of South Africa to the United States as a staunch anti-communist ally and engaged it in what was called "constructive engagement".⁸² The administration also switched its diplomatic efforts from the multilateral channel of the Western Contact Group, which brought about a coordinated Western approach to the problem, to the bilateral channels between the United States and South Africa while formally maintaining the Contact Group. The role of the United States Mission to the United Nations in the negotiations, which was paramount during the previous administration, was downgraded and the State Department became the focal point. The change in the American position created a rift in the Western Contact Group, particularly about the new American demand for the withdrawal of Cuban troops from neighboring Angola as a

⁸⁰United Nations Security Council, Further Report of the Secretary-General Concerning the Implementation of Security Council Resolutions 435 (1978) and 439 (1978) Concerning the Question of Namibia, Document S/15943, 29 August 1983, para 24.

⁸¹Ibid., para 25.

⁸²See, for example, Dennice C. Jordan-Walker, "Settlement of the Namibian Dispute: The United States Role in Lieu of United Nations Sanctions," Case Western Reserve Journal of International Law 14 (Summer 1982): 543-570.

pre-condition to Namibia's independence. The other members of the group did not share this view. South Africa was encouraged by the new American position and grew bolder in defying the United Nations by creating new obstacles in the road to a peaceful settlement of the dispute and also by increasing its military operations against neighboring states. Thus, the Contact Group failed to achieve success. The stalemate over Namibia continued.

Again in June 1985, the Security Council met to discuss the situation in Namibia upon the request of the group of Non-Aligned Countries and the African group at the United Nations. The meetings of the body lasted for eight days during which it heard eighty-three speakers including 22 foreign and other ministers and the President of SWAPO. During the debate, in a clear defiance of the Security Council, South Africa installed an interim government in Namibia.⁸³ At the conclusion of the debate, the Security Council decided to mandate the Secretary-General to resume his contacts with South Africa in order to implement resolution 435 (1978). The Security Council also strongly warned South Africa that failure to cooperate fully in implementing this resolution "would compel the Security Council to meet forthwith to impose, as a first step, mandatory economic sanctions against it under

⁸³New York Times, 18 June 1985, p. A3. The Security Council had unanimously declared that such a step would be "null and void", see United Nations Security Council Document S/17151 of 3 May 1985. Also, in another defiance of the Security Council, South Africa launched a military attack against neighboring Botswana's capital, Gaborone, claiming it harbored guerillas of the African National Congress fighting against its policy of apartheid. The Security Council unanimously condemned this action in resolution 567 (1985) of 21 June 1985.

Chapter VII of the United Nations Charter."⁸⁴ The resolution was adopted by a majority of thirteen votes while the United Kingdom and the United States abstained.

Analysis

The foregoing examination of the United Nations' involvement with the case of Namibia and the attempts of proponents of Namibian independence to marshal the whole machinery of the Organization, including the ICJ, has demonstrated the self-limiting role of the Security Council. As a result, the General Assembly became the focal point of this involvement. Yet, when the majority realized that the Assembly's resolutions are not binding, they tried repeatedly to resort once again to the Security Council, using the Assembly itself as a mechanism to pressure the Security Council to be more forthcoming on the question of Namibia.

The Security Council is the only organ which is competent to adopt decisions legally binding on Member States. According to Article 25 of the Charter, all members "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." In case a Member State refuses to comply with a decision of the Security Council and this refusal constitutes a threat to or a breach of the peace or the State commits an act of aggression, the Council under Chapter VII of the Charter may decide upon measures against such a State including economic and trade sanctions or even the

⁸⁴United Nations Security Council resolution 566 (1985) of 19 June 1985.

use of armed force.⁸⁵ To a large majority of the General Assembly members, the denial of the right to self-determination, as it is the case in Namibia, was equal to a threat to international peace and security. Some Western Powers did not share this view. Thus, the handling of the question of Namibia by the Security Council falls under Chapter VI of the Charter--Pacific Settlement of Disputes.

However, it became evident that the Security Council, due to its composition and structure, was only willing to adopt resolutions declaring that South Africa's occupation of Namibia was illegal and condemning South Africa for its refusal to withdraw from the Territory. However, the Council rejected the call of the majority of the United Nations membership to impose comprehensive mandatory sanctions against South Africa. The major Western Powers, enjoying the veto right in the Security Council, have always contended that South Africa's occupation of Namibia did not constitute a threat to international peace and security and that sanctions against South Africa would not hasten Namibia's independence. Yet it was also clear that those Powers were the major trade partners of South Africa. While they voted for the condemnation of South Africa's occupation of Namibia, they were not willing to back such resolutions with enough pressure on South Africa in order to comply with those resolutions, thus clearly undermining the authority and prestige of the United

⁸⁵The Charter, however, does not provide any criterion to define or identify situations which constitute potential or actual threat to peace. Nonetheless, the continuation of SWAPO-led guerilla warfare against South Africa's occupation of Namibia which originates primarily from Angola, the presence of Cuban troops in Angola, and the possibility of direct combat between South African and Cuban troops constitute the elements of a situation that represents a potential threat to international peace.

Nations and in particular of the Security Council.⁸⁶ Even when the five Western members of the Security Council submitted a feasible plan for the independence of Namibia that required several concessions from SWAPO, the Security Council gave them its blessings. The Security Council, SWAPO and the General Assembly as a whole were willing to give the Five a chance to work out a settlement through negotiations which they have been advocating for a long time. Yet, the Five have so far failed in doing so.

Political efforts to settle the question of Namibia, within or without the United Nations, are stalemated. However, earlier efforts by the United Nations in this regard have not been useless. G. Rocha and some other scholars contend that the years spent on legal battles were "wasted years". They argue that the resort of the General Assembly to the request of advisory opinions from the International Court of Justice was misguided and "helped South Africa's position and allowed a purely political question to escalate into a legal battle."⁸⁷ In my opinion this argument is unfair and unfounded. Such battles should be considered in their time perspective. The fact is that at that time there was virtually no call for Namibian independence. General Smuts of South Africa came to the United Nations carrying petitions allegedly signed by tribal chieftains supporting the incorporation of South West Africa into the Union of South Africa.

⁸⁶This is not unique in the United Nations. States, in their relationship with the Organization, follow their national interests. When such interests conflict with United Nations resolutions, Members do not abide by such resolutions. This question will be discussed in more detail in Chapter VI.

⁸⁷Rocha, p. 43.

Meanwhile there was no clear voice with wide popular support from within the Territory demanding independence. The conflict between South Africa and the United Nations was centered around the transfer of the Territory from its Mandate "C" status into a Trusteeship status. South Africa's refusal to abide by United Nations resolutions and its questioning of United Nations authority created a legal problem which needed to be clarified. It was only natural, at the time, that the General Assembly would follow the Charter which stipulates that legal disputes should, as a general rule, be referred to the ICJ and the competence of the Assembly to request an advisory opinion from the Court.

In 1966, the United Nations had been for more than twenty years trying every possible diplomatic and legal means in order to bring Namibia under the Trusteeship System. All such efforts failed. The United Nations was established after an unprecedentedly destructive world war. Thus, it was only natural that it would seek to settle such a dispute through diplomatic means. The world had been through too much destruction and suffering in two major wars. An issue pertaining to self-determination in remote southern Africa was not urgent enough at the time to create an international crisis.

South Africa was clearly strong economically and militarily. No African country or group of countries could mobilize enough military power to force it to abide by United Nations resolutions on Namibia. Western countries opposed the imposition of sanctions on South Africa. For the West, South Africa had great strategic significance. Besides, Western capital was pouring into South Africa and Namibia investing in all economic fields particularly mineral resources. Furthermore, the

issue of self-determination in general and Namibian independence in particular had not yet gained worldwide attention or prominence.

Thus, the General Assembly was the focal point of international efforts to solve the dispute over the Territory. The Assembly requested advisory opinions from the ICJ whenever it deemed necessary. The Assembly had no other alternative but to establish special committees, ad hoc committees, adopt resolutions, and negotiate with South Africa, all this to no avail.

Ethiopian-Liberian litigation against South Africa was considered by Afro-Asian members of the United Nations and even Namibians themselves to be the most crucial means to obtain a judgment from the world court that would lead to Namibian independence.⁸⁸ This of course was once again naïve, as South Africa would not have changed its position as a result of an ICJ ruling. When the Court finally ruled in 1971 that South Africa's occupation of the Territory was illegal, South Africa simply ignored it. Yet, Afro-Asians at the United Nations were infuriated at the Court's rejection of the Ethiopian-Liberian litigation on technical grounds after six years of deliberations. The Assembly had already adopted resolution 1514 (XV) in 1960 calling for the immediate independence of all non-self-governing territories. Yet, the anti-colonial camp was still hoping for a clear ruling by the Court against South Africa. When these hopes were dashed, there was anger and frustration and a feeling of the need for some dramatic action. Thus, the revocation of the Mandate.

⁸⁸Rulings of the ICJ in litigation are legally binding to the parties of the conflict. Advisory opinions are not binding.

Yet, the early years were not "wasted". The political and legal battle over the status of Namibia achieved several results. First, it clearly established the legal basis for the struggle for independence. A few years after the revocation of the mandate, the ICJ stated that South Africa's occupation of Namibia was illegal, thus legitimizing the struggle for independence. A second result of the Assembly's efforts in the first two decades was to establish the political and legal right and responsibility of the world Organization as an aggregate personality for Namibia. Thirdly, those efforts were closely watched by Namibians themselves and the political and legal battle over their destiny greatly heightened their nationalistic feelings. Thus, it was no coincidence that SWAPO launched its armed struggle for independence a few weeks after the disappointing ruling of the ICJ in 1966.

The main issue was not whether the dispute was legal or political. It was the fact that the main concept around which the United Nations was built proved to be unrealistic. This concept was that the great Powers, which enjoy the veto power at the most important organ of the United Nations, namely the Security Council, would act in unison to deal with any threat to peace or security or any State defying United Nations authority. As Hans Morgenthau correctly remarked "the great Powers have not been able to act in unison when their divergent interests were at stake.... Thus the constitutional scheme of the Charter has been defied by the political reality of the postwar world."⁸⁹

⁸⁹Hans J. Morgenthau, Politics Among Nations: The Struggle for Power and Peace (New York: Alfred A. Knopf, 1978), p. 473.

The lack of support by major Powers at the United Nations for its resolutions has been a crucial reason behind its failure to attain the implementation of its resolutions on Namibia and many other issues. This lack of support of the most influential Members undermines any resolution, no matter how big the majority it was adopted with and empties it from any practical political value. Yet, it does not invalidate the legal value of a resolution and its future implications. This point will be discussed later in Chapter VI.

The Security Council, in handling the question of Namibia, passed numerous resolutions. Some of those resolutions even included an ambiguous threat that, in case of non-compliance, the Security Council would meet "to consider the appropriate measures to be taken under the Charter." Such threats are usually meant to satisfy the increasingly frustrated Third World countries in general and African members in particular. They were meant to give the appearance that an enforcement action under Chapter VII of the Charter was forthcoming. But such action never materialized, thanks primarily to Western members of the Security Council who oppose imposing comprehensive mandatory sanctions on South Africa for its defiance of the United Nations with regard to Namibia. This situation has resulted in the loss of credibility of the Security Council and made a mockery of the United Nations system itself.

The Charter of the United Nations gave the Security Council the power to determine "the existence of a threat to the peace, breach of the peace or act of aggression."⁹⁰ In such a case, the Security

⁹⁰Article 39 of the Charter.

Council can impose a wide range of economic sanctions or even take military action.⁹¹ On several occasions, as mentioned before, the Security Council has condemned South Africa for its refusal to abide by its resolutions on Namibia. The Council declared that South Africa's continued illegal occupation would eventually endanger international peace and security and implicitly threatened to impose sanctions on South Africa. However, the Council never determined the existence of a threat to international peace and security as a result of the stalemate in Namibia. Western members of the Council consistently vetoed any proposal making such determination or calling for comprehensive mandatory economic sanctions on South Africa.⁹²

Also, attempts by mainly African members to suspend or expel South Africa from the United Nations in accordance with Article 6 of the Charter were vetoed by Western permanent members of the Security Council.⁹³ This led the majority to follow an unconventional way of rejecting the South African delegation's credentials to the General Assembly during its twenty-ninth session against the opposition of some members, primarily Western countries. This has resulted in South

⁹¹Articles 41 and 42 of the Charter.

⁹²The Security Council in resolution 418 (1977) of 4 November 1977 imposed a mandatory arms embargo on South Africa because of its racist policy of apartheid against its black population.

⁹³For example in October 1974, the Security Council met at the request of the General Assembly to consider the relationship between the United Nations and South Africa in the light of its constant violation of the Charter. The Security Council received a proposal from Iraq, Kenya, Mauritania, and United Republic of Cameroon for the immediate expulsion of South Africa from the United Nations. See United Nations Security Council Document S/11543, draft resolution was rejected by the Council on 30 October 1974, by vote of 10 in favor to 3 against, with 2 abstentions (Austria, Costa Rica) as a result of the triple veto of France, United Kingdom, and United States.

Africa's exclusion from the work of the Assembly since then. The legality of this move has since been a subject of controversy.

Western countries have often argued that the situation in Namibia does not constitute an actual threat to international peace that would warrant the application of Chapter VII of the Charter. Furthermore, they continue to argue that the imposition of economic and trade sanctions on South Africa will not solve the problem. Sanctions, they contend, could always be evaded or circumvented through countermeasures. These countermeasures may include improving self-sufficiency, stockpiling scarce commodities, encouraging diversification of production, smuggling and the re-routing of trade through middlemen, or cloaking transactions in secrecy.⁹⁴ Also, they continue to argue, sanctions would mean economic loss for not only South Africa but also its trade partners in the West, neighboring African countries and the black population in both South Africa and Namibia.⁹⁵ Finally, Western countries claim, sanctions might even push South Africa to adopt a more intransigent policy on Namibia.

Western argument in my view does not stand on solid grounds. First, on theoretical ground, members of the Security Council, particularly permanent members, have a legal duty under the Charter to take appropriate measures to remove a threat to or a breach of the peace or an act of aggression. In the case of Namibia the West has always rejected the argument of African countries that the situation in

⁹⁴Margaret Doxy, "Economic Sanctions, Benefits and Costs," The World Today, Royal Institute of International Affairs, Vol. 36, No. 12, December 1980, pp. 486-487.

⁹⁵Ibid.

Namibia was a threat to international peace and that South Africa's occupation of the Territory was an act of aggression.⁹⁶ Thus Western Powers repeatedly vetoed draft resolutions determining the existence of a threat to international peace as a result of South Africa's continued occupation of Namibia. Western Powers had always advocated a political settlement without the use of military action. If this was so, after all diplomatic efforts had failed, it was only logical that the West should support economic sanctions as still a non-military means of pressure on South Africa to abide by United Nations resolutions. Second, on practical grounds, sanctions, even if they would not solve the problem of Namibia, would make South Africa's continued offending policy more costly for it. The effectiveness of United Nations sanctions against South Africa would primarily depend on the faithfulness with which the most important trading, commercial and economic partners of South Africa, Western countries, implement the sanctions. Economic losses for neighboring African countries could be compensated through a coordinated international effort. As for the black population in South Africa and Namibia, the racial division of labor and the overall economic structure under the white minority rule mean that it is mainly the white minority that benefits from economic growth and would suffer from sanctions.

Furthermore, sanctions would give South Africa a clear message that the world community is opposed to its illegal occupation of Namibia and is willing to take tangible action to penalize South Africa even if such action would have a cost to the upholders. Economic

⁹⁶See footnote 71, p. 64.

sanctions might not bring South Africa to its knees, but probably they would bring enough pressure on it to change its policies. The example of Southern Rhodesia illustrates that economic sanctions could make the target reconsider its position and "serve important symbolic and constitutive functions."⁹⁷

South Africa's intransigent positions, the West's reluctance to move forcefully and whole-heartedly to apply enough pressure on South Africa to abide by United Nations resolutions, and the limitations of the Organization itself have long infuriated anti-colonial advocates at the United Nations. At the beginning, they reluctantly agreed to pursuing the legal path along with negotiations with South Africa. However, when the ICJ refused to consider the Ethiopian-Liberian litigation in 1966 after six years of deliberations, the moderation of the Afro-Asian group, now fortified by numerous new members thus constituting a clear majority, had been exhausted. Hence, the reaction of the General Assembly was abrupt and unequivocal by terminating the Mandate and assuming the administration of the Territory. When Lord Caradon of the United Kingdom, joined by the representatives of France

⁹⁷Wendell C. Maddy, "Economic Sanctions Against South Africa: Problems and Prospects for Enforcement of Human Rights Norms," Virginia Journal of International Law 22 (Winter 1982): 379. There seems to be another inconsistency in the Western position in opposing the imposition of economic sanctions on South Africa as useless. Whenever it was a Western Power that was offended by another country's policies, the West called for or imposed economic sanctions either within or without the United Nations. This was the case when the United States imposed economic sanctions on Cuba for its policies in the Western Hemisphere; on Iran over the latter's seige of American diplomatic personnel in Tehran in 1979-1980, on the Soviet Union after its invasion of Afghanistan in 1979, and on Poland because of its domestic human rights situation. During its conflict with Argentina over the Falkland Islands in 1982, the United Kingdom, along with most of Western Powers, imposed economic sanctions on the former.

and the United States, argued against such an approach as unrealistic and impractical, his words fell on deaf ears. The procrastination of South Africa had reached an intolerable limit. But, in reality, the revocation of the Mandate was a clear reflection of the unfounded idealism of the new members about the United Nations and its authority, their impatience, inexperience and even naïvete about power politics. While Afro-Asian delegations celebrated the revocation as a political "victory", nothing changed on the ground and Namibia remained in the hands of South Africa.

Nonetheless, the majority soon realized that the mere adoption of resolutions does not end conflicts. Instead of forcibly taking over the administration of Namibia from South Africa, the United Nations Council for Namibia has evolved into a virtual United Nations government in exile, in an unprecedented and unique way that could have a significant impact on the future role of the United Nations.

CHAPTER III

UNITED NATIONS DE JURE GOVERNMENT OF NAMIBIA

In this chapter I will consider the unique role that the United Nations has sought to play with regard to Namibia, namely that of a de jure government, at least in terms of the majority of the General Assembly, albeit in exile. This represents a major departure from the usual practice and a manifestation of a new role for the General Assembly.

In 1966 the General Assembly unilaterally terminated South Africa's Mandate over Namibia and assumed direct legal responsibility of the Territory. In 1967 it created the United Nations Council for Namibia as a de jure government of that Territory. Several major powers at the United Nations expressed doubts at that time about the usefulness and wisdom of this approach.

One of the most important indications of the General Assembly's action was that it has transformed itself from a universal forum for negotiations into a direct party in an international conflict concerning the implementation of a people's right to self-determination. Such a change of role has come as a reflection of the change in the priorities and concerns of its majority since the sixties. Subsequent efforts to carry out this role have revealed the limitations of the United Nations as an international organization.

The United Nations Council for Namibia has been in existence now for almost two decades. It started carrying out its functions with a modest budget in search of optimistic and maybe unrealistic goals. As it realized that there was no possibility for it to assume actual control of Namibia as long as South Africa objected, it gradually shifted the focus of its efforts to practical measures. Thus, the United Nations, through the Council, has been financing, supervising and conducting a massive program of assistance to Namibian refugees and in preparation of the Namibian people for independence. The cost of such program is several million dollars annually.⁹⁸ By this, the United Nations has given its drive to attain the right of self-determination and to achieve universal decolonization a new dimension and a concrete, real content.

However, the Council has also become one of the most controversial bodies of the United Nations. To several observers, the UNCN seems to have gone astray in its political orientation under the influence of some of its radical members. The Council also seems plagued with excessive traveling, waste and duplication in its managerial and administrative aspects, inter-secretariat and personal rivalries and conflicts. In order to assess the work of the UNCN, this chapter will examine and analyze its composition, activities and politics and also the Office of the United Nations Commissioner for Namibia and the assistance programs it implements. Only such an

⁹⁸The total budget of United Nations activities on the question of Namibia amounts to almost US\$ 25,000,000 annually, out of which US\$ 11,000,000 come from the United Nations regular budget and the rest from voluntary contributions, primarily from Western countries.

examination can make it possible to assess the work of the UNCN and make some necessary suggestions to improve its standing and functioning.

The United Nations Council for Namibia: Its Composition, Activities and Politics

The United Nations Council for Namibia (UNCN) was originally composed of 11 members. It was enlarged several times until it reached its present 31 members size in 1978. The members of the Council are: Algeria, Angola, Australia, Bangladesh, Belgium, Botswana, Bulgaria, Burundi, Chile, China, Colombia, Cyprus, Egypt, Finland, Guyana, Haiti, India, Indonesia, Liberia, Mexico, Nigeria, Pakistan, Poland, Romania, Senegal, Turkey, Union of Soviet Socialist Republics, United Republic of Cameroon, Venezuela, Yugoslavia and Zambia. SWAPO and the Organization of African Unity (OAU) also participate in the work of the Council as observers.

All major Western Powers refused from the beginning to join the Council. As mentioned before, they argued that its mandate was unrealistic and abstained in the vote on its establishment. Australia, Belgium, Finland and Turkey finally accepted to join the Council representing the Western group at the United Nations. The Council, like almost all subsidiary organs of the Assembly, was to be composed on the basis of equitable geographic representation of Member States. Although the Soviet Union and its allies also abstained during the same vote, they immediately joined the Council upon its establishment. This situation has had its impact on the orientation of the Council until today.

The Council was given an impossible mandate. The General Assembly had given it the task of proceeding to Namibia and administer it in preparation for independence. Such a mandate was a logical follow-up of the termination of South Africa's Mandate over the Territory. Yet, in view of the Council's apparent inability to wrest the Territory from South Africa by force, the refusal of the Security Council to take enforcement action against South Africa and the inability of African countries to challenge South Africa militarily, the original mandate had no chance whatsoever to be implemented against South Africa's opposition. However, that same mandate still constitutes the legal basis for subsequent activities by the UNCN and the General Assembly to assist Namibian refugees, prepare the Namibian people for independence and endorse SWAPO in its armed struggle for independence.

As the Council, soon after its establishment, realized the unfeasibility of carrying out its original mandate, it shifted its efforts towards more achievable goals which, along with SWAPO's armed struggle, would lead to the eventual independence of Namibia. The Council is legally, if not actually, the de jure government of Namibia and its only legal administering authority. The Council serves as the legislative body for Namibia; its President as the Head of State and the United Nations Commissioner for Namibia as the head of the executive branch. In such capacity, the Council has played the primary role in emphasizing and espousing the responsibility of the United Nations for Namibia until the achievement of genuine independence. Thus, the Council, in other words, embodies the United Nations commitment to the realization of Namibian independence. In this

regard, the UNCN carries out a wide range of activities: exposing the illegal presence of South Africa in Namibia and mobilizing international support for Namibian independence; taking action to promote compliance of Member States with United Nations resolutions on Namibia and to bring about increasing international pressure on South Africa to withdraw from Namibia; representing Namibian interests in international fora; and raising funds for assistance programs for Namibians.

In order to carry out such tasks, the Council established three standing committees. Each committee is entrusted with certain specific functions. Standing Committee I is composed of Algeria, Belgium, China, Colombia, Finland, Haiti, Indonesia, Nigeria, Poland, Senegal, Turkey, Union of Soviet Socialist Republics, United Republic of Cameroon, Venezuela and Zambia. This Committee is allocated the responsibilities of recommending the representation of Namibia in international organizations or conferences and consultations with governments of Member States and regional organizations.⁹⁹

Standing Committee II is composed of Angola, Australia, Bangladesh, Botswana, Bulgaria, Chile, Cyprus, Finland, Guyana, Liberia, Mexico, Pakistan, Romania and Zambia. It is entrusted with reviewing the progress of the liberation struggle in Namibia in its political, military and social aspects and submit to the Council periodic reports related thereto; considering the compliance of Member States with the relevant United Nations resolutions on Namibia and the

⁹⁹United Nations General Assembly Official Records: Thirty-Fourth Session, Report of the United Nations Council for Namibia, Supplement No. 24 (A/34/24), Vol. II, p. 18.

activities of foreign economic interests operating in Namibia. It also considers all legal issues relating to the liberation struggle of the Namibian people and the nature and scale of South African military installations and operations in Namibia.¹⁰⁰

Standing Committee III consists of Algeria, Angola, Australia, Belgium, Bulgaria, Burundi, Colombia, Cyprus, Egypt, India, Mexico, Nigeria, Pakistan, Romania, Venezuela, Yugoslavia and Zambia and is assigned the responsibilities of considering ways and means of increasing the dissemination of information relating to Namibia.¹⁰¹

All three committees, according to their mandate, have to carry out consultations with the representatives of South West Africa People's Organization in all matters under their respective consideration. Committees submit their reports and recommendations to the Council for consideration and adoption.

Besides, there is also a Special Committee entrusted with the operation of the United Nations Fund for Namibia. It is composed of Finland, India, Nigeria, Romania, Senegal, Turkey, Venezuela, Yugoslavia and Zambia. The President of the Council is the chairman ex officio of the Committee. The terms of reference of the Committee are to formulate and review policies on the utilization of the resources of the Fund, the Nationhood Programme for Namibia, the coordination of the work of the Council with the specialized agencies and other bodies of the United Nations family and the activities of the Institute for Namibia at Lusaka.¹⁰²

¹⁰⁰Ibid., p. 19.

¹⁰¹Ibid., pp. 20-21.

¹⁰²Ibid., p. 23.

The UNCN has a Steering Committee which consists of the President of the Council, the five Vice-Presidents, the Chairman of the three standing committees and the Vice-Chairman and Rapporteur of the Committee on the United Nations Fund for Namibia.

Since the UNCN was established, Zambia has had the post of the presidency of the Council in recognition of the special role it plays in the conflict as the sanctuary of thousands of Namibian refugees and a host country for several United Nations assistance programs for Namibia. The current President of the UNCN is Mr. Paul J. F. Lusaka, the Permanent Representative of Zambia to the United Nations, who has served as the President of the Council since January 1979.¹⁰³

Permanent representatives of Algeria, Guyana, India, Turkey and Yugoslavia serve as Vice-Presidents of the Council. The chairmen of the three standing committees are the representatives of the United Republic of Cameroon, Pakistan, and Bulgaria respectively. The Vice-Chairman of the Committee on the Fund for Namibia is the representative of Venezuela who serves also as the Rapporteur.

The Council was clearly taking its new tasks seriously. The division of labor among its members indicated such seriousness. Yet, the Council is an intergovernmental body. It is composed of representatives of sovereign Member States. Members of the Council are supposedly dedicated to the cause of Namibian independence. Every member is supposed to forget about his national allegiances, national

¹⁰³Ambassador Lusaka is widely recognized as a skillful and shrewd diplomat. However, since he assumed the presidency of the UNCN, he has been involved in extensive traveling that keeps him away from the United Nations Headquarters most of the year. He was elected President of the General Assembly during its thirty-ninth session.

interests and policies of his country when he plays his role as a member of the de jure government of Namibia. However, members differ on how best to achieve or expedite Namibian independence. Furthermore, the assumption that members would act solely for Namibian interests and not to enhance their own national interests has been idealistic and even unrealistic.

The UNCN works both as a policy making organ of the United Nations and as the legal administering authority for Namibia. The Council perceives itself as "the major policy-making organ of the United Nations charged with defending the rights and interests of the Territory and its people."¹⁰⁴ In this capacity, the Council submits its annual report to the General Assembly which usually contains, inter alia, an assessment of the situation, as well as the recommendations for action to be taken by the Assembly. The Council participates in the debates of the General Assembly and the Security Council or any other United Nations body whenever the question of Namibia is considered. Draft resolutions to be submitted to the vote at the conclusion of such debates are usually prepared by the Council. Furthermore, the Council also cooperates with both the OAU and the Movement of Non-Aligned Countries and actively participates in the elaboration of the declarations and resolutions of the two organs on the question of Namibia.¹⁰⁵

The Council ordinarily meets at United Nations Headquarters in

¹⁰⁴United Nations General Assembly Official Records: Thirty-Seventh Session, Report of the United Nations Council for Namibia, Supplement No. 24 (A/37/24), 1983, p. 7.

¹⁰⁵Ibid.

New York like other bodies of the Organization. However, in the last decade, the Council has adopted the practice of holding "extraordinary plenary meetings" outside the United Nations Headquarters. Such plenary meetings consider a variety of items relating to the question of Namibia. However, such sessions could still be considered at regular meetings of the Council at United Nations Headquarters in New York. The only purpose of holding such meetings, when the practice started, was to express support and solidarity with front-line countries. So, the Council met in Lusaka, Zambia, in 1973 and 1978. Yet, since 1981, the Council has convened such meetings in places far from Namibia and on an annual basis. Thus, it met in Algiers, Algeria, in 1980; Panama City, Panama, in 1981; Arusha, United Republic of Tanzania, in 1982; and in Bangkok, Thailand, in 1984.¹⁰⁶ Such meetings aim at mobilizing public opinion and governments to support Namibian independence. However, it is quite doubtful that this aim is the only motivation for holding these meetings in these particular venues. Besides, there is no evidence to indicate to any change of positions, of either public opinion or governments, as a direct result of these meetings.

The Council also acts as the de jure Administering Authority of

¹⁰⁶The Council did not hold a separate extraordinary meeting during the year 1983 because it convened a major international conference in support of the Namibian people in Paris in April of this year. The cost of the extraordinary meeting in Bangkok exceeded US\$ 1,000,000, out of a budget of US\$ 2,398,400 for the UNCN, while the extraordinary meeting in Lusaka, 1978, cost only US\$ 447,700 out of a budget of US\$ 1,120,200. See United Nations General Assembly documents A/C.5/32.30/Add.1 of 3 November 1977, A/C.5/38/54 of 26 November 1983, and United Nations Proposed Programme Budget for the Biennium 1984-1985, Vol. 1, United Nations General Assembly Official Record: Thirty-Eighth Session, Supplement No. 6(A/38/6), pp. 256-271.

Namibia. As such it carries out wide range of activities. In order to maintain international pressure on South Africa, the UNCN sends regular missions of consultations to Member States. Such missions conduct consultations with those states which accept to receive them about the implementation of the United Nations resolutions on the question of Namibia. Yet, in practice, the operation of the Council has gone astray. These missions are sometimes unnecessary, since they include countries which have taken firm positions with regard to the question of Namibia and which scrupulously respect United Nations resolutions on the question. For example, the UNCN, during the period from 1 September 1981 to 31 August 1982, sent missions of consultations to Cyprus, Sri Lanka and Bangladesh.¹⁰⁷ During the period from 1 September 1982 to 31 August 1983 such missions were dispatched to Belgium, Bulgaria, Costa Rica, Czechoslovakia, Denmark, the Dominican Republic, Greece, Haiti, Italy, Nicaragua, Switzerland, Turkey and the Union of Soviet Socialist Republics.¹⁰⁸ During the following year, missions of consultation were sent to the Netherlands, Belgium, Luxembourg, the European Parliament and the Commission of the European Communities, Japan, New Zealand, Australia, Trinidad and Tobago, and Argentina.¹⁰⁹ While some of these missions are important, particularly to countries which maintain diplomatic, economic and trade relations with South Africa, several other countries are members of the

¹⁰⁷United Nations General Assembly Official Records, Supplement No. 24 (A/37/24), Ibid., pp. 39-46.

¹⁰⁸Report of the United Nations Council for Namibia, United Nations Document A/38/24 (Part I) of 17 November 1983, pp. 46-62.

¹⁰⁹Report of the United Nations Council for Namibia, United Nations Document A/39/24 (Part I) of 23 November 1984, pp. 158-171.

Council and clearly there was no need for any consultations with them on the implementation of United Nations resolutions on Namibia. Such missions to socialist and Third World countries usually end with the issuance of statements and communiqués which repeat the well-known positions of the host countries supporting Namibia's independence and condemning South Africa.

Within its capacity as the "legal Administering Authority" of the Territory, the Council carries out activities "relating to the representation of Namibian interests in the Specialized Agencies and other international organizations and conferences."¹¹⁰ Thus, the UNCN, throughout the years, has become a full member of the International Labor Organization (ILO); Food and Agriculture Organization (FAO); United Nations Educational, Scientific and Cultural Organization (UNESCO); International Telecommunication Union (ITU); International Atomic Energy Agency (IAEA); United Nations Conference on Trade and Development (UNCTAD); United Nations Industrial Development Organization (UNIDO); and the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR). The Council also enjoys associate membership status in the World Health Organization (WHO). Besides, the UNCN represents Namibia in meetings of the OAU, Movement of Non-Aligned Countries, and meetings sponsored by non-governmental organizations. Also, the Council attends, in its capacity as the legal Administering Authority of Namibia, a large number of international conferences.

There is no doubt that the representation of Namibia in meetings of Specialized Agencies has a great significance. Many of

¹¹⁰Ibid., p. 63

these agencies carry out programs for the assistance of Namibian people, particularly those who fled to neighboring countries. For example, the Office of the United Nations High Commissioner for Refugees provides vital assistance to Namibian refugees, particularly in Angola. This assistance is provided in the form of projects aiming at "reducing the dependence on relief and giving priority to improving living standards through medium-term projects."¹¹¹ These projects cover the sectors of education, agriculture, infrastructure, transport, health and immediate needs with a total cost of over US\$ 4,000,000 in the year 1984. Implementation of the projects are entrusted to SWAPO with the technical assistance of the office of UNHCR.¹¹²

Also, representation in conferences or meetings directly related to the question of Namibia are important. Presentation of the UNCN views concerning the current situation in Namibia and its future status in meetings such as those of the United Nations Commission on Human Rights, the World Conference to Combat Racism and Racial Discrimination, or the Committee Against Apartheid, for example, is understandable. However, this representation has extended throughout the years to cover conferences and meetings which bear no direct relevance to the Namibian question. For example, during the period from 1 September 1982 to 31 August 1983, the Council was represented, inter alia, at the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts, held at Vienna from

¹¹¹Report on UNHCR assistance activities in 1982-1983 and proposed voluntary funds programmes and budget for 1984, submitted by the High Commissioner for Refugees, United Nations General Assembly Document A/Ac.96/620, p. 9.

¹¹²Ibid., p. 10.

1 to 8 March 1983, by two delegates; at the first session of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, held at Kingston, Jamaica, from 15 March to 8 April 1983, by four delegates and one SWAPO representative; at the sixth session of United Nations Conference on Trade and Development (UNCTAD) held at Belgrade, Yugoslavia, from 6 to 30 June 1983, by one delegate; at the meeting of the International Preparatory Committee for the World Assembly for Peace and Life and Against Nuclear War held at Prague, Czechoslovakia, from 21 to 26 June 1983, by one delegate. In other meetings, the number of delegates representing the Council was unnecessarily big, due to the interest of delegates to attend them. For example, the Council was represented at the extraordinary ministerial meeting of the Co-ordinating Bureau of the Non-Aligned Countries held at Managua, Nicaragua, from 10 to 14 January 1983, by three delegates. The meeting was devoted to the consideration of the situation in Central America and the Caribbean. At the Seventh Conference of Head of States or Governments of Non-Aligned Countries, held at New Delhi, India, from 7 to 11 March 1983, the Council was represented by three delegates in addition to a SWAPO representative.¹¹³ The UNCN usually sends a delegation of one to three of its members accompanied by United Nations Secretariat staff members for technical and administrative assistance. In the case of important meetings such as summit meetings of the Organization of African Unity or the Movement of Non-Aligned Countries,

¹¹³Report of the United Nations Council for Namibia, United Nations General Assembly Document A/38/24 (Part I) of 17 November 1983, pp. 63-67.

such delegations are usually expanded and become a target of competing lobbying for participation by various UNCN members at the ambassadorial level. Even delegates who participate in the work of the UNCN admit these hidden abuses in private conversations.¹¹⁴

Critics in the United Nations from within and without the Council indicate that this activity has grown into an extensive traveling exercise which prompted such critics to call the Council "Namibia Tours". Several members of the Council also observe that demand from representatives to represent the Council in various meetings rises during holiday seasons. They also remark of a certain degree of favoritism in choosing representatives to travel to important conferences or most interesting world cities.

The function of representing Namibia in international fora is, though, one of the most important tasks the Council carries out. While the Special Committee of 24 considers the situation in all remaining non-self-governing territories, the UNCN is devoted only to the Namibian cause. It embodies the international will to give Namibia its long overdue independence. Maintaining representation of Namibian interests in international fora refutes South African claims to speak for or act on behalf of the Namibian people. Thus, the Council for example, accedes to and ratifies international treaties and conventions on behalf of Namibia.

The fact that the UNCN represents Namibia in international fora, while SWAPO is recognized by the United Nations as the sole legitimate representative of the Namibian people, does not constitute a

¹¹⁴The amount appropriated for travel of UNCN representatives during 1984 was US\$ 837,200. See United Nations General Assembly Official Record, Supplement No. 6 (A/38/6).

problem. The Council is an intergovernmental body which symbolizes the United Nations responsibility towards Namibia. It acts as a de jure government of the Territory, even if it has no de facto control over it. SWAPO is a national liberation movement and does not claim any legal governmental authority over the Territory. It is the representative of the Namibian people in its capacity as a national liberation movement and not as a government. Besides, SWAPO fully and actively participates and guides the work of the Council as its own mandate required it to guarantee the utmost participation of the Namibian people in its work. A representative of SWAPO is usually included in any delegation of the UNCN to a major international meeting. Thus, there seems to be no problem of dual representation. On the contrary, this situation is probably a blessing insofar as it relieves SWAPO of the burden of full representation of the Namibian people at international fora, which it cannot do at this stage, and enables it to focus upon its struggle within the Territory itself for independence.

The Council also carries out some very important activities. One of these activities is its action concerning foreign economic interests in Namibia. Acting by virtue of the powers entrusted to it by the General Assembly in its resolution 2248 (S-V), and in conformity with the ICJ advisory opinion of 1971 and Security Council resolutions, the UNCN, on 27 September 1974, enacted Decree No. 1 for the protection of the natural resources of Namibia. Decree No. 1 prohibited any economic exploitation of Namibian natural resources, without the consent and permission of the Council.¹¹⁵ Subsequently, by

¹¹⁵See text of Decree No. 1, Annex 3.

resolution 3295 (XXIX) of 13 December 1974, the General Assembly requested all Member States to take all appropriate measures to ensure the full application of, and compliance with, the provisions of the Decree on the Natural Resources of Namibia enacted by the United Nations Council for Namibia.

Decree No. 1, the first major legislative act of the United Nations Council for Namibia, is theoretically a domestic law of Namibia. However, the fact that the Council, the authority which legally "administers" Namibia, discharges an international responsibility for that territory under a mandate from the United Nations, must imply an awareness on the part of Member States of the United Nations that the act of that authority carries international consequences. Therefore, Decree No. 1, while being a domestic law of Namibia, is also an instrument carrying international consequences for Member States of the United Nations. The legal basis for the Decree is the ICJ opinion of 1971 and thus is different from other decisions of the UNCN. The Decree represents the legal basis for the Council's efforts to discourage states and companies from any economic activity in Namibia in collaboration with the illegal occupation of the authorities of South Africa.

The Council has continued to "inform the international community of the situation in Namibia with regard to the exploitation of the Territory's people and resources by South African and other foreign economic interests."¹¹⁶ However, despite repeated United Nations resolutions, the advisory opinion of ICJ of 1971 and UNCN

¹¹⁶United Nations General Assembly Document A/38/24 (Part I), p. 68.

Decree No. 1, transnational corporations have continued their economic activities in the Territory. Western based transnational corporations are usually mentioned in the reports of the Council. Yet, reported Soviet fishing activities in Namibia's territorial waters and its exclusive economic zone have never been expressly mentioned or condemned.¹¹⁷

The Council organizes seminars to "inform the decision-makers and the general public in the home countries of the transnational corporations of the role of those corporations and the political, economic, social, military and cultural implications" of collaboration with South Africa in the exploitation of Namibian resources.¹¹⁸ UNCN officials recognize that neither the Council nor the United Nations itself can practically enforce UNCN Decree No. 1. The Council has done extensive research in order to compile the names of transnational corporations conducting economic activities in Namibia. However, unless such corporations agree to cease their activities in the Territory, the implementation of Decree No. 1 would be impossible. First of all, the Council has no concrete detailed information about the destinations of exports from Namibia and the means of their transportation. Secondly, any attempt to enforce the decree, short of the use of force, entails a considerable and complicated amount of legal research, thus, the decree has remained unenforced.¹¹⁹

¹¹⁷Exploitation of all Namibian resources, in general, including water resources, has been repeatedly condemned in UNCN and General Assembly resolutions.

¹¹⁸United Nations General Assembly Document A/38/24 (Part I), p. 74.

¹¹⁹Saxena, pp. 265-269.

However, in May 1985, the UNCN announced its plan to file suit in the Courts of the Netherlands to block the processing of Namibian uranium by Urenco, a joint Dutch, British and West German uranium enrichment concern.¹²⁰

In the same capacity, the Council also discusses the military situation in Namibia. In this regard, the Council publishes reports in the form of United Nations documents and publications using the information provided to it mainly by SWAPO.¹²¹ Also, in its consideration of political matters concerning Namibia, the Council is usually guided by the views expressed by SWAPO's representatives. Soviet bloc countries in the Council also exert a tremendous pressure in order to use the Council for the denunciation of Western, particularly American, policies towards Namibia.

Similarly, the Council keeps under review social conditions in the Territory. The Council includes in its annual reports a section on these questions such as South Africa's racially discriminatory legislation and practices in the Territory, education, health facilities, housing and living conditions, the status of women, and repression and human rights violations in Namibia.¹²²

Again, in its capacity as the legal Administering Authority for Namibia, the Council conducts several activities in the field of public information and publicity. The UNCN disseminates information to

¹²⁰New York Times, 26 May 1985, p. A6.

¹²¹Figures and statements about the military situation are usually exaggerated for propaganda reasons.

¹²²United Nations General Assembly Document A/38/24 (Part I), pp. 101-114.

governments, institutions, non-governmental organizations and directly to the public. The purpose of such activities is to "better inform and mobilize world public opinion in support of the genuine independence of Namibia."¹²³ The activities of the Council in this field, during the years 1984 and 1985 for example, included a long list of public information activities such as the preparation and dissemination of publications, radio programs, television broadcasts, films, posters, bulletins and booklets on the various aspects of the Namibian question.

The Council acts in the field of public information through its Standing Committee III. The Committee has been chaired by a junior Bulgarian representative for the last five years. During those years, Standing Committee III has been greatly radicalized. Although the USSR is not a member of the Committee, the Soviet representative regularly attends its meetings and plays an active leading role in its deliberations in close consultation and coordination with its Chairman. As a result of this, the Committee approved a draft resolution for the UNCN to submit to the General Assembly for adoption during its thirty-eighth session which stated that the Assembly, inter alia,

Decided to intensify its international campaign in support of the cause of Namibia and to expose and denounce the collusion of the United States of America, certain other Western countries and Israel with the South African racists....

Although this language was resented by several delegations, including some Members of the Council and its Standing Committee III itself, it was adopted by the Council and subsequently by the Assembly on

¹²³Ibid., p. 115.

1 December 1983 by 122 votes in favor, none against and 22 abstentions as resolution A/38/24(II) D.

Among what the UNCN considers some of its "major activities" is the convening of regional symposia and seminars. During 1984, the Council conducted a regional symposium in Arusha, United Republic of Tanzania, from 2 to 5 April 1984. The Council's delegation to the symposium consisted of six of its members, including its President, a representative of the United Nations Commissioner for Namibia, and a representative of SWAPO, in addition to United Nations staff members for technical and administrative assistance. The symposium was attended by delegations of Member States, representatives of some United Nations bodies, national liberation movements and non-governmental organizations. The meeting resulted in the usual condemnation of South Africa and a call to the international community to support SWAPO.¹²⁴

During the same year, the Council convened a seminar on "the activities of foreign economic interests in the exploitation of Namibia's natural and human resources", at Ljubljana, Yugoslavia, from 16 to 20 April 1984. The seminar was conducted by a delegation of the Council composed of five of its members. Participants included scholars, mostly East Europeans, representatives of non-governmental organizations and few journalists.¹²⁵

The idea of holding seminars and symposia on the various aspects of the question of Namibia is rather useful in order to

¹²⁴United Nations General Assembly Document A/39/24 (Part I), pp. 108-110.

¹²⁵Ibid., pp. 110-116.

mobilize international public opinion in support of the struggle of the Namibian people for independence. However, the practice of the Council reveals that such activities have been held in places where the public opinion does not need them in the least rather than in countries whose support is crucial. This led to the inevitable result of having the Council trying to 'convert the already converted' in such meetings. Besides, the unnecessarily large size of the Council's delegations to such meetings has only worsened its image and cast further doubt on the real objective of its members in participating in such activities.

The political radicalization of Standing Committee III and the fact that none of its members has any professional public information experience or expertise, have also led to friction and sharp disagreement between the Committee and the United Nations Secretariat department responsible for carrying out the activities decided upon by the Committee, namely, the Department of Public Information (DPI).

DPI is usually represented by one of its professional staff members at meetings of Standing Committee III. This representative gives the professional perspective of any idea or project suggested by members of the Committee. However, this advice is often ignored and completely disregarded. The Committee itself, manipulated in most cases by its Chairman, adopts decisions to carry out projects that have no real public informational value whatsoever. The details of such projects are also decided upon by the Committee and not professional information officers of DPI.

For example, when the Committee itself, with a subsequent pro forma approval of the Council in a plenary meeting decides to hold a journalists' encounter on the question of Namibia in order to better

acquaint journalists from different regions of the world with the facts of the problem, it also decides the dates, venue, agenda, and even the journalists to be invited. The journalists invited are usually from countries members of the Council itself in order to appease such members. Most of those journalists are already familiar with and sympathetic to the Namibian cause. Furthermore, the speakers at such an encounter would be members of the Council itself who are usually low to middle level diplomats, which makes the whole event unworthy for any professional journalist. Even the program of work of the staff member in charge of the encounter is decided by the Committee.

Furthermore, the Committee itself sometimes demonstrates flagrant disregard of any serious approach to public information activities. For example, in October 1984, Standing Committee III decided to hold a global journalists' encounter on the question of Namibia within a week of its decision. The normal period needed for preparation of such an activity would be three months. DPI professional views were again disregarded this time.

This problem also exists with regard to texts of publications, newsletters, booklets or pamphlets to be issued by DPI. Whenever the Department attempts to maintain objectivity, impartiality and credibility in such texts, DPI is usually accused of antipathy towards the Namibian cause. Its representatives are sometimes even abused at the Committee's meetings. The Committee, under its Bulgarian Chairman, has sought to force DPI to carry out projects proposed by the Committee against the professional advice of the Department. This had led to almost constant friction between the Committee and DPI which is trying to maintain its professionalism and integrity.

This approach on the part of Standing Committee III has often led to carrying out useless activities, waste of money and the delay in implementing public information activities on the question of Namibia. Also, the main thrust of the information disseminated is usually influenced by political considerations and exaggerations and not objectivity. This happens although the mere objective facts of the Namibian problem would be enough to convince the public opinion of the justice of the Namibian people's struggle for independence.

The Council also publishes in its annual reports information on contacts between member and non-member States of the United Nations and South Africa as collected by Standing Committee II, the Office of the Commissioner and the Secretariat. The information covers these contacts in various fields such as political, diplomatic and consular; economic: trade, trade fairs and conferences, investments and loans, air and sea links; military contacts and nuclear collaboration; social and cultural contacts: sports, entertainment, tourism, immigration, and educational and scientific cooperation. Most of the information is gathered from newspapers and focus upon the collaboration of Western States, particularly Belgium, Federal Republic of Germany, France, The Netherlands, Switzerland, the United Kingdom, and the United States, with South Africa. Also, Israel, Japan and Taiwan are usually on the list of such states.¹²⁶ The Council maintains that such contacts are in violation of General Assembly resolutions requesting all states to boycott South Africa as a means of pressure in order to bring about an

¹²⁶See Report of the United Nations Council for Namibia, United Nations General Assembly Document A/38/24 (Part III) of 24 March 1983.

end to its occupation of Namibia.¹²⁷ Yet, there is strong evidence that other countries also maintain similar contacts. However, the Committee has always singled out Western countries for criticism and never mentioned others.

One of the most concrete aspects of the activities of the UNCN in its capacity as the legal Administering Authority for Namibia is its operation of the United Nations Fund for Namibia.¹²⁸ Historically, the United Nations either directly or through one of its agencies have offered humanitarian assistance for refugees or victims of political or military crises. In the case of Namibia such assistance has evolved into a comprehensive program of nation-building in addition to assistance to refugees. This program is unique at the United Nations, but the case of Namibia is also unique insofar as the United Nations responsibility is concerned.

The decision to establish the Fund was based on the consideration that the United Nations, having terminated South Africa's Mandate over the Territory and assumed direct responsibility for it, had incurred a solemn obligation to provide the people of Namibia in their struggle for independence with comprehensive assistance. The Fund became operative in 1972 with a total budget of less than

¹²⁷United Nations General Assembly resolution 36/121 B of 10 December 1981. It is relevant to recall that the only organ within the United Nations competent to impose binding sanctions on a Member State is the Security Council. The General Assembly adopted this resolution after the Security Council failed to impose comprehensive mandatory sanctions against South Africa due to Western veto. The General Assembly resolution is merely legally a non-binding recommendation.

¹²⁸The General Assembly established the Fund by its resolutions 2679 (XXV) of 9 December 1970 and 2872 (XXVI) of 20 December 1971.

US\$ 65,000.¹²⁹ The General Account and the Nationhood Programme are administered, directly or indirectly, by the Office of the United Nations Commissioner for Namibia. The Institute is an autonomous body. They will all be discussed in the next section.

As a part of its activities to expose illegal foreign investments in Namibia, the UNCN held a panel for hearings on the exploitation of Namibian uranium as one of its most important natural resources. Several experts were invited to participate in the hearings which took place at the United Nations Headquarters in New York from 7 to 11 July 1980. The hearings revealed many facts about the involvement of certain Western States, directly or through their national corporations, in the extraction, processing or sale of Namibia's uranium. Such findings were widely distributed as United Nations documents.¹³⁰

One of the major achievements of the UNCN was the convening of the International Conference in Support of the Struggle of the Namibian People for Independence in the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris from 25 to 29 April 1983. The conference was first called for by the General Assembly at its thirty-sixth session, by its resolution 36/121 C of 10 December 1981.

The Conference was opened by the United Nations Secretary-General and attended by 138 States.¹³¹ Among the

¹²⁹This amount included the US\$ 50,000 allocated from the regular budget of the United Nations. See Report of the United Nations Council for Namibia, Vol. I, United Nations General Assembly Official Records: Twenty-Seventh Session, Supplement No. 24(A/8724), p. 25.

¹³⁰See United Nations General Assembly Document A/Ac.131/L.163 (Parts I, II and III) and A/Ac.131/82 and Addenda 1-6.

¹³¹Several Western countries attended as observers.

participants, there were many foreign ministers, the President of the General Assembly, the Director-General of UNESCO, and the President of SWAPO. Also, other non-state categories participated in the Conference, such as the Specialized Agencies and other international organizations and institutions within the United Nations system; intergovernmental organizations accorded observer status in the General Assembly; the Movement of Non-Aligned Countries; national liberation movements recognized by the United Nations and the OAU; and international and national non-governmental organizations, as well as individuals invited by the UNCN.¹³²

The final documents of the Conference reiterated the positions previously adopted by the General Assembly on the question of Namibia. However, United Nations and SWAPO representatives contend that the Conference was a worthwhile exercise. These officials contend that its mere convening in France, an important Western country and a member of the Western Contact Group was an achievement. The Foreign Minister of France inaugurated the Conference and clearly stated his country's objection to the idea of linking Namibia's independence to the withdrawal of Cuban troops from Angola as proposed by both South Africa and the United States of America. Besides, these officials contend that the Conference tended to solidify public official opinion in West Europe for the independence of Namibia. Furthermore, the Conference mobilized public opinion in general for the struggle of the Namibian

¹³²See Report of the International Conference in Support of the Struggle of the Namibian People for Independence, Paris, 25-29 April 1983, United Nations General Assembly Document A/CONF. 120/13, p. 28.

people through the participation in the Conference of almost a hundred non-governmental organizations and journalists.¹³³

The role of the United Nations Secretariat is crucial in the analysis of the performance of the UNCN. Planning and implementing United Nations activities on Namibia is the responsibility of the Council itself. However, professional, organizational and technical assistance is provided by the United Nations Secretariat. Without such assistance, it would be almost impossible for the Council to function.

Secretariat assistance to the Council is provided by two organizational units--the Council Secretariat, which falls administratively within the Department of Political Affairs, Trusteeship and Decolonization (PATD), and the Office of the Commissioner for Namibia (OCN). The former assists the Council in matters relating to the representation of Namibia, reviewing the progress of liberation struggle in Namibia, and monitoring the observance of Decree No. 1. The latter provides its services in matters relating to the protection of Namibian interest and the assistance to Namibians. On the question of mobilization of international support both units, in addition to DPI, are involved.

This distribution of the assistance role within the Secretariat has created endless problems of coordination and cooperation and led to bitter conflicts and rivalries among those units, particularly the Council Secretariat and OCN. The lack of coordination between these

¹³³Interviews with Brajesh Mishra, United Nations Commissioner for Namibia, United Nations, New York, 26 January 1984 and Theo-Ben Gurirab, SWAPO Permanent Observer to the United Nations, New York, 31 January 1984.

two units has been noted in several administrative reports.¹³⁴ In the words of SWAPO Permanent Observer to the United Nations, its Secretariat "is perhaps one of the most frustrating aspects of the activities of the United Nations Council for Namibia" and referring to the rivalries between the Secretariat of the UNCN and the Office of the Commissioner, he says that "permanent structures were established with identical functions."¹³⁵

There is clear evidence of duplication and overlapping in the work of the two units. For example, both collect and utilize information on economic and social conditions in Namibia, foreign economic interests operating in the Territory, progress of liberation struggle in and around Namibia, repressive practices of the Government of South Africa, policies of major governments on the question of Namibia, etc. Also, other activities, such as the preparation of Council reports require inputs from both units and coordination among them.

The location of the Council Secretariat within PATD dates back from the time when South West Africa (Namibia) was a mandated territory and was expected to be a trust territory. However, the subsequent historical development of the Namibian question followed a very different path followed by territories which eventually became trust territories. Thus, it seems that there is little interrelationship

¹³⁴Reports of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), see United Nations General Assembly Document A/9608/Add. 15 para 2 and United Nations General Assembly Document A/39/7/Add. 13, para 24.

¹³⁵Interview with T. B. Gurirab.

between the services provided by PATD in respect to trust territories and those provided for Namibia.

The OCN was created as a separate unit in recognition of the unique character of the Namibian problem. It serves as the executive and administrative branch of the de jure government of Namibia. As will be discussed later, it provides direct assistance and services to the Namibian people. Its independent status symbolizes the United Nations responsibility for Namibia.

Under the circumstances it is only logical to amalgamate the two units. Because of the need to maintain the symbolic status of OCN and the fact that the Council secretariat did not belong to PATD and several managerial and administrative considerations that fall beyond the scope of this study, the Council secretariat should be incorporated into an enlarged OCN. Such reorganization would make the new unit more effective in providing the support services the Council needs and avoid the duplication, overlapping and waste as it is the case now.¹³⁶

Several times in the past, this idea of amalgamating the two units was raised. Yet, it was never implemented. This was due to reasons and factors completely unrelated to consideration of efficiency or the Namibian cause itself. Personality clashes and rivalry between the President of the Council and the Commissioner was one of such factors. Being symbolically the Head of the State of Namibia, administered by the United Nations, and its Prime Minister respectively, the President and the Commissioner have always vied for prestige, influence and status symbols. While the Commissioner has his

¹³⁶Interviews with several United Nations Secretariat staff members.

own staff as a Secretariat member at the level of Assistant-Secretary-General, the President is a representative of a Member State and has to rely upon the services of the Council secretariat. Merging the two units would enhance the Commissioner's status and make the President dependent upon him to provide the services accorded to the President in this capacity. Furthermore, such a merger could mean reducing the number of staff members providing the support services for the Council. Several of them, sometimes nationals of States Members of the Council, have lobbied hard with members of the Council to prevent such merger. Also, the usual bureaucratic tendencies towards expansion and self-perpetuation played a role in preventing the merger. Today, the idea is still unimplemented although not dead.

Several scholars and observers argue that the United Nations has failed in the Namibian test of its role as the world machinery for decolonization. G. M. Rocha argues that

While the United Nations has been invaluable in mobilizing public opinion on the illegality of the South African presence in Namibia, promoting the interests and rights of the Namibian people and serving as an overt pressure group on Pretoria and its allies, the withdrawal of the illegal administration from the international Territory will not be achieved through the Organization's multilateral framework by itself.¹³⁷

Rocha argues that the liberation of Namibia can only be achieved through the intensification of the armed struggle by SWAPO.

While this failure is attributable to the built-in weakness in the United Nations itself as an international organization, the Council

¹³⁷Rocha, p. 156.

itself has to receive the blame for its own shortcomings.

With the refusal of South Africa to comply with General Assembly and Security Council resolutions pertaining to Namibia, the United Nations, in general, and the UNCN, in particular, found themselves facing a deadlock. Most Third World countries, particularly African states, have found in the West the target for this frustration. These countries contend that the West has a special responsibility with respect to the cause of decolonization because of its colonial past. Also, these countries contend that it has been due to the use of the veto power in the Security Council that this organ has been unable to impose comprehensive mandatory sanctions against South Africa that would presumably force it to withdraw from Namibia.

Also, Soviet bloc countries exploit this situation by agitating Third World countries against the West. Thus, the frustration of the Third World, the agitation of the Soviet bloc countries, and the refusal of all major Western states to serve as members of the Council have resulted in the radicalization of the Council. Hence, Soviet bloc countries acquired, throughout the years, a very high profile in the decision-making process of the Council and its orientation.¹³⁸ This has been contested, from time to time, by some moderate members of the Council and directed it to adopt, on several occasions, resolutions to

¹³⁸Many of Third World members of the Council, most of which are considered moderate, have no vital national interest in the question of Namibia, thus tend to go along with radical African members. This sometimes leads to their acquiescence to radical resolutions which do not reflect their national policies. Besides, Western members of the Council usually play a very passive role during its meetings and rarely try to influence the outcome of its deliberations.

the disliking of Soviet bloc countries or blocked proposals submitted by this bloc.¹³⁹

The supporters of the Council also argue that the charge that it has become an anti-Western institution is unfair and distorting. They contend that most of what is being considered anti-Western is in fact a reflection of the fact that several Western countries maintain strong diplomatic, economic and commercial ties with South Africa in violation of the General Assembly resolutions pertaining to Namibia.¹⁴⁰

The Council's work is also plagued by political rivalries among its Member States, empty rhetoric and inefficient bureaucracy provided by staff members of the United Nations Secretariat. Some delegates to the Council have sometimes used their work in the Council to achieve personal goals and benefits. Members of the Council Secretariat, on the other hand, have frequently tried to use the Council and its

¹³⁹For example, the Council during its extraordinary meeting in Algiers, 1980, adopted, against the strong opposition of the Soviet, Bulgarian and Polish delegations, a proposal submitted by the Egyptian delegation, supported by Chile, Liberia, Nigeria, Senegal and United Republic of Cameroon condemning "all illegal exploitation of Namibian water resources." The Soviet Union is known to have been fishing in Namibian exclusive economic zone for the past several years. No Western delegation intervened in the debate. Another example to cite took place during the last International Conference of Paris in the work of its drafting committee of the Programme of Action when the Bulgarian delegation introduced a proposal to condemn the Western Contact Group as the main obstacle to Namibian independence. This proposal was rejected after long discussions due to the concerted efforts of moderate delegations in the Committee such as Egypt, Indonesia, Kenya and Nigeria. Also, Western delegation played a passive role. Again, during its last extraordinary plenary meeting held in Vienna, Austria, from 3 to 7 June 1985, the UCN, against the strong opposition of its Soviet bloc Members, adopted in the final document a proclamation of an exclusive economic zone for Namibia, the outer limit of which shall be 200 miles. See Vienna Final Document, United Nations General Assembly Document A/AC.131/1985/EPM/1 of 7 June 1985, para. 24.

¹⁴⁰Interviews with T. B. Gurirab and B. Mishra.

delegates to support them in bureaucratic rivalries with other departments of the United Nations Secretariat. The function of representing the Namibian people in conferences has developed into an opportunity for delegates and the Council Secretariat to travel around the world in what sometimes seems to be paid vacations.

The Office of the United Nations Commissioner for Namibia

As mentioned before, the OCN was established concurrently with the UNCN itself. The Office was given separate standing from regular United Nations Secretariat departments to emphasize its role. The Commissioner himself was to be at an Assistant-Secretary-General level. The OCN, according to General Assembly resolution 2248 (S-V) was to be in charge of executive and administrative aspects of the work of the Council. The Commissioner, in performance of his functions, was to be responsible to the Council, as any Prime Minister would be to the legislature in a democratic system. However, it was the General Assembly itself that would appoint the Commissioner.

The first Commissioner, appointed in June 1967, was Constantin A. Stavropoulos, who was also the Legal Counsel of the United Nations, and functioned as Acting Commissioner. Mr. Stravolopolus retained this position until 1972 when he was succeeded by Dr. V. A. Hamdani of Pakistan. In 1974, Sean McBride of Ireland was appointed as the Commissioner. In 1978, Martti Ahtisaari was appointed as the new Commissioner and the "Special Representative of the Secretary-General for Namibia." In 1982, Brajesh Mishra of India was appointed the Commissioner, in which capacity he is still serving, while

Mr. Ahtisaari retained his capacity as the Special Representative of the Secretary-General.¹⁴¹

Resolution 2248 (S-V) also provided that the "administration" of South West Africa under the United Nations should be financed from the revenues collected in the Territory. Yet, this was evidently impossible as South Africa refused to recognize the Council or its Mandate. Thus, all projects or programs undertaken by the UNCN had to be financed by voluntary contributions. These contributions had thus to come from Member States of the United Nations, non-governmental organizations and institutions, as well as individuals.

It was evident in the following years that a mere General Assembly resolution calling for voluntary contributions would not mean immediate pledges without the existence of specific programs or even an organizational structure. Thus, the Assembly, upon the initiative of the Council, established the United Nations Fund for Namibia.¹⁴² The Fund became operative in 1972 and was administered by the Secretary-General with the UNCN acting in an advisory capacity to him. In 1973, the General Assembly appointed the Council itself as the Trustee of the Fund.¹⁴³ The United Nations Commissioner for Namibia administers the Fund and executes its programs and reports to the

¹⁴¹There is a wide consensus that the current Commissioner has injected great dynamism into the work of his office. He is known as an energetic and able administrator in addition to being a veteran skillful UN diplomat. He has also been outspoken against Western policies, particularly that of the U.S.A., towards Namibia and the situation in Southern Africa.

¹⁴²United Nations General Assembly resolutions 2679 (XXV) and 2872 (XXVI).

¹⁴³United Nations General Assembly resolution 3112 (XXVIII) of 12 December 1973.

Council.

The guidelines for the orientation, management and administration were not approved by the Assembly until 1976.¹⁴⁴ These guidelines stipulate that the resources of the Fund will be used to make provision of scholarships and of a comprehensive education and training program for Namibians; to provide, where necessary, medical and other social services to Namibians in need of assistance; to provide fund for legal defense of Namibians who are undergoing persecution; to provide for defense of Namibian interests; and public information activities. The guidelines also provided that the Fund would also be used to facilitate the representation of Namibian people at the United Nations and international gatherings.

Proponents of Namibian independence suspected that voluntary contributions were forthcoming. Thus, they used their majority at the Assembly to extract a resolution in 1970 allocating as an "interim measure" the amount of US\$ 50,000 from the regular budget of the United Nations.¹⁴⁵ This "interim measure" has continued until today with the annual amount increased to US\$ 1,000,000.

Nevertheless, voluntary contributions have always been the major source of financing of the Fund. Since the establishment of the Fund, annual General Assembly resolutions contain appeals to Governments and national organizations and institutions to make voluntary contributions to the Fund. The Assembly also on numerous occasions called upon the Specialized Agencies and other organs and

¹⁴⁴United Nations General Assembly resolution 31/151 of 20 December 1976.

¹⁴⁵United Nations General Assembly resolution 2679 (XXV).

bodies of the United Nations system to make contributions to the Fund and assist in the implementation of the projects approved by the UNCN. In the last year, voluntary contributions have totalled about US\$ 14,000,000. The top Member States contributors to the Fund are Norway, Finland, Sweden, Denmark, United States of America, Japan, The Netherlands, France, and Australia. The Soviet bloc countries have never contributed to any of the United Nations projects for Namibia.

Western countries, however, have failed to translate this financial contribution into any viable degree of influence to counterbalance the Soviet role in the UNCN. The Western countries have also failed to make a good use to their benefit of the fact that Soviet bloc countries do not make any contribution to these projects.

United Nations assistance programs for Namibians represents the first time the Organization has ever provided what could be called state-machinery-building at a relatively large scale to a people still under colonial rule. This came as a logical result of the United Nations assumption of direct responsibility of the Territory. Allocating financial appropriations for such programs was something tangible that the majority in the Assembly could achieve. The regular budget of the United Nations is financed mostly by the major Powers. The majority felt that it was the least such Powers should do for the Namibian people after their failure to compel South Africa to withdraw from Namibia.

Implementation of assistance projects is however difficult and cannot proceed according to conventional approaches. This is due to the fact that the Territory is still under occupation. Also, reliable socio-economic data on Namibia is generally unavailable. Due to the

scarcity of educational opportunities for the black population in Namibia, special attention is given to training projects for Namibians in preparation for independence.

Over the years the assistance programs financed by the Fund increased and expanded significantly. With such expansion, the Fund was separated into three accounts: (a) the General Account for educational, social and relief activities; (b) the Trust Fund for the United Nations Institute for Namibia; and (c) the Trust Fund for the Nationhood Programme. A brief review of the activities of each account would reveal the extent to which the United Nations has gone to give a concrete meaning to its call for the free exercise of the Namibian people of their right to self-determination and to the Organization's direct responsibility for Namibia.

A. The General Account for Educational, Social and Relief Activities

The General Account is used to finance a wide range of assistance activities administered by the Commissioner's Office. The main activity in this regard is the Namibian Scholarship Programme. This program provides educational assistance to Namibians in the form of scholarships in various academic fields in different countries, mostly in Western and African countries.¹⁴⁶ At present the program

¹⁴⁶For example, during the period 1 July 1983 and 30 June 1984, out of 124 awards were 77 in the United States, 14 in the United Kingdom, 14 in Romania, 9 in Botswana, and 4 in Zambia. Report of the United Nations Council for Namibia, United Nations General Assembly Official Records Supplement No. 24 (A/39/24), p. 214. The Permanent Observer of SWAPO himself is a graduate of an earlier UN sponsored scholarship program.

covers 124 Namibian students studying at various levels in eleven countries. Scholarships cover a wide range of academic studies such as administration, agriculture, business education, engineering, liberal arts, medicine, political science, and urban studies and planning, etc. Scholarships are awarded and the program is carried out within the framework of the educational needs of the Namibian population and in anticipation of manpower needs for an independent Namibia.

Due to the increasing number of Namibians who have fled from the Territory and due to the scarcity of other funds for assistance to Namibians within the United Nations system, there has been an increasing need for assistance through the General Account. Until recently, the number of scholarships awarded to Namibians through the United Nations Educational and Training Programme for Southern Africa (UNETPSA) has been decreasing substantially. Consequently, there has been a growing demand on the Fund to award more individual scholarships. The Office of the Commissioner for Namibia has also received requests to assist Namibian children in refugee centers in Angola and Zambia as well as proposals for group training.

The Fund is also used to finance vocational and technical training. Also, it provides medical care, social services and relief aid to Namibian refugees. Furthermore, the Fund provides emergency assistance particularly to Namibian refugees in neighboring African countries. Subscriptions to various publications on Namibia and Southern Africa as well as books and library materials are financed by the Fund to be made available to Namibian refugee camps and to SWAPO officials. Finally, this account is also used to provide funds to facilitate the attendance of several Namibians at international

seminars and conferences.¹⁴⁷ Expenditures of the General Account for 1983 amounted to US\$ 2,332,769 most of it on its educational programs.¹⁴⁸

B. Nationhood Programme for Namibia

The Nationhood Programme for Namibia was established in 1976 by the General Assembly as a comprehensive assistance program within the United Nations system to assist the people of Namibia in their struggle for independence.¹⁴⁹ By the same resolution, the Assembly called upon the UNCN to elaborate, in consultation with SWAPO, the guidelines and policies for such a program. The Office of the Commissioner serves as the coordinating authority for the implementation of the Nationhood Programme.

The projects carried out within the framework of the Nationhood Programme can be classified into three broad categories:

- (a) pre-independence projects; (b) transitional projects; and
- (c) post-independence projects.

While the General Account primarily provides for the day to day needs of Namibians, the Nationhood Programme is an integrated development-oriented program consisting of both training and research projects. Approximately half of th projects involve training in

¹⁴⁷Ibid., pp. 215-216.

¹⁴⁸Ibid., p. 216.

¹⁴⁹United Nations General Assembly resolution 31/153 of 20 December 1976.

selected fields to provide Namibians with the necessary skills for the development of their country after independence. The remainder of the project provides research aimed at providing the future independent Government of Namibia with data and development policy options in the major sectors of the economy. By far, the largest project within the program at present is the Vocational Training Center for Namibia in Angola.¹⁵⁰ Projects are decided upon and implemented in close consultation with SWAPO. Several United Nations Specialized Agencies, particularly the United Nations Development Programme (UNDP), are involved in the implementation of the program's projects.¹⁵¹ At present, the projects carried out under the Nationhood Programme total almost US\$ 16,000,000.

C. United Nations Institute for Namibia

In order to carry out its tasks of providing assistance to the Namibian people and in view of the lack of educational opportunities for the black population in Namibia and Namibian refugees, the UNCN established the United Nations Institute for Namibia in 1974. The

¹⁵⁰For details of the projects, see: Nationhood Programme for Namibia and Educational, Social and Relief Activities Under the United Nations Fund for Namibia, Progress Report of the United Nations Commissioner for Namibia, June 1984, UNCN Doc. A/Ac.131/1984/CP.71 of 3 October 1984.

¹⁵¹UNDP plays a primary role in the administration of the program. Under an arrangement reached in 1979 between UNDP and the Office of the Commissioner, a "UNDP Trust Fund for the Nationhood Programme of the Fund for Namibia" was established through which allocations and remittances are made to the executive agencies to meet the project's expenditures, Ibid., p. 149.

Institute became operational in August 1976.

The Institute operates as an autonomous body administered by a Senate consisting of 16 members. The Senate submits annual reports to the Council including its budget estimates. The Institute's activities are financed by the Council through the United Nations Fund for Namibia. However, the account of the Institute is separate. The Institute also receives additional financial assistance from the UNDP and the United Nations High Commissioner for Refugees.

The Office of the Commissioner plays no direct role in the administration of the Institute. Nevertheless, the Office provides assistance to the Institute in the form of fund-raising activities and also provides advice when requested. The Commissioner serves as a member of the Senate of the Institute.

The primary objectives of the Institute are to train cadres for public administration in an independent Namibia; to conduct a research aimed at developing public policy operations for Namibia; and to serve as an information and documentation center on Namibia. The Institute conducts teaching and research functions through six substantive programs, viz: Agricultural and Land Resources Division; Constitutional, Legal and Judicial Affairs Division; Economics Division; Historical, Political and Cultural Division; Information and Documentation Center on Namibia; and Social and Education Division.

Since it was established, the student body of the Institute has grown rapidly. In 1983, the Institute had 422 students enrolled in its different programs. The total number of Institute graduates since its establishment until January 1983 is 282 receiving a diploma underwritten by the University of Zambia. In 1984, 183 new students

were admitted into various programs of the Institute. The budget of the Institute has averaged about US\$ 4,000,000 annually over the past five years.¹⁵²

Some Namibians have voiced sharp criticism of the management of the Institute. These critics claim that the UNCN discriminates against non-SWAPO supporters in admissions to the Institute.¹⁵³ To this criticism, the Commissioner responds that General Assembly resolutions require his office to consult and cooperate with SWAPO on the preparation and implementation of all United Nations projects. However, he adds, the great majority of those getting individual scholarships are non-SWAPO people. In fact, it was suggested at the beginning that the Institute should be used to train SWAPO cadres, but SWAPO itself insisted on making the Institute for all Namibians.

In addition, the Office of the United Nations Commissioner for Namibia carries out several other activities. The Office and the Commissioner personally carry out fund-raising activities to ensure the financing of the various programs under the Fund. Also, the Office commissions, on behalf of the Council, studies relating to the Namibian question, particularly the implementation of the UNCN Decree No. 1. One of these studies, for example, is a comprehensive study of economic options for an independent Namibia, similar to a study that was prepared for Zimbabwe before it became independent and proved to be

¹⁵²United Nations General Assembly Document A/39/24 (Part I), pp. 208-209.

¹⁵³See M. S. Haikali, "The UNCN Divides Namibians" and Olavi Hamukuaya, "The Mistakes of the UNCN," The Namibian Review No. 6 (September 1977): 7.

very useful. In the words of the Commissioner, this study "will prove to be one of the most important projects" undertaken by his Office "to aid the people of Namibia."¹⁵⁴ The Office also collects and analyzes information relating to Namibia and closely follows internal political, economic and legal developments in Africa concerning Namibia. The Office also carries out various public information activities for the public and non-governmental organizations in addition to those carried out by the United Nations Department of Public Information. Furthermore, the Commissioner participates in numerous international conferences and meetings and holds consultations with various governments. Besides, the Commissioner and his staff hold close consultations with SWAPO representatives to review the various projects and programs of assistance for Namibia. The Commissioner has offices at Luanda, Angola; Lusaka, Zambia; and Gaborone, Botswana.¹⁵⁵

Another unprecedented aspect of the activities of the Office of the Commissioner is the issuance of passports to Namibians. This activity is significant for Namibians because the South African Government has denied passports to numerous Namibians, thus preventing them from leaving the Territory either to acquire higher education abroad or to wage political struggle against the South African occupation of Namibia. It is also significant for Namibian refugees in neighboring African countries. After long and protracted negotiations between the Council and several governments, modalities were worked out

¹⁵⁴Interview with B. Mishra.

¹⁵⁵United Nations General Assembly Document A/38/24, pp. 148-155.

and the scheme was launched in December 1970. By then 76 countries had recognized the validity of travel documents issued by the Council. Today, 88 countries accept these documents as valid for travel and identity purposes. During the period from 1 September 1982 to 31 August 1983, the Office of the Commissioner issued 1,778 new and renewed travel and identity documents in Africa, 14 in North America, 2 in Latin America and the Caribbean, 1 in Western Europe and 1 in Asia and the Pacific.¹⁵⁶

Analysis

As the United Nations attempted to play an active direct role in the conflict over Namibia, it was necessary to create a subsidiary organ to play the vanguard role in this regard. Hence, the United Nations Council for Namibia was established. The Council acts as the de jure government of the Territory. The President of the Council is theoretically the President of Namibia with the Commissioner as his Prime Minister.

The UNCN started its work cautiously. It primarily focused upon its unrealistic mandate of taking over the administration of Namibia from South Africa in preparation for its independence. Soon after the inevitable spectacular failure of the Council in this regard, it shifted to focus on more practical goals, namely to keep the question alive politically, to sustain and increase international

¹⁵⁶The Office of the Commissioner for Namibia receives annually more than US\$ 5,000,000 from the United Nations regular budget in addition to voluntary contributions to carry out its activities.

pressure on South Africa to relinquish control over Namibia, and most significantly to launch relatively massive programs to assist the Namibian people and prepare it for eventual independence.

Over the years, the UNCN has become one of the most important and militant subsidiary organs of the United Nations. The Council initiates and virtually decides the content and shape of General Assembly resolutions on Namibia. It also commands an unprecedentedly large budget, financed both from United Nations regular budget and voluntary contributions, that is used for the promotion of the independence of Namibia.

The work of the Council and its evolution clearly illustrates how the majority of the United Nations managed to use its voting power within the Assembly in order to pass resolutions with tangible results within the legal jurisdiction of the Assembly. The legal impact of General Assembly resolutions will be examined later. Nonetheless, the majority succeeded in creating new realities such as voting to appropriate funds for assistance programs for Namibians and also to grant SWAPO an observer status at the General Assembly.

In the process of its evolution, the Council for Namibia has become one of the controversial bodies of the United Nations. Supporters of the Council praise it for its positive activities to promote Namibian independence and dispose of the criticism levied against it, try to find excuses for its drawbacks or even assign the blame to the critics themselves. Detractors of the Council point out to its failure in achieving its mandate and numerous excesses by the Council in carrying out its functions.

There is no doubt that the Council has played the pivotal role in the international arena in advocating Namibian independence. This stems from the fact that it uniquely and unprecedentedly embodies the United Nations role as an active direct actor in an international dispute over the independence of a territory. The Council has managed to keep the question alive at the United Nations and other international fora. During every regular session of the General Assembly it leads the annual debate on the subject, repeating its call for the immediate withdrawal of South Africa from Namibia. It has also brought the question to almost every other international forum seeking support for the struggle of the Namibian people for self-determination and independence. The Council, in its contacts with governments, seeks their support for its objectives and the adherence to United Nations resolutions on Namibia. Furthermore, the Council has also initiated contacts with transnational corporations in an effort to dissuade them from collaborating with South Africa in the exploitation of Namibian resources. The Council, in cooperation with SWAPO, provides the proper representation of Namibia in different fora. It also provides SWAPO with a forum for expressing its views, interacting with the international community and a support for its struggle.

The most significant and concrete aspect of the UNCN efforts is its assistance programs for the Namibian people. Such extensive programs symbolize the United Nations determination to give its repeated call for self-determination a concrete and material manifestation. This is even more important in Africa, where several former colonies were faced with tremendous problems after independence as a result of the lack of proper institutions and skilled cadres.

The success of this effort has even compelled the UNCN to initiate further programs. As the years passed, the first generation of trainees have already finished their theoretical and vocational training programs. Thus, the OCN has already started a Field Attachment Programme, according to which graduates of various training programs would be temporarily placed in appropriate jobs in African countries in order to gain practical experience until Namibian independence.

Yet, detractors of the Council point at several shortcomings and excesses that it has indulged in. Criticism has focused upon administrative inadequacies, travel excess, its alleged bias for SWAPO in dealing with Namibians, and most importantly, the Council's political and ideological orientation.

As the United Nations attempted to play an active role in the conflict over Namibia, it was inevitable that the Namibian cause would fall victim to all the drawbacks of a big organization and bureaucratic politics added to the usual limitations of the United Nations itself as an international organization. Also, personality clashes between the President of the Council and the United Nations Commissioner for Namibia have been known to divide the Council and sometimes hinder its work.

It has been clear for a long time that there is a structural flaw in the secretariat services of the UNCN. As mentioned before, merging the secretariat of the Council with the OCN is necessary for a better functioning of the Council and avoiding duplications. Also, the roles of the President of the Council and the Commissioner respectively have to be clearly defined. The President is a representative of a

sovereign Member State who functions as the head of the United Nations "administration" of Namibia. In reality, the UNCN is an intergovernmental subsidiary organ of the General Assembly which serves as a policy-making body on the question of Namibia. On the other hand, the Commissioner is the most senior officer of the secretariat entrusted with the implementation of the Council's directives. As things stand now, he is at the level of an assistant-secretary-general and elected by the General Assembly upon the recommendation of the Secretary-General.

Thus, symbolism has led to great complications in the work of the UNCN. Elevating the Commissioner to the level of an assistant-secretary-general was in the first place unnecessary. Being elected by the General Assembly itself is rather unparalleled and it gives the Commissioner enough credit, prestige and status almost equal to the President of UNCN which inevitably leads to conflicts between them, as the President attempts to exercise his authority over the OCN. Therefore, it may be better to maintain the level of the post as the head of an amalgamated Council's secretariat while the Commissioner be appointed by the Secretary-General, like other staff members, after consultations with the President of the Council. Thus, the Council remains the policy-making body which the secretariat would be responsible for the execution of this policy.

On the public information level, DPI should be consulted and its professional advice heeded. The mandate of the Department which requires it to disseminate objective and balanced information should be respected. In the final analysis, only factual and objective information would be successful in gaining public support for the

Namibian cause.

The alleged bias of the Council in favor of SWAPO at the expense of other groups in Namibia is exaggerated. The recognition of SWAPO by the General Assembly as the "sole legitimate representative" of the Namibian people has certainly given this group a significant advantage over other groups.¹⁵⁷ Almost all United Nations assistance programs for Namibians are implemented in consultation with SWAPO. But, senior United Nations officials categorically deny any policy of discrimination against non-SWAPO supporters. However, given the fact that the General Assembly recognizes only SWAPO as the representative of all the Namibian people and that it is always consulted about all United Nations assistance projects, some bias in favor of SWAPO seems inevitable.

The most controversial criticism of the UCN is that it has become a tool in Soviet hands against the West in general and the United States in particular. Detractors point at draft resolutions on the question of Namibia worked out at the Council and submitted to the General Assembly for adoption. These resolutions are usually critical of Western countries and often single out the United States for condemnation of its policy of collaboration with South Africa. The same attitude is usually repeated in the Council's declarations and pronouncements.

Since it was established all major Western Powers refused to join the Council after casting doubt about the rationale of its

¹⁵⁷This point will be discussed in detail in the following chapter.

creation. This position was clearly unwise and cleared the way for extremists at the UNCN to gain control of it. Only Australia, Belgium, Finland and Turkey are Members of the Council representing the Western group at the United Nations. These countries clearly do not represent the main power centers of the West, even if some, and definitely not all, share the political orientation of Western countries. These Western Members of the Council have traditionally played an inactive role in the decision-making process of the Council. Most of them absent themselves from many meetings of the Council and its committees. Their representatives usually defend their own countries' interests and policies. Even in the case of declarations or pronouncements which they consider extremist and contrary to their own governments' policies they enter reservations which are mostly kept on internal documents of the Council and not public ones. This represents a clear passive role in the Council where all decisions are taken by consensus and not through voting. Some members of the Council describe Western participation in its work as "negligible at best and obstructionist at worst."

Non-participation of major Western Powers in the Council has clearly had its adverse effect on its political orientation. Such boycott strongly antagonized many Members of the Council. Also, Western Powers have always given the impression that they do not actually give much attention to what comes out of the Council. Thus, even moderate members of the Council which constitute its majority, have often gone along with anti-Western attitudes advocated by the Soviet delegation or its allies, on the basis that the West would not

mind, so why put up a fight for no reason.¹⁵⁸

When the Reagan administration acceded to power in the United States in January 1981, the United States Mission to the United Nations, under the then new Permanent Representative, Jean Kirkpatrick, adopted a policy of "get tough". Thus, American representatives delivered tough statements at various meetings of United Nations bodies and threatened the withholding of United States economic aid to countries that vote for resolutions which the United States considered hostile. This attitude was also coupled with staffing the high echelons of the United States Mission with unqualified political appointees who are considered by many to be "the weakest supporting team a chief delegate has ever had in New York and in the State

¹⁵⁸Participation in the Council can surely deflect and prevent critical reports of the participating country. This has been the case for several UNCN members. In two specific cases, I have been instrumental in preventing critical reports of my country, Egypt, when I served as its representative at the Council. After the signing of the Camp David Accords (CDA) on the Middle East problem between Egypt, Israel and the United States, Algeria, a Member of the Council and an opponent of the Accords within the Arab world, initiated the idea of comparing the CDA to the internal settlement in then Southern Rhodesia, and tried to get the Council to condemn the Accords. This coincided with convening the extraordinary meeting of the Council in Algiers. I attended the meeting and through extensive contacts with other representatives and threatening to disrupt the work of the Council managed to abort such a possibility.

In a second instance, a press report alleging an arms sale from Egypt to South Africa through France was mentioned in the testimony of an "expert" in the United Nations Committee on Arms Embargo to South Africa. The Egyptian Government immediately issued a denial. When the report was discussed in Standing Committee II of the Council, I again strongly denied the alleged sale and objected to making any reference to an untrue press report. In several cases, similar press reports were the only basis for the Council's condemnation of a certain country, mostly Western, and particularly the United States which does not even take the trouble of denying or confirming such reports.

Department."¹⁵⁹

The new orientation of American diplomacy at the United Nations was not accompanied by sophisticated and skillful use of diplomatic tactics to explain United States position and gain support for them. Instead, it followed a policy of heavy-handedness and aloofness. Thus, when the United States introduced amendments to the General Assembly's thirty-ninth session to delete specific condemnations of the United States and Israel in draft resolutions on Namibia, prepared by the Council, without prior consultations with moderate UCN members or adequate lobbying with most of the Assembly's Members, those amendments were rejected by the Assembly.

Also, the United States continues to completely ignore the pronouncements, declarations or condemnations made by the Council. When the Council accuses a Western country of violating the arms embargo against South Africa or Decree No. 1, usually that country responds to such an accusation. In several cases, the country either sends a representative to a meeting of the Council or an official letter to refute and deny such accusations. This attitude by the United States further alienates the UCN members. The United States along with the major Western Powers, do not recognize the Council as legally representing Namibia.

Non-participation by major Western Powers in the works of the Council was based on several considerations. First of all most of them considered the idea and mandate of the Council as unrealistic. They

¹⁵⁹Richard N. Gardner, "A Memorandum: U.N. Diplomacy," New York Times, March 8, 1985, p. A35.

also feared that it would inevitably be dominated by extremists.

Third, most Western countries have economic relations with South Africa and saw the clear contradiction between such relations and an active participation in the works of the Council.

To a large extent that absence of major Western Powers from the Council explains its attitudes and policies. The East-European group is represented by Bulgaria, Poland, Romania, USSR, and Yugoslavia. The Soviet delegation can always count on the support of Bulgaria and Poland while Romania and Yugoslavia try to follow relatively independent policies more closely coordinated with Third World countries. All other Members, with the exception of a very few, are not generally anti-Western. Yet, the Soviet bloc representatives maintain a very high profile at the Council and its committees. These representatives work full time on the question of Namibia. They regularly and closely consult and coordinate with SWAPO representatives. The Soviet bloc has the chairmanship of Standing Committee III which reviews all matters pertaining to public information activities on the question of Namibia.

Non-participation, though, cannot by itself explain some of the clearly anti-Western attitudes of the Council. The problem has a more substantive and deeper reason. The basic fact remains that Western Powers, out of concern for their own economic and strategic interests and the fear of the spread of communism, maintain full diplomatic, economic and trade relations with South Africa. Despite Western positions of denouncing South Africa's occupation of Namibia and its policy of racial segregation they argue that the only possible solution is through negotiations and quiet diplomacy. Such attitudes may have

contributed to the prolongation of the conflict. History clearly proves that such prolongation feeds extremism which would eventually endanger the interests of the West.

Third World countries, particularly Africans, denounce the West for collaborating with South Africa. Such collaboration is perceived by them to be an implicit endorsement and support for South Africa's policies. The Western countries' refusal to impose comprehensive economic sanctions on South Africa significantly aggravates this situation, notwithstanding their arguments that sanctions will only lead to further South African intransigence. Thus, even moderate Third World countries tend to believe that condemnation of Western policies on Namibia is legitimized, a situation the Soviet Union understandably welcomes and takes advantage of in its rivalry with the West and also to enhance Soviet interests in Southern Africa.

J. Kaufmann accurately explains the United Nations decision-making through bloc politics. Blocs at the United Nations serve for the exchange of information, adopting common positions and taking joint action. Several delegations, particularly those representing small developing countries do not receive specific instructions from their capitals on every issue at the United Nations. Usually they just follow the common position of the regional group to which they belong.¹⁶⁰ The most effective and largest of these blocs is the African group which represents almost one third of the whole membership of the United Nations. The African group often succeeds in

¹⁶⁰Johan Kaufmann, United Nations Decision Making, (Alphen and Len Rijn, The Netherlands: Sijthof & Noordhoff, 1980), pp. 87-103.

obtaining the full support of yet a larger group to which all of Africa belongs, the Non-Aligned Movement which comprises more than one hundred members.

While the Soviet Union has traditionally courted such groups, the West in general and the United States in particular have failed to employ the basic rules of parliamentary diplomacy to explain their positions to other groups at the United Nations. American diplomacy at the United Nations is a case in point. Former Permanent Representative of the United States to the United Nations, Jean Kirkpatrick, once called it amateurish, incoherent and inept.¹⁶¹ Instead, during her four years in office from 1980 until early 1985, she adopted a "get tough" policy which alienated numerous delegations including some of the countries friendly to the United States.¹⁶² American delegates seem sometimes to forget some basic rules at the United Nations. As Professor Finger, a former United States delegate to the United Nations states "important actions can be taken only by governments, and influence on them can usually be effected by informal conversations and persuasive ear...."¹⁶³ In the absence of a "constructive dialogue, the non-aligned majority will have no incentive to desist from rhetoric invective and sterile resolutions."¹⁶⁴

¹⁶¹Jean J. Kirkpatrick, "The United Nations and the United States," The Heritage Lectures: The United Nations Under Scrutiny No. 15 (New York: The Heritage Foundation, 1982): 26.

¹⁶²See Seymour M. Finger, "The Reagan-Kirkpatrick Policies and the United Nations," Foreign Affairs No. 62210 (Winter 1983/1984): 436-442.

¹⁶³*Ibid.*, p. 438.

¹⁶⁴*Ibid.*, p. 440.

The major political pronouncements of the Council might sound extremist and anti-Western. However, this eventuality was almost inescapable for several reasons. On the one hand, South Africa continued its illegal occupation and repressive policies in Namibia. On the other, the West, particularly the United States, seemed to abdicate its chance to influence the work of the Council, while continuing to advocate the increasingly discredited policy of constructive engagement with South Africa. Western countries also continued their extensive economic, trade and investment collaboration with South Africa which are perceived by most of the world community as an indirect support for South African policies.

Furthermore, as it is the case in several organs of the United Nations, particularly in group politics, radicals control and guide the outcome of the debates. A vocal minority of radicals, through the intimidation of moderates, the indifference of some, and the general frustration of the majority over the impasse in the situation can usually lead the organ to the adoption of extremist positions. This has been frequently the case in the UCN.

In order to address this problem and regain its credibility, several steps should be taken. First and foremost the UCN has to be reconstituted. The Council has to reflect the real power centers at the United Nations in accordance with the principle of equitable geographic distribution. The active participation of at least one or more major Western Powers would have an immediate impact on its orientation and would give the Council a status that it currently lacks.

Also, the membership of the Council from the non-aligned group has to be reconsidered. Some of the major and respectable countries of

this group representing the different trends within it should be admitted instead of some of the indifferent and inactive current members of the Council.

Decision-making process in the Council should continue to be through consensus. At the same time, the majority should realize that proposing and adopting extremist or propagandistic resolutions or pronouncements which have no chance of implementation is worthless. A moderate resolution that has the support and backing of all Members carries more weight.

Furthermore, excesses have to be checked. Travel would have to be kept at the strictly necessary levels. This would apply to the President of the Council, its members and the secretariat staff in all activities of the UNCN.

An analysis of the work of the Council since its establishment shows a mixed balance sheet. Although it has been unsuccessful in achieving South Africa's withdrawal from Namibia, it has continued to keep this goal as a feasible eventuality. The dynamism of the Council in shifting the focus of its work from mere symbolic acts, like the attempt to enter Namibia and administer it against South Africa's opposition, to maintaining political pressure on South Africa and engaging in extensive programs of assistance to Namibians is rather remarkable. This is particularly so in view of the fact that almost ten per cent of Namibians live as refugees in neighboring African countries. The work of the Council represents a unique case not only in advocating the independence of a colony, guaranteeing the rights of its people and protecting its interests until independence, but also in actually preparing the Namibian people to be ready to assume the

responsibility for Namibia upon independence.

The UNCN has clearly several achievements to take credit for in spite of some negative drawbacks and waste. A clear recognition of its role came from an unlikely party when South Africa insisted on the Council freezing its activities as a condition for the initiation of a political settlement of the Namibian question leading to independence. It is true that some of the Council's excesses like travel and waste are inexcusable. As for others such as its extremist pronouncements, the blame has to be shared by other parties too. Nonetheless, the Council has made a significant contribution to the Namibian cause during its almost two decades of existence. The fact that Namibia is still under South Africa's occupation should not belittle the Council's contribution, because "the liberation of Namibia rests ultimately with the Namibian people themselves."¹⁶⁵

¹⁶⁵Rocha, p. 156.

CHAPTER IV

THE MOVEMENT FOR NATIONAL LIBERATION OF NAMIBIA

The focus of this chapter is on the significance of the Assembly's recognition of SWAPO as the sole representative of the Namibian people. By such an action, the General Assembly took sides, even among the internal parties within Namibia and not only on the side of Namibian independence against South Africa. What are the reasons for such an action? Is it legitimate or not? What are the implications of this action for SWAPO and the role of the Assembly itself?

The process of decolonization, which many colonial Powers reluctantly accepted, was stubbornly resisted by some others. This was the case of France in Algeria, Portugal in its African colonies, and South Africa in Namibia. Instead, they tried to tighten their grip over those colonies and responded to nationalistic uprisings by resorting to repressive violence. This attitude forced the peoples of those territories to meet violence with violence as the only means to force their colonizers to recognize their right to self-determination and independence. After long and bloody revolutions that cost both colonial Powers and colonial peoples a tremendous price in human life and material destruction, France and Portugal recognized the historic inevitability to withdraw from their respective overseas colonies. But South Africa continued to occupy Namibia.

When the conflict over South West Africa arose at the United Nations in 1945, it was the Afro-Asian countries that championed the call for its placing under the Trusteeship System and the rejection of South Africa's proposal to incorporate the Territory. Latin American, East European groups and some Western countries supported the Afro-Asian position. However, no authentic Namibian voice was heard by the United Nations until several years later. The first petitioner who came to the United Nations in 1947 to argue on behalf of the people of South West Africa against the incorporation of the Territory into South Africa was an Englishman named Rev. Michael Scott.

Nationalistic feelings and authentic political institutions in South West Africa in the forties were not developed or ripe. This was due to the long history of brutal occupation coupled with a small population and a large territory. Today, SWAPO leads the national liberation struggle for Namibian independence on both military and political fronts. Namibia today also represents a situation pregnant with the potentiality of an East-West conflict.

In my opinion the recognition of the General Assembly of SWAPO as the representative of the Namibian people was valid, logical and legitimate. It was logical because the Assembly had already unequivocally taken the side of Namibian independence and SWAPO was the leading authentic Namibian movement seeking independence by all means including armed struggle, a principle the Assembly had already endorsed. It was also legitimate because it was based upon a similar recognition of the regional organization primarily concerned with the issue, namely the Organization of African Unity. A study of the internal political situation in Namibia would also substantiate the

position of prominence and leadership of SWAPO in the struggle of the Namibian people for independence.

As I shall try to demonstrate in this chapter, the General Assembly's recognition of SWAPO as the sole legitimate representative of the Namibian people and its endorsement of SWAPO's participation in United Nations' meetings and activities have afforded this national liberation movement both legitimacy and concrete support. Such role of the General Assembly is both desirable and in accordance with the purposes and principles of the United Nations Charter.

Today, SWAPO enjoys the political and financial support of the General Assembly in spite of strong reservations of some Member States. SWAPO also plays an active role in determining the outcome of deliberations of United Nations bodies dealing with the question of Namibia.

South West Africa People's Organization and National Liberation Struggle

South Africa, as Germany did before, suppressed by brutal force the repeated uprisings of the indigenous population of the Territory. Several organizations were founded, mostly based upon tribal affiliation, with rather limited objectives such as raising wages. However, by 1966, several organizations have come to realize that there was no way other than military struggle to bring about the liberation of their country from the South African occupation.

SWAPO started as the Ovamboland People's Organization (OPO) in 1958 to oppose the migratory labor systems imposed on the Ovambo tribal laborers by South Africa. In April 1960, OPO was formally

reconstituted as SWAPO under the leadership of Hermanja Toivo, the founder of OPO, and later of Sam Nujoma, who assumed the leadership of SWAPO after Mr. Toivo was detained and sentenced by South African authorities in 1968. The clear objective of SWAPO was to liberate the country from South African occupation. Sam Nujoma remains the President of the movement until today.

SWAPO, with a clear goal of the liberation of Namibia acts on three different, yet complementary fronts. First, SWAPO, on the domestic front inside Namibia, works to marshal popular support for its struggle against the illegal occupation of the Territory by South Africa. Second, SWAPO acts on the diplomatic international front, at the center of which lies the United Nations, in order to mobilize international support for the independence of Namibia. The third front for SWAPO is its armed struggle against South African occupation forces in Namibia. This military front is of primary importance in SWAPO's struggle for independence and it devotes most of its resources to intensify military operations against South African forces.¹⁶⁶

This combination of political and military struggle for independence was crucial in acquiring prominence and leadership in the quest for Namibian independence. SWAPO has developed into an organization with an elaborate structure. It has a central committee based in Lusaka, Zambia; a national executive committee in Windhoek, Namibia,¹⁶⁷ and a military arm, the People's Liberation Army of Namibia (PLAN), which is based in Southern Angola. It has also

¹⁶⁶Interview with T. B. Gurirab.

¹⁶⁷Later renamed "Political Bureau".

established its own women, youth, students and other organizations. The nationalist trade union, the National Union of Namibian Workers (NUNW) is affiliated with SWAPO.

SWAPO's declared objectives are the liberation of Namibia from South Africa's occupation; the establishment of a democratic "people's Government"; the realization of genuine and total independence of Namibia in the spheres of politics, economy, defense, social and cultural affairs.¹⁶⁸ To these ends, SWAPO struggles to mobilize and organize mass support for its goals, to mold and heighten the bond of national and political consciousness amongst the Namibian people, to combat tribalism, regionalism, ethnic orientation and racial discrimination, and eventually to build "a classless, non-exploitative society based on the ideals and principles of scientific socialism."¹⁶⁹ In the field of foreign policy, SWAPO raises the slogans of anti-colonialism, anti-imperialism, and the total emancipation of the African continent.

SWAPO established PLAN in the early sixties. Namibian guerilla fighters received their initial military training in Algeria, Egypt, and Tanzania. Later, SWAPO received, and continues to receive, increasing military assistance from the Soviet Union, Eastern Europe and China. On 26 August 1966, in a clear reflection of its frustration over the failure of diplomatic efforts to obtain Namibian independence, SWAPO "declared war" on South African occupation forces. The

¹⁶⁸SWAPO: Political Programme of the South West Africa People's Organization, adopted by the meeting of the Central Committee, July 28 to August 1, 1976, Lusaka, Zambia, published by the SWAPO Department for Publicity and Information, pp. 5-6.

¹⁶⁹Ibid., p. 6.

independence of Angola in 1975 and the support of its new government of SWAPO's armed struggle, allowed PLAN to obtain permanent bases in Southern Angola for training and sanctuary and, thus, escalate its operations inside Namibia. PLAN maintains its headquarters and bases in Southern Angola from which guerilla fighters infiltrate the borders into Namibia. Most of the military operations of PLAN are concentrated in the northern part of Namibia. These operations include attacks on South African targets, white settlers, and black Africans collaborating with South Africa.

SWAPO recruits guerilla fighters mainly from Namibian refugees in Angola and other neighboring countries¹⁷⁰ and also from Namibians in the Territory, particularly the Ovambos. SWAPO's participation in the supervision of United Nations assistance programs to Namibian refugees obviously helps it in this regard. In most cases, apart from patriotic motivations, joining the cadres of PLAN entails opportunities for material advancement for the youth involved. However, there have been some reports about involuntary forms of recruitment such as "destabilizing traditional or existing authority arrangements (by means of assassinating chiefs and village headmen), coercing through terror and kidnapping young people."¹⁷¹ However, most guerillas are recruited from among refugees and students at SWAPO schools in Angola

¹⁷⁰The number of Namibian refugees is currently estimated by the Office of the United Nations High Commissioner for Refugees at 75,000 with 70,000 in Angola, 4,300 in Zambia, and another number in Botswana. United Nations General Assembly Document A/CONF.120/7-A/Ac.131/94 of 31 March 1983, p. 10.

¹⁷¹Thomas H. Henricksen, "Namibia: A Comparison With Anti-Portuguese Insurgency?," The Round Table No. 278 (April 1980): 188.

and Zambia, who are politically indoctrinated. It is estimated that PLAN's guerilla fighters number eight to twelve thousand.

SWAPO claims that it has "scored many successes against South African occupation forces in Namibia" and inflicted heavy damage on these forces."¹⁷² The 1982 annual report of PLAN, for example, states that during that year it carried out 802 military operations against South African forces in Namibia. Those operations, according to the report, included attacks on South African military positions, demolition of military, economic and communications installations, land mine destruction of vehicles and armored cars, ambushes of troops and raids on military targets. The report claims that these operations resulted in killing or wounding 2,865 "enemy" soldiers, the capture of 230 "enemy" agents and the destruction of a large number of military equipment.¹⁷³ It is obvious that these figures are inflated for propaganda purposes.

SWAPO also claims that South Africa maintains an occupation force of 100,000 soldiers and mercenaries in Namibia.¹⁷⁴ South Africa claims that its forces in Namibia number 20,000 soldiers. The real figure should be somewhere in between. In an attempt to minimize its casualties in this guerilla warfare and also in order to give the impression of an independent Namibian defense forces, South Africa

¹⁷²United Nations General Assembly Document A/CONF.120/7-A/Ac.131/94 of 31 March 1983, Ibid., p. 12.

¹⁷³The Military Situation In and Relating to Namibia, Report of the United Nations Council for Namibia prepared for the International Conference In Support of the Struggle of the Namibian People for Independence held in Paris from 25 to 29 April 1983, United Nations General Assembly Document A/CONF.120/3-A/Ac.131/91 of 28 March 1983, p. 20.

¹⁷⁴Ibid., p. 13.

started a policy of "Namibianization" of the war. This was to be achieved through the recruitment of special counter-insurgency forces from among black Namibians themselves. Also, South Africa introduced obligatory conscription for all Namibians aged 16-25 in January 1981.¹⁷⁵

Notwithstanding the conflicting figures, the mere survival of a national liberation movement as a military force is in itself an achievement. The goal can never be to achieve a military victory, but rather to persevere and remain as a costly and demoralizing force for the colonial Power. Guerilla warfare can make an occupation costly both in human and material terms. Besides, it forces the occupation authorities to adopt strict security measures that inevitably lead to the alienation of the local population.

Most observers believe that SWAPO's armed struggle is low-key. However, it has succeeded in several instances in inflicting human and material losses on South Africa's occupation authorities. Those authorities have been forced lately to impose new measures restricting access to the north of the country in an area stretching 600 miles along Namibia's borders with Angola and Zambia and 300 miles down its frontier with Botswana.¹⁷⁶

In its resolution 2248 (S-V), establishing the United Nations Council for South West Africa, the General Assembly entrusted it, inter alia, with the task of administering the Territory "with the maximum possible participation of the people of the Territory." Yet, the

¹⁷⁵Namibia in the 1980s, (London: Catholic Institute for International Relations and the British Council of Churches, 1981) p. 10.

¹⁷⁶New York Times, 11 March 1985, p. 7.

participation meant by this resolution was based theoretically on the assumption that the Council would be based in South West Africa and actually administer the Territory. But, this kind of participation has never materialized.

The General Assembly's Fourth Committee has been listening to petitioners from the Territory for years. Although those petitions were considered within the framework of the goal of decolonization, they mostly focused upon specific policies of South Africa against political activities in the Territory, labor conditions or other communal or demographic problems. However, General Assembly resolutions on petitions concerning Namibia took on more of a political cast every year.¹⁷⁷

SWAPO's ascendance to its current position as an observer at the General Assembly representing the Namibian people was long and arduous. In the sixties, SWAPO participated in the deliberations of the Fourth Committee as a petitioner among others. It was not until 1972, in its resolution 3031 (XXVII), that the General Assembly started to invite, in consultation with the OAU and through it, representatives of SWAPO to participate in an observer capacity in its consideration of the Namibian question.¹⁷⁸ Such invitations marked the shift of the majority of the General Assembly from the hitherto futile diplomatic efforts to secure Namibian independence towards the eventual endorsement of armed struggle which SWAPO advocated and waged.

¹⁷⁷See relevant Verbatim Records of the Fourth Committee and Council for Namibia and Special Committee on Decolonization and General Assembly resolutions.

¹⁷⁸United Nations General Assembly resolution 3031 (XXVII) of 28 December 1972.

The Assembly, in inviting SWAPO in particular to participate in the consideration of the Namibian problem, was following the lead of OAU. The Namibian problem was primarily an African issue, and thus it was only normal and in accordance with the Charter that the Assembly should take the views of the regional organization involved into consideration.

The OAU was established in May 1963 in Addis Ababa, Ethiopia. The OAU is a regional organization which encompasses all independent African countries with the exception of South Africa. When it was born, it had thirty-three members. Today, its membership has increased to fifty. This expansion was due to the historic process of decolonization of the African continent.

The OAU has always supported the struggle for independence of African national liberation movements. This support emanates from the Charter of the Organization itself. Article II para I(d) binds the OAU "to eradicate all forms of colonialism from Africa." Furthermore, Article III para 6 commits all the members of the Organization to solemnly adhere to the principle of "absolute dedication to the total emancipation of the African territories which are still dependent." It is not surprising that the OAU has taken such a strong stand on the question of decolonization since most of its members have suffered from colonialism.

In order to translate this principle position into real practical support to African national liberation movements struggling for independence, the Organization set up a Special Fund to be raised by voluntary contributions of Member States. This Fund was to supply the necessary practical and financial aid to these movements. A

coordinating committee of limited membership, which became known as the Liberation Committee was established to propose the apportionment of the Fund among OAU Member States and to harmonize the assistance to African national liberation movements. The Committee was composed of nine members, then expanded to seventeen. The Committee has its headquarters in Dar-es-Salaam, United Republic of Tanzania.

The Committee works out a strategy for the OAU support of the struggle for liberation and reports to the Council of Ministers, which makes its recommendations to the highest body of the Organization, the Assembly of African Heads of State and Government.¹⁷⁹

Since the beginning, OAU was faced with the problem of internal strains among nationalist movements in all the dependent Southern African territories. The problem forced the Organization to determine the legitimacy of such movements and which of them should be recognized and assisted by the OAU. The Organization launched numerous appeals to different movements in each territory to unite and coordinate their efforts against the alien occupation. However, due to personality clashes, clashing ambitions, and differences in strategies, those appeals were not heeded.¹⁸⁰

Thus, the OAU decided in 1969 to lend its support to those movements which, in the judgment of the Organization, were waging a genuine armed struggle inside their territories.¹⁸¹ Based on this

¹⁷⁹Leonard T. Kapungu, "The Organization of African Unity's Support for the Liberation of Southern Africa," paper presented at the Sixteenth Annual Meeting of the African Studies Association, Syracuse, October 31 - November 3, 1973, pp. 2-4.

¹⁸⁰Ibid., pp. 4-5.

¹⁸¹Organization of African Unity Document CM/Res. 75 (VI), para. 4.

criterion and after field visits by the Liberation Committee, the OAU sided with SWAPO against the South West Africa National Union (SWANU) and recognized the former as the sole legitimate representative of the Namibian people.¹⁸² Consequently, SWAPO participated in the OAU meetings in an observer capacity. This recognition gave SWAPO an important boost in its position internally and internationally. In the United Nations, SWAPO became the most prominent spokesman for the Namibian people. Thus, the General Assembly followed the OAU decision and eventually recognized SWAPO as the sole legitimate representative of the Namibian people and granted it a permanent observer status. In September 1979, the Movement of Non-Aligned Countries went even further and granted SWAPO a full member status.

In a clear reflection of the increasing militancy of the anti-colonial majority, the General Assembly during its twenty-eighth session, by resolution 3111 (XXVIII), recognized that "the National Liberation Movement of the South West Africa People's Organization is the authentic representative of the Namibian people."¹⁸³ The General Assembly also expressed its support for the efforts of SWAPO to strengthen national unity, in a clear reference to the fact that SWAPO was not the only political organization in the Territory. And the General Assembly continued to request all states, United Nations specialized agencies, as well as the non-governmental organizations

¹⁸²Today, SWANU represents only a fraction of the ethnic minority, the Hereros. See Gerhard Töttemeyer, "Namibia Today," The Namibian Review No. 17 (May/June 1980): 14.

¹⁸³General Assembly resolution 3111 (XXVIII) of 12 December 1973, para 2. The resolution was adopted by a majority of 107 votes with 2 against (Portugal and South Africa) and 17 abstentions.

concerned, "to render to the Namibian people, in coordination with the Organization of African Unity, all moral and material assistance necessary to continue their struggle for freedom and independence."¹⁸⁴ Furthermore, the General Assembly decided to defray the expenses of a representative of SWAPO when accompanying missions of the Council for Namibia to meetings, bodies and conferences whenever the rights and interests of Namibia are concerned.¹⁸⁵ However, the Fourth Committee continued to hear petitioners, other than SWAPO, from Namibia.

During the twenty-ninth session of the General Assembly, its resolution 3295 (XXIX) went a step further. After noting with satisfaction the progress of the struggle of the Namibian people in all its forms for national liberation under the leadership of SWAPO, the General Assembly reiterated its position that SWAPO is the authentic representative of the Namibian people and again supported its efforts to strengthen national unity. Furthermore, it authorized adequate financial provision in the budget of the Council for Namibia to cover the expenses of an office for SWAPO in New York, "to ensure the due and proper representation of the people of Namibia through the South West Africa People's Organization at the United Nations."¹⁸⁶ The same

¹⁸⁴Ibid., para 14.

¹⁸⁵Ibid., para 17.

¹⁸⁶United Nations General Assembly resolution 3295 (XXIX) of 13 December 1974 on the Question of Namibia, Part III, para 2. This practice has continued since then. The regular budget of the UN for 1984 appropriated US\$ 598,200 for SWAPO's office in New York. SWAPO is the only national liberation movement that receives such assistance. This is due to the unique United Nations responsibility for Namibia and the inability of SWAPO and its supporters of neighboring African states to provide enough funds for this purpose.

resolution decided again to defray expenses of a SWAPO representative accompanying any mission approved by the Council for Namibia. The resolution was adopted by 112 votes to none, with 15 abstentions, mostly Western states.

The General Assembly during its thirty-first session took a further step in endorsing SWAPO. In its resolution 31/146 of 20 December 1976, the General Assembly recognized "that the National Liberation Movement of Namibia, the South West Africa People's Organization, is the sole and authentic representative of the Namibian people."¹⁸⁷ Furthermore, it decided to increase the financial provisions in the budget of the Council for Namibia to finance the office of SWAPO in New York. More importantly, the General Assembly, in a separate resolution, extended a standing invitation to SWAPO to participate in General Assembly sessions as Permanent Observer.¹⁸⁸

This resolution has clearly enhanced the standing of SWAPO. Furthermore, more importantly, from the constitutional perspective of the international organization, it represented the climax of the process of change in the interpretation of the Charter provisions on membership of the United Nations. Practically, SWAPO, according to this resolution, was entitled to practice almost all the rights and privileges granted to observer states. It was quite clear that the

¹⁸⁷United Nations General Assembly resolution 31/146 of 20 December 1976 on the Situation In Namibia Resulting From the Illegal Occupation of the Territory by South Africa, para 2. This resolution was adopted with a majority of 110 votes with 6 against, and 13 abstentions.

¹⁸⁸United Nations General Assembly resolution 31/152 of 20 December 1976. This resolution was adopted by a majority of 115 votes with none against and 13 abstentions. See Annex IV.

United Nations that granted SWAPO an observer status was not the same United Nations of 1945.

In subsequent resolutions, the General Assembly reiterated its position that SWAPO was the sole and authentic representative of the Namibian people. It also continued to support the armed struggle of the Namibian people, led by SWAPO, to achieve national independence.¹⁸⁹

The ascendance of SWAPO to the observer status in the General Assembly reflects and is correlated to the Assembly's failure to achieve Namibian independence. The frustration over the failure to solve the question by political and legal means convinced the majority of the General Assembly and Namibians themselves that South Africa would not withdraw from the Territory willingly. Thus the Assembly endorsed the only organization in Namibia which advocated and actually resorted to armed struggle as the only means to liberate Namibia from South Africa's occupation.

SWAPO: Permanent Observer in the General Assembly

The impact of the transformation of the United Nations was not confined to the attitude and pronouncements of the General Assembly on specific questions of decolonization. This impact spread over the various activities of the United Nations and its structure. An

¹⁸⁹See United Nations General Assembly resolutions 32/9 D of 4 November 1977, paras 10 and 11; S-9/2 of 3 May 1978, para 14; 33/182 A of 21 December 1978, paras 3 and 19; 34/92 G of 12 December 1979, para 12; 35/227 of 6 March 1981, para 13; and 36/121 A of 10 December 1982, paras 2 and 4.

unprecedented result of such impact was granting national liberation movements a formal status at the General Assembly in the capacity of an observer. Although the observer status at the Assembly was not new, granting it to a non-state entity represented a new and wider interpretation of the Charter provisions on membership.

The Charter provisions on the question of membership say nothing about any type of involvement with the United Nations other than that of states. Nevertheless, these provisions do not in any way preclude such involvement in the work of the Organization by any other state, or for that matter any international entity, in a different capacity other than that of a full member.

Switzerland was the first State to acquire an observer status in the United Nations.¹⁹⁰ Switzerland has long adopted a foreign policy based on the principle of "permanent neutrality". This status of neutrality was recognized by several multilateral treaties and unilateral declarations.¹⁹¹ Yet, this special status did not prevent Switzerland from joining the League of Nations as a full Member on the understanding that such membership was not incompatible with

¹⁹⁰The number of non-member states having permanent observer status at the United Nations grew by 1977 to 16. These States, according to the date of acquiring the observer status are: Switzerland, Austria, Italy, South Korea, Finland, Japan, West Germany, South Vietnam, Spain, Monaco, Holy See, Bangladesh, East Germany, North Korea, Guinea Bissau and North Vietnam. Most of these countries were later admitted as full members. North and South Vietnam were united and joined the United Nations as a full Member in 1977. Currently, observer States are Holy See, Monaco, North Korea, South Korea, and Switzerland. See E. Suy, "The Status of Observers in International Organizations," Recueil Des Cours: Collected Courses of The Hague Academy of International Law, 2 (1979): 91 and footnotes p. 162.

¹⁹¹The Swiss permanent neutrality was recognized by the main European Powers in the Act of 20 November 1815 and subsequent international instruments. See Suy, pp. 91-92.

neutrality. The League accepted this position and recognized certain neutrality rights for Switzerland.¹⁹²

With the establishment of the United Nations, Switzerland expressed its interest in its work and sought admission to its membership provided the United Nations granted it the special status it had enjoyed in the League. Thus, in 1946, Switzerland established a liaison office with the United Nations within the Swiss Consulate-General in New York. The functions of the office were to follow the work of the United Nations and to maintain contact with the Organization concerning establishing its European office in Geneva. Also, Switzerland applied for admission to the International Court of Justice and Specialized Agencies of the United Nations.¹⁹³ In 1948, Switzerland converted the liaison office into an autonomous mission under a Permanent Observer. This did not require the approval of the Security Council or the General Assembly. Rather, the Secretary-General, in this case as in subsequent similar cases, had the authority to grant observer status without the formal procedure of receiving and examining the credentials of the head of the mission as is the case with Member States. As Eric Suy, the former Legal Counsel of the United Nations from 1974 to 1983, comments, "this authority, of course, is ceremonial, and there seems to be no authority for the Secretary-General to deny such a status to a non-member State. This procedure seems to have been accepted by the General Assembly."¹⁹⁴

¹⁹²Ibid., p. 92.

¹⁹³Switzerland was admitted as a party to the Statute of the Court in 1948 and later to several Specialized Agencies.

¹⁹⁴Suy, pp. 155-156.

The term "observer" implies a rather passive role. An observer might be allowed to attend certain open meetings to follow the deliberations and take note of the conclusions. Even this narrow interpretation of the term requires giving the observer access, i.e., "the authoritative attendance in organizations, areas and facilities which are provided for the process of decision-making."¹⁹⁵ Such an access is an elementary right an observer acquires automatically upon admission.

The General Assembly has a general, open and encompassing membership. It consists of "all Members of the United Nations."¹⁹⁶ Hence, it was natural that the Assembly would be the main forum where observers have free access to its meetings. From the very beginning, Switzerland set the precedent when it attended as observer both the General Assembly's initial session in London and its first session in New York. Also, on numerous occasions, observers were granted access to the Main Committees of the General Assembly by special invitations.

The role, functions and activities of observers have expanded significantly since Switzerland joined the United Nations as observer. This expansion took place mainly through practice and precedents. The initial expectation of an observer was just to be present to follow deliberations, and it took many years before observers acquired the right of participation in substantive debates by making statements. In the last eight years, the General Assembly has given greater freedom to observers to make statements in its plenary meetings.

¹⁹⁵Ibid., p. 103.

¹⁹⁶Article 9 para 1 of the United Nations Charter.

This participation was limited to particular issues.¹⁹⁷

However, the trend has been to give observers the right to participate in the substantive debates in the Main Committees and even committees of limited membership.

Very recently, the participation of observers in the main organs of the United Nations has been expanded into areas that were traditionally reserved for full Member States. For example, they have been granted the right to make statements in reply to statements made by other delegations.¹⁹⁸ Also, observers can provide the Secretariat with written documents to be distributed to other delegations. However, there are still certain areas such as submitting proposals, participation in procedural issues, raising points of order that are still reserved for full Member States. Naturally, due to their status, observers have no right to vote, and thus, no right to explain the vote.

National liberation movements have had a long association with the United Nations in general and the General Assembly in particular. Petitioners from dependent territories have long been allowed to address the various committees dealing with questions relating to their respective territories. Also, the General Assembly's Fourth Committee has often listened to such petitioners in their personal capacities. Sam Nujoma, the current President of SWAPO, was one of those

¹⁹⁷This participation was mainly limited to the question of elections of Judges for the International Court of Justice and amendments to its statutes. Switzerland again has been the lead non-member State to set the precedent in this regard. For details, see Suy, pp. 133-134.

¹⁹⁸Western representatives objected to this but were overruled by the President of the General Assembly, see United Nations General Assembly Document A/131/PV9, para 154.

petitioners who came to speak on behalf of Namibians in the early sixties. In the sixties, individuals from these territories were often included in delegations of friendly countries, thus acquiring diplomatic status and an opportunity to speak about the conditions in their countries even if they were speaking as representatives of other countries. Representatives of national liberation movements in African dependent territories were included in African delegations and Palestinian individuals were included in delegations of sympathetic Arab countries. Yet, national liberation movements had not acquired any formal organizational status in the United Nations.

In a move which was hailed in some quarters as a victory for anti-colonial advocates and strongly criticized by others as a contradiction to the Charter of the United Nations, the General Assembly during its twenty-ninth session adopted resolution 3210 (XXIX) of 14 October 1974 in which it invited the Palestine Liberation Organization (PLO), as the representative of the Palestinian people, "to participate in the deliberations of the General Assembly on the question of Palestine in plenary meetings." Previously, the PLO had the right to participate in meetings of the main committees of the Assembly but not in the plenary. During the same session, the Assembly went a step further and granted the PLO a permanent observer status and the right to "participate" in this capacity "in the sessions and the works of the Assembly," and "in the sessions and the work of all international conferences convened under the auspices of the General Assembly...."¹⁹⁹

¹⁹⁹United Nations General Assembly resolution 3237 (XXIX) of 22 November 1974. The resolution was adopted by a majority of 95 votes, with 17 against, and 19 abstentions.

The General Assembly, during the same session, also granted liberation movements recognized by the OAU an observer status in the United Nations system. This applied to the African National Council (ANC) of South Africa, Pan-African Council of Azania (PAC), Patriotic Front of Zimbabwe, and South West Africa People's Organization (SWAPO).

After several years of participation in the work of the General Assembly's Fourth Committee during its consideration of the item on Territory of South West Africa and the work of the United Nations Council for Namibia, the General Assembly during its thirty-first session, adopted resolution 31/145 of 20 December 1976, in which it recognized SWAPO as "the sole and authentic representative of the Namibian people." Furthermore, as mentioned earlier, the Assembly adopted another resolution during the same session, in which it granted SWAPO a permanent observer status and invited it "to participate in the sessions and the work of the General Assembly" and "in the sessions and the work of all international conferences convened under the auspices of the General Assembly...."²⁰⁰

This recognition of national liberation movements and the General Assembly's invitation to them to participate in its work, without limiting this participation to questions of decolonization is rather significant. Thus, E. Suy states that this position of the General Assembly reflects the perception of these movements "as future authoritative governments" which "will be responsible for the social and economic well-being of their people. Hence, it seems appropriate

²⁰⁰United Nations General Assembly resolution 31/152. The argument about the validity of this decision by the Assembly is discussed later in this chapter.

to allow them to participate in the deliberations of these issues."²⁰¹ The admission of national liberation movements to the United Nations as observer could thus be perceived as a step towards the achievement of universality for the United Nations. It also represents the determination of the Assembly to pursue the process of decolonization until its completion and to ensure the respect for the right of all peoples to self-determination.

This view is confirmed by the practice of the United Nations and the privileges national liberation movements enjoy in their capacity as observers. Contrary to other types of observers, national liberation movements were granted the status of observer by a General Assembly resolution which gave them in each case a very wide scope of access and potential participation. In the case of non-member States, this access and participation had to develop based upon the Swiss precedent and subsequent practice. In the case of inter-governmental organizations, the resolutions granting them observer status use rather limiting language.

Thus, SWAPO participates in both plenary meetings of the General Assembly and its Main Committees. This participation is not confined to the debate on the question of Namibia. It can make statements on any agenda item. However, as a sign of the wise diplomacy of SWAPO, it has traditionally avoided the involvement in controversial issues that would force it to take sides and thus lose some of its supporters. Other liberation movements recognized by the

²⁰¹Suy, p. 100.

OAU have access only to the Main Committees.²⁰²

Subsidiary organs of the General Assembly and specialized agencies have followed its course and, on numerous occasions, provided access to their meetings for national liberation movements. United Nations Children's Fund (UNICEF), for example, amended its Rules of Procedure in order to explicitly provide such access. Also, any national liberation movement, when participating in the deliberations of the Economic and Social Council (ECOSOC), enjoys an equal footing with any state, not member of the Council, except for the right to submit proposals.²⁰³ National liberation movements can also participate in the relevant regional commissions and in the functional commissions.

Participation by observers of national liberation movements in procedural issues seems to be less clear. These observers have not been granted the right to make statements on procedural issues, nor raise points of order. Obviously, since they have no right to vote, they do not have the right to explain the vote. However, in sub-committees which deal mainly with questions of primary concern to such observers, they have been granted greater flexibility in

²⁰²With the independence of Zimbabwe in 1980 and granting a permanent observer status to SWAPO, this category includes only ANC and PAC. This difference in status is a reflection of the fact that these two organizations have not yet reached the status achieved by both the PLO and SWAPO in their struggle for independence for their respective peoples and also of the differences between the situation in the occupied Palestinian territories and Namibia on one hand and the situation in the Republic of South Africa on the other.

²⁰³Rule 72 of the Rules of Procedure of ECOSOC provides that a State, non-member of the Council, whether Member of the United Nations or not, when invited to participate, "may submit proposals which may be put to the vote on request of any Member of the body concerned."

participating in procedural debates, in raising points of order, and even in actively participating in the process of decision-making when it is based on consensus rather than formal vote. The work of the UNCN and SWAPO's participation in it substantiate this trend.

Representatives of national liberation movements, with an observer status in the Assembly, have been consistently granted entry visas to the host country. The United States, as the host country, raised no question about the admission of those representatives to its territory. Thus, initially, they were granted a C-2 visa, which poses strict limitations on the functions and movements of such representatives beyond their participation in the General Assembly sessions. The United States, later, unilaterally changed the visa granted to representatives of national liberation movements in 1976 to a B-1 visa which gives them functional immunity, more freedom of movement and is easily renewable every six months.²⁰⁴

SWAPO representatives, along with representatives of other national liberation movements, enjoy free access to informal arenas at the United Nations. Their names are also included in the "Blue Book". They also receive documents issued and distributed by the United Nations, though in smaller quantities than representatives of Member States. More importantly, national liberation movements have received financial assistance from the United Nations since as early as the twenty-seventh session of the General Assembly.

National liberation movements, including SWAPO, have also been

²⁰⁴Suy, pp. 117-118. However, the representative of the PLO is granted a B-1 visa for a single entry with severe time and movement limitations.

granted the right to participate in the deliberations of the Security Council. Rule 39 of the Provisional Rules of Procedure of the Security Council provides for such access. However, in the case of the PLO, the Council has invited it to participate in its meetings in an unprecedented manner equal to that conferred when a Member State was invited to participate under Rule 37. At the beginning of every Security Council meeting in which the PLO wishes to participate, its participation in this capacity has been granted by a procedural vote.

SWAPO and other national liberation movements have been invited to participate as observers in the deliberations of international conferences, held under the auspices of the United Nations or its specialized agencies as well as other conferences. In almost every resolution by the Assembly to convene an international conference, there is a provision to invite national liberation movements recognized by regional organizations concerned.

SWAPO participates in the work of the UNCN as an observer. Yet, its informal role in the Council's decision-making process is undeniable. Usually, members defer to it on almost any question. SWAPO sometimes even resorts to "gentle arm twisting" of some delegations to convince them to go along with its positions. Its opinions are always crucial whenever there is any disagreement within the Council. Members explain this as normal since the Council is supposed to serve the interests of the Namibian people, and SWAPO is their representative. In the meeting of the Council, its representative states that he feels like "a full ambassador for Namibia without a vote."²⁰⁵ Members of the Council, including those from

²⁰⁵Interview with T. B. Gurirab.

Western countries concur with this statement.

SWAPO's participation in the work of the UNCN has allowed the Council to keep pace with developments in the Territory itself, as the organization is most familiar with such developments. This participation also gives credibility to the Council itself, as it reflects the indigenous views of the Namibian people, which help direct the Council's work towards the achievement of the goals of the Namibian people.

Granting SWAPO a permanent observer status has various political implications. This official and formal status gave SWAPO an opportunity, in a dignified way, to interact with representatives of different countries. It also gave it a forum to address the international community at large and world public opinion. This emanates from the right to participate fully in the work of the General Assembly and related organs with a clear identification as the representative of the Namibian people. Furthermore, representatives of SWAPO can and do request to meet with the Secretary-General to discuss the situation in Namibia. Finally, and maybe most importantly, gaining a permanent observer status has tremendously enhanced its diplomatic standing both at the international scene and inside Namibia itself. It bestowed an undeniable legitimacy on the movement. Sam Nujoma, President of SWAPO has since met Heads of State and Prime Ministers of various Western countries. In most Non-aligned and Eastern European countries, he is received as a Head of State.

The position of prominence of SWAPO in the UNCN has not always been a blessing for the Movement. On several occasions, members of the United Nations Secretariat have sought to obtain its support in their

disputes with other members of the Council or the Secretariat. In numerous cases, pressure was brought to bear on SWAPO by governments in order to support their representatives in the Council. This situation has forced SWAPO to reluctantly take sides in conflicts, sometimes personal conflicts, that have nothing to do with the struggle for independence. A prime example of such situation is the traditional personal conflict and rivalry between the President of the Council and the Commissioner.

There is no doubt that granting observer status to SWAPO has also enhanced its legal standing. This status was bestowed on SWAPO after it had already established itself as the national liberation organization speaking and acting for its own people. The OAU recognition of it in 1969 was the watershed in this regard. SWAPO had also been participating on behalf of the Namibian people in international affairs prior to gaining the observer status at the Assembly. Although its leaders realized that independence could be achieved only through their own political and military struggle inside Namibia, they also realized the need for the maximum achievable international support. Hence, SWAPO sought and acquired formal recognition from a large number of Third World and Socialist countries as the representative of the Namibian people. It is clear that SWAPO has acquired a recognition of its international personality, though arguments rage over the degree of such personhood.²⁰⁶

When SWAPO started its armed struggle for independence, the

²⁰⁶Henry J. Richardson, "Constitutive Questions In the Negotiations for Namibian Independence," The American Journal of International Law 78 (January 1984): 117.

right of the Namibian people to self-determination had been established. The Assembly in its revocation of the Mandate had ascertained the international commitment to the Namibian people's right to territorial sovereignty and independence, in a legally defined population and territory.

Thus, granting SWAPO observer status in the Assembly as a "proto state" was a recognition by the international community of the standing which SWAPO had achieved. It was in a way an ascertainment of a fact. Yet, it tremendously enhanced the diplomatic and legal standing of SWAPO and opened channels of communications to almost all members of the world community that were formerly unattainable. The ascendancy of SWAPO at the United Nations was generally achieved within the framework of observer status which had been evolving for several decades. Yet, the granting of this status to a non-state entity was unprecedented. Thus, today SWAPO, along with the PLO enjoy a unique position at the United Nations which entitles them to an extensive degree of participation in the Organization short only of full membership.

In the case of SWAPO, granting it such a status was yet another manifestation of the new majority not to limit itself to the conventional interpretation of the Charter provisions. This majority realized the limitations of the General Assembly and tried to focus upon those areas where it can make its votes count. A decision by the Assembly to grant the observer status did not need the recommendation of the Security Council as is the case for the admission of a new Member State. So, the Western opposition to this action could not undermine it. This was yet another success for the majority in their attempt to mobilize the United Nations machinery behind their goals.

The success of advocates of Namibian independence in mobilizing the United Nations machinery behind the struggle of the Namibian people for independence could be attributed to several factors. First, the fundamental change in the complexion of the world Organization, resulting primarily from the great influx of newly independent states. Those new states, due to their own history of falling under European colonialism, vocally expressed an automatic support for SWAPO and sympathy to its cause. Second, the major evolution of the Organization itself insofar as its orientations are concerned. These orientations have dramatically shifted from focusing upon issues of concern to the West to issues that constitute the primary preoccupation of the new majority of the United Nations, particularly the achievement of universal decolonization and the elimination of all forms of racial discrimination. Third, the gradual de facto amendment of Charter provisions through the broad and flexible interpretation of its provisions. Such interpretation provided, for example, the granting of a permanent observer status to national liberation movements, namely the PLO and SWAPO. Evidently, this was almost inconceivable at the San Francisco Conference of 1945 where the United Nations Charter was drafted in its final form. Fourth, the clever, persistent and shrewd diplomatic strategy and means adopted by SWAPO and implemented by its highly qualified and capable representatives at the United Nations.

Namibia: The Internal Political Balance

The decision of the General Assembly to recognize SWAPO as the sole representative of the Namibian people was disputed by several

parties, primarily South Africa, some Western countries and a few internal parties in Namibia. However, an analysis of the domestic political balance in Namibia demonstrates that such recognition was valid and legitimate.

With the end of Portuguese colonial rule in both Angola and Mozambique in 1975, South Africa realized that the independence of Namibia was inevitable. However, it was determined not to let such independence lead to the establishment of a radical state at its borders under the leadership of SWAPO which would deny it access to the mineral resources and maybe, more importantly, would have grave repercussions as far as the internal situation in South Africa itself was concerned. Thus, the optimum solution for South Africa was to establish a friendly, strong and ethnically based government in Namibia. Hence, South Africa's search for a substitute for SWAPO.

South Africa's attempts to create a client party in Namibia as a substitute for SWAPO led to the establishment of a multi-racial alliance party which came to be known as the Democratic Turnhalle Alliance (DTA). It encompassed a small splinter white group and several small moderate parties. The main white political organization in the Territory, the South West Africa National Party (SWANP), refused to join the DTA as it considered the latter a threat to its exclusive power and privileges. A minority of its members did not agree with this position, broke with SWANP, constituted the all-white Republican Party and joined DTA. The leader of this party, Dirk Mudge, became the leader of DTA. The remainder of SWANP, along with few black representatives, established the Action Front for the Retention of the Turnhalle Principles (AKTUR) which continue to oppose any reforms to

apartheid policies and legislation in Namibia.²⁰⁷

In December 1978, South Africa continued its efforts to legitimize the DTA and, thus, unilaterally called an election in Namibia in which neither SWAPO nor the major moderate black parties, Namibian National Front (NNF) and SWAPO Democrats, participated. As expected, DTA won an overwhelming majority of the Constituent's Assembly's seats. In May 1979, South Africa converted this Assembly into a "National Assembly" with limited powers for internal self-government. The leader of DTA, Mr. Mudge, also headed the Namibian Council of Ministers.

In 1982, DTA faced defections of several of its component parties. At the same time, tensions were building between Mr. Mudge and the South African Administrator-General. Finally, in January 1983 Mr. Mudge resigned. This led to the dissolution of the Council of Ministers. South Africa responded by terminating the National Assembly and resumed direct rule of the Territory.²⁰⁸

There are more than forty political parties in Namibia. This reflects the wide diversity of racial and ethnic groups in the Territory. Nonetheless, most of these parties have limited racial or ethnic following. Among these minor parties, the principal non-white ones are SWANU and the SWAPO Democrats, a small dissident group from

²⁰⁷In addition to AKTUR and the Republican Party, there is an extreme right wing white party called the National Party. For further details of the internal politics of Namibia, see Colin Legum, The Western Crisis Over Southern Africa: South Africa, Rhodesia, Namibia (New York: Africana Publishing Company, 1979), pp. 181-190.

²⁰⁸"Namibia: The Crisis in United States Policy Toward Southern Africa," a study prepared by Trans Africa and 23 other non-governmental organizations in the United States, annexed to United Nations Security Council Document S/15781 of 23 May 1983, p. 9.

SWAPO that essentially shares the same political objectives of SWAPO but opposes its methods.²⁰⁹

It is difficult to determine the degree of support SWAPO has among the local population. SWAPO has its ethnic roots and backing mainly from the Ovambo tribe which constitutes 46 per cent of the total population.²¹⁰ Some members of the other ethnic groups have traditional suspicions of the Ovambos and perceive their predominance in SWAPO as a threat. Also, South Africa has long tried to promote traditional leaders as a counterbalance to SWAPO. Besides, it seems that the apparent radicalism of SWAPO's public ideology has alienated some sectors of Namibians. Nevertheless, there is almost an agreement among analysts of the internal situation in Namibia that SWAPO enjoys considerable, if not majority, support amongst the "non-white" population as the major historic nationalist movement.²¹¹ SWAPO's advocacy of democratic pre-independence elections seem to confirm its confidence in the support of the population in the Territory.

The fact that SWAPO still operates a legitimate, though harassed internal wing inside Namibia, has permitted the movement to

²⁰⁹Spicer, p. 407.

²¹⁰The total population of Namibia is estimated at a little over one million, out of which 88.4 per cent are blacks, 7.5 per cent are whites, and 4.1 per cent are coloreds. The Ovambos constitute the largest ethnic group in the Territory. The other main groups are the Kavangos, 9.3 per cent; the Hereros, 7.7 per cent; the Damaras, 7.6 per cent; the Namas, 4.9 per cent; and others. See Republic of South Africa, Department of Finance, Windhoek Advertiser, May 26, 1982 and Demographic Study of Namibia, United Nations Office of the Commissioner for Namibia, New York, August 1983.

²¹¹See for example Spicer; Töttemeyer; and van der Vyver, Dugard and Serfontein, South West Africa/Namibia: A Symposium (Braamfontein: The South African Institute of International Affairs, 1976), pp. 16-18.

maintain political links with the population. There are signs that this wing exerts some moderating influence over the hardline external leadership. Christian churches also widely support SWAPO.

SWAPO has advocated an independent Namibia where both blacks and whites would enjoy equal rights and equal duties. In the words of its Permanent Observer to the United Nations, SWAPO is a national liberation movement "under which all the Namibian people, regardless of their tribe, religious affiliation, or race are united in the common pursuit of liberating their country and establishing a democratic government."²¹²

However, there are voices inside Namibia itself and outside which contest the choice of SWAPO as the "sole and legitimate representative" of the Namibian people. Several of the political parties inside the Territory are bitterly opposed to SWAPO and condemn its policies and methods. Some have argued that the recognition of SWAPO as the sole representative of Namibia has undermined Namibian unity and that Namibians were "not allowed to choose or elect their own leaders."²¹³

South Africa and many Western analysts argue that SWAPO's leaders are Marxists. The evidence they present to support this argument is that "the organization depends exclusively on the Soviet Union and its satellites for military aid."²¹⁴ However, even some of these analysts recognize that "the fact that guerilla organizations in

²¹²Interview with T. B. Gurirab.

²¹³The Namibian Review No. 4 (May 1977): 2.

²¹⁴Valentine J. Belfiglio, "The Issue of Namibian Independence," African Affairs 78 (October 1979): 508.

Southern Africa are Soviet sponsored, and received also their armaments from communist countries is largely the result of the West not sponsoring them and supplying them with armaments."²¹⁵

This argument about the ideological orientation of SWAPO is clearly superficial. Even if one accepts that some of the leaders of the organization are Marxists, it does not mean that the organization as a whole is necessarily Marxist. History shows that most national liberation movements have made radical ideological pronouncements during the stage of their armed struggle for independence. After gaining independence, events clearly show that such pronouncements did not always translate into Marxist ideology for the new state nor that these new states necessarily became allies of the Soviet Union. Even when some of the leaders of those states profess Marxism or socialism, they still profess a non-aligned foreign policy. The example of Zimbabwe is evidence to this. Besides, SWAPO receives assistance from several Western countries for educational, training, and humanitarian purposes. Furthermore, SWAPO receives military assistance from several African countries, including Egypt, that cannot be described as Marxist nor Soviet satellites.

Besides the vital importance of external assistance in providing military equipment necessary for armed struggle, "external help has great psychological and diplomatic value.... External help is important in internationalizing guerilla demands and keeps alive the hope of liberation."²¹⁶ Thus, any national liberation movement, and

²¹⁵Ibid.

²¹⁶Eqbal Ahmed, "Revolutionary War and Counter-Insurgency," Revolutionary War: Western Response, David S. Sullivan and Martin J. Sattler, eds., (New York: Columbia University Press, 1971), p. 14.

in this case SWAPO, cannot be blamed for the sources of assistance it receives.

South Africa tried to present the DTA as an alternative to SWAPO. But, in the opinion of many analysts, the DTA had no chance to play such a role. First, the DTA was linked to "divisive ethnicity politics which is viewed as a concealed perpetuation of the South African homeland's policy."²¹⁷ Besides, the DTA has been considered by the black population as an agent of South Africa. Also, the DTA has brought about very few real changes in the political and economic structure of the Territory. Its election victory in 1978 was only due to the fact that there was no other real alternative to vote for because of the non-participation of SWAPO and NNF.

SWAPO's confidence that the results of internationally supervised elections would be in its favor emanates from several factors. First, there is a widespread realization in the Territory that there can be no peace in Namibia unless SWAPO takes part in any settlement. Second, it seems that, at least at the present time, there is not one single political party or alliance which could constitute a serious challenge to SWAPO in such elections. Third, SWAPO, notwithstanding any controversy among various political parties and segments of the population about its ideology and methods, is the authentic and indigenous symbol of the national liberation struggle for independence. The support for SWAPO is most solid among the Ovambos who constitute the largest single population group in the Territory. Such support, in the view of many analysts, is not limited to

²¹⁷Töstemeyer, pp. 11-12.

Ovamboland. Also, South African security forces have alienated the population in the Territory, particularly in the north. Finally, the churches, particularly black churches which play a significant role in influencing the attitudes of the black population, have become increasingly supportive, explicitly or implicitly, of SWAPO.²¹⁸

Besides, supporters of SWAPO argue that the General Assembly recognized SWAPO as the sole representative of the Namibian people only in its capacity as a liberation movement. In other words, the Assembly is not saying that SWAPO is or should be the government of Namibia. SWAPO has also declared its readiness to enter free elections, under United Nations supervision, as one of the parties without any privilege resulting from being the national liberation movement recognized by the General Assembly. SWAPO has repeatedly stated that it would respect the results of democratic elections. Representatives of Western countries recognize this distinction and praise it.²¹⁹

These considerations, in my view, validate United Nations action to recognize SWAPO as the sole representative of the Namibian people. Some scholars would still argue that such an action is an interference in the internal affairs of the Namibian people. Yet, one must remember that the United Nations is a direct party in this conflict. Furthermore, the Assembly in its recognition of SWAPO had properly relied upon the regional organization, namely the OAU, which was and still is most familiar with and involved in the question of Namibian independence.

²¹⁸Ibid., pp. 13-15.

²¹⁹Interviews with T. B. Gurirab and B. Mishra and interviews with representatives of Australia, Belgium, the United Kingdom and the United States at the United Nations.

Analysis

Movements for national liberation in colonial territories resorted to armed struggle when some colonial Powers stubbornly resisted the tide of nationalism that was sweeping over colonies. In such cases colonial Powers resorted to military oppression in order to maintain their control over the increasingly defiant colonial peoples.

In Namibia the long history of suppression of uprisings of the indigenous population by German occupation and later by South Africa succeeded only in delaying the inevitable development of a national liberation movement seeking self-determination. As the discussion of this chapter reveals, SWAPO has become the most prominent and leading party in the struggle for independence for Namibia, both politically and militarily.

The General Assembly's recognition of SWAPO as the sole legitimate representative of the Namibian people reflected the new criteria for representativity and legitimacy acceptable to the majority of the United Nations. These criteria are based primarily upon the militancy and degree of success of a national liberation movement in the struggle against colonial occupation and support among indigenous population.

The preceding analysis also clearly proves the hypothesis that the General Assembly's recognition of SWAPO as the sole legitimate representative of the Namibian people was valid, desirable and in accordance with the United Nations Charter. Such recognition manifests the Assembly's determination to take every possible action to secure Namibian independence. This recognition was based on the prominence

and leadership of the national struggle for independence which SWAPO had acquired and which the OAU had earlier recognized.

Furthermore, the General Assembly gave its recognition of SWAPO an institutionalized form by granting it a permanent observer status. Such an action meant a stretching of the provisions of the Charter on membership without the formal process required to amend it.

For SWAPO these actions by the General Assembly provided major advantages and great opportunities. Inside Namibia the General Assembly's action gave SWAPO an advantage over other local parties. Internationally SWAPO also gained legitimacy and status. Within the United Nations itself SWAPO had the opportunity to lead the campaign to mobilize the whole machinery of the world Organization to achieve Namibian independence and, until this goal is achieved, to supervise the assistance programs for Namibian refugees.

CHAPTER V

THE UNITED NATIONS AND ARMED STRUGGLE

This chapter will address one of the most controversial issues which arises from the General Assembly's recognition and endorsement of national liberation movements, and their right to resort to the use of violence by such movements as a means to achieve independence. Is armed struggle by such movements legitimate as an overwhelming majority of States argue, or is it an act of terrorism, as those States against which such struggle is waged claim? What prompted the General Assembly to endorse armed struggle for national liberation? Where is the borderline between authentic armed struggle and terrorism?

The Charter provisions on the question of decolonization and self-government clearly reflect the perception of United Nations founders of a gradual non-violent process. Several colonial Powers reluctantly but peaceably relinquished control of many of their colonies in the years following the end of World War II. The rise of nationalistic movements in those colonies has forced colonial Powers to hasten the process of decolonization. Expressions of national aspirations in many colonies took various forms, such as demonstrations, strikes, non-cooperation with colonial authorities or boycott of colonial goods. In numerous instances clashes occurred between colonial authorities and peoples resulting in violence and

bloodshed. Eventually, most colonial Powers, with different degrees of reluctance and sometimes procrastination reached the conclusion that relinquishing control over colonies was inevitable and that self-determination was the tide of history that could not be reversed.

However, some colonial Powers refused to share this conclusion and insisted upon the preservation of their overseas colonies. Political activities of those peoples were violently suppressed by colonial authorities. United Nations resolutions failed to prod colonial Powers to recognize the right of self-determination of those peoples, and in some cases not even the most elemental human rights.

It was inevitable that peoples in those colonies would rise to resist the continued occupation of their homelands by foreign colonial Powers. Their resistance, as in the case of Namibia, took the form of national liberation movements which resorted to the use of violence against occupation authorities and symbols in order to force them to recognize the peoples' right to self-determination.

Armed struggle by national liberation movements has led to a large scale debate and controversy within the United Nations and international community at large. The majority of United Nations Members have strongly and explicitly endorsed armed struggle by national liberation movements as a legitimate means to obtain the free exercise of self-determination and independence. On the other hand, Western countries denounced some of those activities, particularly those involving indiscriminate violence against civilians, as terrorist.

The debate over the legitimacy of armed struggle continues. The controversy around it has not abated. However, it is my opinion that armed struggle by national liberation movements is a legitimate

act, particularly in the case of refusal of colonial Powers to relinquish their control peaceably. Furthermore, the General Assembly's endorsement of armed struggle as a means, among others, is legitimate and in conformity with the Charter and international treaties. Nonetheless, an effort has to be made to clearly differentiate between legitimate armed struggle and acts of terrorism.

The General Assembly has continued to adopt, year after year, with increasing majorities, resolutions endorsing armed struggle by national liberation movements in their quest for independence.²²⁰ In the case of Namibia, where the General Assembly itself had become a direct actor in the conflict over Namibia, its endorsement of SWAPO's armed struggle, as well as that of other national liberation movements before, has led some scholars and observers to argue that armed struggle by national liberation movements has become an accepted norm in international relations and international law even with the objection of some of the major Powers.

The Legitimacy of Armed Struggle: The Legal Debate

The question of the legitimacy of the armed struggle of colonial peoples in order to achieve national independence has been

²²⁰For example United Nations General Assembly resolution 2908 (XXVII) of 2 November 1972 reaffirmed the legitimacy of the struggle of peoples under alien domination for self-determination and independence "by all the necessary means at their disposal." This resolution was adopted by a majority of 99 against 5 (France, Portugal, South Africa, United Kingdom and the U.S.A.) with 23 abstentions mostly from the West. During the thirty-ninth session, the Assembly adopted resolution 39/50 A of 12 December 1984 explicitly endorsing the armed struggle of the Namibian people by a majority of 128 against none with 25 abstentions, again mostly from the West.

subject of a wide debate among scholars. The world community has by and large recognized colonial peoples' right to self-determination. Yet, the means to achieve this goal have been subject to controversy. "Occupied nations and oppressed peoples have resorted to guerilla warfare throughout recorded history. But only in modern times has it become the acknowledged weapon of the weak..."²²¹

Colonial Powers have long argued that the armed struggle by people under their colonial administration was a question of internal jurisdiction. Thus, such Powers have claimed that other States should not interfere in these conflicts by aiding the non-self-governing peoples. Colonial Powers also argued against any consideration of such situations by the United Nations on the assumption that such consideration would be in violation of the Charter, particularly Article 2 para 7 which prohibits the Organization from intervening "in matters which are essentially within the domestic jurisdiction of any State."

The practice of the United Nations clearly supports the position that armed struggle by colonial peoples is not, as claimed by colonial Powers, an internal question but a matter of international concern. The right of self-determination of colonial peoples has been well established. Several international law scholars have argued that the right of self-determination has become a legal right and not only a political one. Nevertheless, questions arising from the struggle by colonial peoples to exercise their right to self-determination have long been matters of international concern. Conditions of colonial

²²¹Ahmed, p. 1.

peoples have been discussed, debated, and supervised by both the League of Nations and the United Nations. Attempts by States to prevent the realization of this right, particularly when such attempts were carried out through oppressive measures and the use of force, have been widely condemned by the world community. Armed conflicts between a colonial Power and a colonized people resorting to armed struggle to achieve its independence have been clearly considered international conflicts by the first additional Protocol to the 1949 Geneva Convention on Humanitarian Law Applicable in Armed Conflicts. Article 1 of the Protocol defined the scope of its application relating to international armed conflicts. Paragraph 4 of this article stated that such conflicts include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of the right of self-determination.

The recognition of the international nature of wars of national liberation did not end the controversy. The immediate question that arises from such recognition is whether such wars are legitimate or not. The United Nations Charter Article 2, para 4 states:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

Some Western scholars have argued that this article applies to wars of national liberation; consequently these are not consistent with the purposes of the United Nations Charter.²²² These scholars also reject the argument by supporters of national liberation movements that

²²²See for example Hans Kelsen, The Law of the United Nations, (New York: Praeger, 1950).

wars of national liberation are justifiable under Article 51 of the Charter. Article 51 guarantees "the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations...." Such argument was reflected in the debate of the United Nations Legal Committee. Third World states argued that a war of national liberation is an act of self-defense. Some Western scholars rejected such an argument and claimed that only armed force constituted an aggression.²²³ Thus, Western Powers contend that they cannot couple their support of the right of the Namibian people to self-determination with a similar support for a United Nations endorsement of armed struggle to achieve this goal and calling upon States to offer assistance to SWAPO.

But calling upon oppressed peoples like the people of Namibia to exercise more patience while its oppressor procrastinates and refuses to abide by United Nations resolutions or pleas of Western Powers themselves to withdraw from Namibia is unjust. The United Nations has terminated the Mandate over Namibia and claimed the Territory to be under its own jurisdiction until independence. However, because of its inherent weaknesses and the objection of Western Powers to apply Chapter VII of the Charter on South Africa, the United Nations has proved unable to secure independence for Namibia. Meanwhile, South Africa has resorted to violence and oppression to silence any political activity within Namibia calling for granting the Namibian people the right to self-determination and national

²²³See Robert E. Gorelick, "Wars of National Liberation: Jus ad Bellum," Case Western Reserve Journal of International Law 11 (Winter 1979): 72-77.

independence. Furthermore, South Africa has frequently invaded neighboring countries, under the pretext that they harbor "terrorists".

Besides, citing Article 2(4) of the Charter as a categorical prohibition over the use of force is rather misleading and selective. Article 1(2) cites the principle of equal rights and self-determination of peoples as the basis for friendly relations among nations. This principles has not been respected by South Africa in any way. It should be noted here that Article 2(4) was included in the Charter against the background of World War II and thus it clearly refers to territorial aggrandizement and not liberation.

National liberation struggle in Namibia is not waged against "the territorial integrity or political independence" of South Africa, nor is it inconsistent with the Purposes of the United Nations. More importantly, the key phrase upon which Article 2 para 4 lies is that the use of force is prohibited in any manner "inconsistent with the purposes of the United Nations." Self-determination is clearly a noble purpose of the Charter itself. Moreover, Chapter VII of the Charter, Article 42, provides for the use of armed force by the United Nations itself against an aggressor. This Article should have been applied long ago against South Africa if it were not for the veto power used by Western countries to prevent its application by the Security Council. Indeed, Article 42 has never been applied in the history of the United Nations despite many aggressions and breaches of peace around the world. Finally, the mere recognition of national liberation movements by international organizations implies the recognition by the majority of the use of force by such movements, if not their right to do so.

Proponents of armed struggle by colonial peoples also refer to

the position of the Allied Powers during World War II and their declared support for resistance movements of the peoples in Europe against Nazi occupation. Even the independence of the United States was not achieved by peaceful means, but rather through armed struggle. Also, they argue that the General Assembly does not advocate armed struggle as the only means to achieve independence, but only as one among others. Furthermore, they contend, this armed struggle is to implement resolutions of the Organization, that it cannot enforce itself.²²⁴

Several Third World countries, particularly India, have argued that colonialism itself was "a permanent aggression" which legitimized the use of force under Article 51 of the Charter. This argument considered the act of colonization as the initial aggression. The continuation of such an aggression gave the victim the right to use force in self-defense against this continued aggression of colonialism. However, this argument was strongly contested by legal scholars and some Western Governments on the basis that territorial acquisition was once legal and thus contemporary legal norms could not be applied ex post facto.²²⁵

The General Assembly, under the influence of Third World countries, has clearly recognized, in its resolution 2105 (XX), the view that "the legitimacy of the struggle by peoples under colonial rule to exercise their right of self-determination and independence." This assertion by the General Assembly has been repeated in almost

²²⁴Interviews with T. B. Gurirab and B. Mishra.

²²⁵Gorelick, pp. 77-80.

every session up to the present. Western States have consistently refused to endorse it.

However, a resolution of the General Assembly that has a historical and legal value is relevant in this regard. This resolution which has been adopted by consensus was given the form of a "declaration" so as to illustrate its special status and significance. This declaration is the Declaration On the Definition of Aggression contained in General Assembly resolution 3314 of 14 December 1974 which was adopted without a vote. In its sixth preambular paragraph, it reaffirmed "the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity." Article 3 enumerated the acts which qualify as an act of aggression. Yet, the Declaration explicitly exempts colonial peoples' struggle from such qualification as Article 7 stated that

Nothing in this definition, and in particular Article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right..., particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end..."

Article 7, thus, reaffirms the right of colonial peoples to use armed struggle against colonial Powers forcibly attempting to prevent such peoples from exercising their right to self-determination. This reaffirmation is only logical because any restriction upon the right of the oppressed people to use force against their oppressors would be only a call for surrender and subjugation. This would be a clear violation of the spirit and letter of the Charter itself and the numerous resolutions calling for granting self-determination and

independence to colonial peoples. If the United Nations itself cannot enforce its resolutions in this regard, the least it can do, in the view of its overwhelming majority, is to reaffirm the right of non-self-governing peoples to restore their basic national rights.

Based on the conclusion that the principle of self-determination has become a legal right under international law for any "self-conscious politically coherent community that is under the political subjugation of another community,"²²⁶ Ofuatey-Kodjoe logically argues that a "dependent people" has the right to be recognized as such, the right to take steps to achieve full self-government without hindrance, the right to interim protection, and the right of permanent sovereignty over their natural resources.²²⁷ The right of self-liberation refers to the right of revolution against intransigent colonial Powers. Also, dependent peoples are entitled to international protection symbolized by the Trusteeship System. Furthermore, the right of permanent sovereignty over natural resources is the right of dependent peoples to have their resources safeguarded against exploitation by the administering power.²²⁸

The General Assembly and Armed Struggle: An Evolving Position

The involvement of the General Assembly in questions pertaining to decolonization and national liberation has been long. Such

²²⁶Ofuatey-Kodjoe, p. 156.

²²⁷Ibid., pp. 164-168.

²²⁸Ibid., pp. 167-176.

involvement has influenced the Assembly's position on particular issues such as Namibia, as this position has developed over the years. As early as 1952, Angolan nationalists sent a petition to the United Nations asking it "to take steps to end... Portuguese rule."²²⁹ Also delegations from the Front de Libération Nationale (FLN) in Algeria came to the United Nations as early as 1954 to seek international support for Algerian independence.

Nevertheless, it was not until 1965 that the General Assembly for the first time recognized the "legitimacy of the struggles by the peoples under colonial rule to exercise their right to self-determination and independence." The same resolution also invited "all States to provide material and moral assistance to the national liberation movements in colonial territories."²³⁰ This position was not reached lightly. It came two decades after the establishment of the United Nations and five years after the historical resolution 1514 (XV) of 1960. Constant political endeavors had failed to convince some colonial Powers, primarily Portugal, South Africa, and the illegal regime of Southern Rhodesia, to allow the free exercise of self-determination by the colonial peoples under their control. This has naturally led to national uprisings in such colonies. The General Assembly thus reached the conclusion that "if the original method of cooperation and amity has been abandoned, it is the colonial Powers

²²⁹See John Marcum, The Angolan Revolution: The Anatomy of an Explosion (1950-1962) (Cambridge, Massachusetts: MIT Press, 1966), p. 26.

²³⁰United Nations General Assembly resolution 2105 (XX) of 20 December 1965.

which are to blame for this situation."²³¹

Portugal, for example, persistently claimed that its numerous African colonies, Angola, Mozambique, Guinea (Bissau) and Cape Verde, were not non-self-governing territories but rather "overseas provinces." Such position led to the development of a violent national liberation struggle in those territories. It was not until a progressive military coup in Portugal itself took place in April 1974, that it renounced this position which later led to the independence of these territories.

National liberation movements have almost invariably sought to mobilize world support behind their cause. Thus, it comes as no surprise that they focused their efforts on the United Nations, as the forum for decolonization particularly since the sixties, when its proponents gained an overwhelming majority in the General Assembly.

Yet, it was not until later that the General Assembly moved to explicitly endorse armed struggle for national liberation. As late as 1972, the Assembly was still calling for the initiation of negotiations between the Government of Portugal and the national liberation movements in the territories under its administration.²³² Such call was launched even when those national liberation movements were already engaged in an armed conflict with Portuguese troops and settlers in those territories. Also, the Security Council took the same position in its handling of this question.²³³

²³¹Usha Sud, Decolonization to World Order: International Organizations and the Emerging Pattern of Global Interdependence (Delhi: National Publishing House, 1983), p. 76.

²³²See for example United Nations General Assembly resolution 2918 (XXVII) of 9 November 1972.

²³³See United Nations Security Council resolution 322 of 1972.

In order to launch successful guerilla warfare against colonial Powers, national liberation movements have traditionally needed sanctuaries across the borders of their territories. Such sanctuaries were provided by sympathetic neighboring states. This has led the colonial Powers and regimes to extend their policies of oppression and use of force to those neighboring states. This escalation of the situation has prompted the United Nations General Assembly and the Security Council to condemn frequent raids by such Powers against their militarily weaker neighboring states. Such condemnations not only echoed the Assembly's concern and commitment to the respect for the independence, sovereignty and territorial integrity of the victim states but also reflected, though implicitly, its recognition of the legitimacy of the armed struggle for independence in non-self-governing territories.

Furthermore, the General Assembly has tried to exhaust all political options for the achievement of a peaceful settlement of conflicts arising from intransigent positions of colonial Powers. Thus, the Assembly repeatedly called upon the Security Council to impose mandatory comprehensive economic sanctions against those colonial Powers particularly Portugal, Southern Rhodesia and South Africa. The Assembly itself has also repeatedly requested all States to take effective measures to end the supply of aid and other forms of assistance, including military supplies and equipment, to those regimes.

It was not until all such calls and requests went unheeded that the Assembly started to take a more active position with regard to the struggle of national liberation movements. Thus, in its resolution 2795 (XXVI), the General Assembly requested all States and Specialized

Agencies and other organizations within the United Nations system to render to the peoples of the Portuguese colonies all moral and material assistance necessary to continue their struggle for the restoration of their inalienable rights.²³⁴ Similar resolutions were also adopted by the Assembly with regard to the situation in Southern Rhodesia.²³⁵

The Security Council, reflecting its special status within the Organization and the position of its permanent Western Powers, has also pronounced itself on this question though not as strongly as the Assembly did. Thus, in 1970, the Council, for example, in a consideration of the situation in South Africa, recognized "the legitimacy of the struggle of the oppressed people." That struggle was related to their "human and political rights set forth in the Charter of the United Nations and the Universal Declaration of Human Rights."²³⁶ Under continued pressure from the Assembly and its anti-colonial majority, the Security Council, meeting in Addis Ababa in February 1972, recognized the legitimacy of the struggle of the liberation movements in Portuguese territories.²³⁷ The Council also applied mandatory sanctions against Southern Rhodesia in a succession of resolutions.

The culmination of the General Assembly's position on national

²³⁴United Nations General Assembly resolution 2795 (XXVI) of 3 December 1971.

²³⁵See for example United Nations General Assembly resolution 2796 (XXVI) of 10 December 1971.

²³⁶United Nations Security Council resolution 82 of 1970. The three permanent Western members of the Security Council abstained on the resolution.

²³⁷See United Nations Security Council resolution 312 of 1972.

liberation struggle including the use of armed struggle as one of its means was explicitly and elaborately developed into major resolutions. Resolution 2625 (XXV) of 24 October 1970 entitled "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations" recognized the right of colonial peoples to have recourse to a war of liberation. Thus it indicated that the international community has come to recognize the right of revolution of the colonial peoples against their oppressors. This position was more explicitly stated in resolution 3070 (XXVIII) of 30 November 1973 entitled "Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights" which reaffirmed the legitimacy of all peoples resisting foreign domination and subjugation by all available means "including armed struggle." The same resolution condemned "all governments which do not recognize the right to self-determination and independence of peoples...." This position has been reaffirmed by the Assembly during its subsequent annual sessions and with greater majorities.

It was obvious to Third World majority that this was the only option open to achieve decolonization in those instances where colonial Powers insisted on maintaining control over their colonies, such as the case of South Africa. Militarily South Africa was superior to any single African country or group of them. Thus, guerilla warfare by the Namibian people was the last resort to make the occupation of Namibia costly for South Africa and force it to withdraw from it. Hence, the Third World majority at the United Nations challenged the traditional

norms of international relations pertaining to the inadmissibility of the use of force. This was only confined to authentic armed struggle for independence and after all peaceful means had been exhausted.

Armed struggle by SWAPO was thus the logical and legitimate response to South Africa's intransigence and oppressive occupation of Namibia. The General Assembly, by increasingly overwhelming majorities, endorsed its guerilla warfare against South African occupation. In the case of Namibia, as the General Assembly became a direct party to the conflict, South Africa was the enemy of the United Nations itself as an aggregate personality. Yet, the Assembly continued to endorse armed struggle as only one means to achieve independence. Also, assistance by the United Nations to SWAPO was exclusively non-military. Whenever there seemed to be any hope for a peaceful settlement of the problem, the Assembly endorsed it and pursued it to the end, but South Africa continued to dash such hopes.

Hence came the General Assembly endorsement of armed struggle of SWAPO. Other colonial cases, although protracted, eventually came to an end; not so in the case of Namibia. This prompted the General Assembly to explicitly endorse armed struggle in Namibia, at least as a means among others, to bring independence to the Territory. It called upon all States, specialized agencies and interested parties to provide SWAPO with moral and material support. The Assembly did not confine itself to resolutions, but, as reviewed earlier, it also provided both moral and material support to SWAPO. Although the Assembly never rendered any military assistance to SWAPO, other kinds of support enabled the movement to devote more of its limited resources to armed struggle.

SWAPO: Authentic Armed Struggle or Terrorism?

National liberation movements are the embodiment of colonized peoples' struggle to gain the universally recognized right of self-determination. They clearly expose the inhumanity of colonialism. Nationalism is usually the motor force for such movements. Nationalism serves as a powerful ideology mobilizing people struggling for the basic human right of self-determination and independence. Frantz Fanon correctly observes that "the essence of revolution is not the struggle for bread; it is the struggle for human dignity."²³⁸

The case of SWAPO has great similarities with other African liberation movements, particularly those of Portuguese territories. These similarities include the way these movements developed into forces seeking full independence and the requirements of a successful national liberation movement.

In several cases, as in Namibia, national liberation struggle grew out of movements with limited objectives, such as achieving reform within the colonial status quo. However, such movements came to the realization that total national liberation was the only way to achieve the fundamental aspirations of their peoples. Such liberation, in the face of military oppression by colonial Powers in those cases, had to be achieved through armed struggle. So it is almost universal that national liberation movements created their military components soon after they started their struggle for independence. Such components

²³⁸Frantz Fanon, A Dying Colonialism (New York: Grove Press, Inc., 1967), p. 12.

are usually small guerilla forces at the beginning, which become an army with the influx of new recruits and volunteers, especially if initial attacks on colonial targets are successful and inflame the morale of the people.

A clear political and ideological program suited to the national characteristics, history and cultural conditions of the country in question can also play a vital role in achieving cohesion among the various groups of the population and can provide clear goals for their struggle.

The history and experience of several cases of national liberation struggle demonstrate that unity of nationalist forces in their struggle for independence is essential for their success.²³⁹

The case of Southern Rhodesia and of the Portuguese colonies in Africa have clearly manifested that armed struggle, coupled with concerted international support in the form of moral and material assistance to a national liberation movement and pressure on the colonial regime, could eventually force that regime or power to allow the free exercise of self-determination by the people.

However, there is also some distinctiveness in the case of SWAPO. This is due to the geopolitical strategic differences between the two colonial Powers involved. On the one hand, Portugal was a declining European small power trying to hang to the remnants of its fifteenth and sixteenth centuries empire thousands of miles away from it. By contrast, South Africa is strong militarily and economically and also contiguous to Namibia. The terrain in Namibia is less

²³⁹Harjinder Singh, "Armed Struggle and Zimbabwean Independence," Africa Quarterly 20: 93-97.

favorable for rural guerilla warfare than in the former Portuguese territories. Furthermore, South Africa is more aggressive in its pursuit of SWAPO across the borders of Namibia regardless of worldwide condemnation than Portuguese African counterinsurgency policies.²⁴⁰

SWAPO, in its war against South Africa, seems to follow the usual guerilla warfare tactics. Thus, landmine warfare and hit-and-run tactics have predominated its struggle. Due to topographical and logistical reasons, most of such incidents have taken place in the northern part of Namibia close to SWAPO's sanctuaries in Angola.

South Africa has repeatedly accused SWAPO of being a terrorist organization directing its violence against civilians, particularly white settlers. SWAPO categorically denies engaging in any terrorist violence against civilians. SWAPO representatives contend that Namibians, regardless of tribe, religion, or race, are the people it seeks to liberate. Thus, as a matter of philosophy, it is determined to save them from any harm as a result of the armed struggle for independence. On the other hand, reports of impartial international organizations, like Amnesty International, repeatedly confirm the widespread violation of human rights of civilian population at the hands of South African authorities.

Eqbal Ahmed seems to support this view when he observes that mass support is the primary condition for the success of revolutionaries. Thus, winning and maintaining popular support should be their central objective throughout the struggle. "The requirements of guerilla war, as well as the history of its failures and successes,

²⁴⁰See Henriksen, pp. 184-194.

confirm the primacy of political factors in such a conflict." Thus, "the use of terror by guerillas is highly selective."²⁴¹

Popular support of a liberation movement is essential to its success because, as Mao Tse Tung states, "guerilla warfare basically derives from the masses and is supported by them," thus, "it can neither exist nor flourish if it separates itself from their sympathies and cooperation."²⁴² National liberation movements in occupied territories need mobility, good information on enemy movements and shelter which they cannot have except through intimate contact with sympathetic population. Cooperation of the population and its support cannot be obtained by terror but through arduous political struggle to gain the minds and hearts of the people and to acquire legitimacy among the population.²⁴³

T. E. Lawrence likened the Arab guerilla against the Turks to "a thing invulnerable, intangible, without front or back, drifting about like a gas."²⁴⁴ Thus, any successful guerilla campaign should avoid open, fixed battles and conduct a "campaign of surprise ambushes and hit-and-run attacks against the enemy's weakest outposts, seldom achieving major military objectives."²⁴⁵ Such a campaign should aim at inflicting heavy losses on the occupying Power, exhausting it, and

²⁴¹Ahmed, pp. 9-10.

²⁴²Cited in Ibid., p. 2.

²⁴³Ibid., pp. 2-9.

²⁴⁴Cited in John J. Hoagland's "Changing Patterns of Insurgency and American Response," Revolutionary War: Western Response, David S. Sullivan and Martin J. Sattler, eds. (New York: Columbia University Press, 1971), p. 125.

²⁴⁵Ibid., p. 126.

"through international pressure, force it to negotiate not the status quo but withdrawal."²⁴⁶

During the last two decades, the debate over the question of armed struggle and its means and targets has intensified. This was due to the resort by several national liberation movements to the use of violence in their struggle to gain independence. Most national liberation movements used guerilla warfare tactics against colonial Powers. Such tactics sometimes included violent acts against clearly non-military targets.

In a clear response by the General Assembly to the repeated occurrence of such incidents, it adopted the Convention Against the Taking of Hostages. This convention, in addition to several other international conventions on various aspects of terrorism, came as an additional link in the legal ring against international terrorism based upon the three international conventions dealing with aviation security, concluded under the leadership of the International Civil Aviation Organization (ICAO) and the Convention on the Prevention and Punishment of Crimes Against Protected Persons which came into effect in 1977. Thus, "the United Nations conventions and resolutions... are strengthening and widening international cooperation against terrorism." The United Nations, as an international organization has "succeeded in condemning terrorism as an illegitimate instrument of policy."²⁴⁷

²⁴⁶Ahmed, p. 14.

²⁴⁷Amos Yoder, "The Effectiveness of UN Action Against International Terrorism; Conclusions and Comments," Terrorism: An International Journal 6 (1983): 591-592.

The Security Council has also strongly condemned acts of terrorism. Most recently, in a reaction to a seajacking of an Italian passenger ship in the Mediterranean, the Council condemned this incident "as well as other acts of terrorism, including hostage-taking." Furthermore, the Council condemned "terrorism in all its forms, wherever and by whomever committed."²⁴⁸ During its fortieth session, the General Assembly, after deliberating the issue for more than a decade, unanimously adopted a historic resolution which unequivocally condemned "as criminal, all acts, methods and practices of terrorism wherever and by whomever committed..."²⁴⁹

Furthermore, on 17 December 1985, the Security Council unanimously adopted resolution 579/1985 which unequivocally condemned "all acts of hostage-taking and abduction."

Although there is no unanimity among observers and diplomats in this regard, an overwhelming majority of them agree that national liberation movements are supposed to abide by the rules and norms of international law and conventions regulating armed conflicts. Thus, acts of violence against innocent civilians, internationally protected persons or hijacking of civilian planes or piracy cannot be considered legitimate acts of national liberation struggle. Armed struggle for national liberation should be primarily directed in the first place against military or paramilitary targets or facilities that serve the oppressive colonial machinery. Nonetheless, guerillas are usually

²⁴⁸Statement of the President of the Security Council on behalf of its members, United Nations Security Council document S/17554 of 9 October 1985.

²⁴⁹United Nations General Assembly resolution 40/61 of 9 December 1985.

irregular troops with little traditional military discipline. An absolute observance of the rules of the law of war is almost impossible. However, the leaderships of national liberation movements should always strive to achieve this goal.

Analysis

The previous discussion has focused upon questions pertaining to armed struggle: its legitimacy, the evolving position of the General Assembly towards it and the differentiation between authentic armed struggle and terrorism.

As the right of self-determination of colonial peoples has come to be recognized as a legal right, an increasing number of legal scholars have argued that colonial peoples also have the right to revolt against their occupiers who forcibly continue to deprive them from their inalienable right to self-determination. This right to revolt or armed struggle for independence, in my opinion, is in full conformity with the provisions and spirit of the United Nations Charter. This position has been explicitly reflected in historic resolutions of the General Assembly such as its Declaration on the Definition of Aggression of 1974.

The involvement of the General Assembly in the controversy surrounding the question of armed struggle came as a result of its unequivocal support for universal decolonization. Thus it has from the beginning supported national liberation movements seeking the overthrow of colonial rule. Yet such support did not reach the full and explicit endorsement of armed struggle by national liberation movements except

in very few cases. This endorsement was first bestowed on the struggle of nationalist movements in former African Portuguese territories and Southern Rhodesia. This endorsement was at the beginning cautious and qualified. However, in the case of Namibia and as a result of the protracted struggle for independence due to South Africa's intransigence and procrastination, the General Assembly's position has become more explicit and militant. The Assembly not only expresses its support for SWAPO's armed struggle as a means among others to achieve Namibian independence, but also calls upon States to provide it with moral and material assistance. The Assembly furthermore provides SWAPO with large scale assistance to Namibian refugees which enable this movement to devote most of its efforts and resources to armed struggle.

Guerillas of national liberation movements do not constitute regular armed forces. In the past two decades, some of those movements have resorted to acts of violence that have involved innocent civilians. In order for national liberation movements to maintain the authenticity of their armed struggle they must strongly strive to avoid at all cost indiscriminate acts of violence. Leaderships of national liberation movements should always do their utmost to guarantee that their guerillas should abide by the rules and norms of international law and conventions regulating armed conflicts.

The endorsement by the General Assembly of armed struggle was not an isolated act. It falls within the broader process of decolonization. It also raises the question of the impact of General Assembly resolutions on the initiation, development and creation of new norms of international behavior. Also, the question which follows is what is the best way for the General Assembly and the United Nations in

general to follow in order to achieve a greater degree of effectiveness for their resolutions.

The preceding analysis clearly reveals that armed struggle by national liberation movements seeking independence has been recognized as legitimate and even endorsed by an overwhelming majority of the United Nations. This recognition was not confined to General Assembly resolutions; it went farther to establish it as a legal norm of international law.

The legal debate around the legitimacy of armed struggle has focused upon the issue of use of violence. The review of this debate demonstrates that authentic armed struggle is in conformity with the provisions of the United Nations Charter and the basic right of self-determination. Dependent peoples struggling for independence have the right of international protection and assistance from the international community.

The position of the General Assembly has evolved over the years in response to the intransigence of some colonial Powers. In the case of Namibia, after several decades of calling, to no avail, upon South Africa to cooperate in reaching a diplomatic solution for the question of Namibia, the General Assembly moved to first endorse the struggle of the Namibian people in general terms then to explicitly endorse armed struggle as a means to fight South Africa's occupation and to achieve independence.

The recognition of the General Assembly of the legitimacy of armed struggle has also brought to the forefront of the debate the nature of such struggle. In my view, such endorsement cannot include or cover acts of random indiscriminate violence against innocent

civilians. Armed struggle should be strictly confined to the fight against military authorities of occupation and its symbols.

CHAPTER VI

THE NEW ROLE OF THE UNITED NATIONS AND
ITS IMPACT ON NORMS OF INTERNATIONAL BEHAVIOR

This chapter will address the broader issues which the question of Namibia and its handling by the United Nations raise. First, what is the role of the General Assembly in the development and creation of new norms of international behavior and what are those norms which the case of Namibia helped develop and strengthen?

I shall argue that certain resolutions, even though adopted by a large majority rather than a consensus, which address themselves to certain fundamental principles, as in the case of Namibia, contribute to the initiation, legitimization and creation of new norms of international behavior.

Norms of international behavior or international customs are the most flexible sources of international law. They develop from state practice. The basic prerequisites of the emergence of an international norm are an evidence of such practice and a demonstration of acceptance by a large number of States. In this regard, it is my opinion that the General Assembly provides a forum in which States can demonstrate their acceptance of new norms through the process of voting and through subsequent actions.

The other question that arises in this regard is how did the

anti-colonial majority use the decision-making mechanism in the General Assembly in its quest to achieve its goals? What is the reality of the claims that this majority automatically adopts anti-western positions? On the other hand, is the constant resort by the majority to its voting power against the explicit opposition of the major countries at the General Assembly an appropriate tactic or does the majority need to exercise discretion and restraint not only to achieve its goals but also for a better functioning of the world Organization?

Majority rule for voting in the General Assembly was a progressive decision-making mechanism compared to the unanimity rule which prevailed at the League of Nations. With the dramatic change of membership at the General Assembly it was only natural that the new majority attempt to reorient the Assembly to be more responsive to its primary concerns and preoccupations. In this the new majority was only following in the footsteps of western countries which enjoyed a majority in the Assembly at its inception and used their position to achieve their goals.

Since the beginning of the Assembly's handling of the question of Namibia and overwhelming majority of states, including most of Western countries, opposed South Africa's positions. Yet, in the late sixties when the new majority was showing increasing impatience and frustration over South Africa's intransigence and procrastination that this unified position broke down. Thus, the Assembly adopted increasingly militant resolutions with regard to the question of Namibia.

In fact, most of the Assembly's resolutions on the question of Namibia were never implemented. Namibia today is still under the

illegal occupation of South Africa. This situation is not confined to the question of Namibia. Scores of General Assembly resolutions on several other issues were disregarded by States to whom they were addressed.

In my view, this situation calls for a sober reassessment by the majority of its tactics. Having already succeeded in establishing the norms pertaining to decolonization, such as the illegitimacy of colonialism, the legal right of dependent peoples to self-determination and their right to revolt against their oppressors, and the legal standing of national liberation movements as the legitimate representatives of their peoples, the majority today has to seek the return to a "working consensus." By this I mean striving to attain the support of all interested parties in addition to the major Powers for resolutions. Such a working consensus would breathe new life into resolutions and give them a greater chance of being implemented.

General Assembly Resolutions and the Establishment of New International Norms

A glance at the United Nations history clearly manifests that it has come to be regarded as the most significant diplomatic forum in the world. In the words of C. Wilfred Jenks, "the United Nations has now become the basis, and the only positive basis of a wholly new political structure of the world."²⁵⁰ However, the present international system, based on the sovereign state as its basic unit,

²⁵⁰C. Wilfred Jenks, "Due Process of Law in International Organizations," International Organization 19 (1965): 163.

has continued to present the United Nations with its most important handicap.

Forty years after its establishment, the balance sheet of the United Nations shows its failure to guarantee the implementation of a multiplicity of important resolutions. United Nations resolutions are often ignored with impunity and rarely implemented by Member States to whom these resolutions are addressed. Throughout the years, the gap between the adoption of resolutions and their execution has even widened. Since it is universally recognized that the effectiveness and credibility of the United Nations hinged largely on its ability to ensure compliance with its resolutions, that credibility seems to have been drastically eroded.²⁵¹

Nevertheless, the United Nations remains the only viable international forum capable of striving for a minimum degree of international peace and security and harmonizing the actions of nations in their pursuit of their individual national interests. United Nations resolutions still carry significant political weight. Also, international assemblies, and especially the United Nations General Assembly, are the principal means for the articulation of the general will of the international community. In the words of former United States Permanent Representative to the United Nations, Jeane J. Kirkpatrick, "UN votes affect both the image and the reality of power in the UN system and beyond it."²⁵²

²⁵¹Interview with Ambassador Nabil Elaraby, Head of the Legal Department, Egyptian Ministry of Foreign Affairs, New York, 17 April 1984.

²⁵²Jeane K. Kirkpatrick, Testimony Before the Senate Appropriations Committee, Foreign Operations Sub-Committee, 2 March 1984, p. 7.

The current crisis concerning the non-compliance with United Nations resolutions has mainly resulted from the mushrooming General Assembly resolutions adopted annually, some of which are mere repetitions of past resolutions never implemented by States. The Security Council has not been immune from this phenomenon. Constitutionally, the Council, in accordance with the Charter, has the competence to take enforcement measures to give effect to its decisions in cases of threats to the peace and acts of aggression; however except for the action in Korea in 1950, it has never called for the use of armed force against an aggressor.

The crisis of credibility in General Assembly resolutions, in particular, has been the subject of debate among scholars for a long time. On the one hand, there is the view that the Assembly's resolutions are mere recommendations that are not binding. This position emanates from the original conception of that organ as only a deliberative body endowed with limited powers that certainly do not include the legislative prerogative. On the other hand, there is another group of scholars who argues that the General Assembly has a legislative or at least a quasi-legislative function. Thus, they argue, resolutions adopted by the Assembly are legally binding on Member States.

Articles 10 to 17 of the Charter give the General Assembly a wide range of functions and powers. The primary article in this regard is Article 10 which states that "the General Assembly may discuss any questions or any matters within the scope of the present Charter...."

According to Hans Kelsen, "by Article 10, the General Assembly is competent not only to discuss any matter within the competence of

the United Nations but also to make recommendations on any such matter. This is a political, not legal competence...."²⁵³ Kelsen further contends that "recommendations, by their very nature, do not constitute a legal obligation to behave in conformity with them."²⁵⁴ This limited competence of the General Assembly, according to Kelsen, is explained by the fact that "the intention was to establish the General Assembly as 'town-meeting of the world', the 'open conscience of humanity' that is to say, as a deliberative and criticizing organ."²⁵⁵

Leo Gross, concurs with the argument that the United Nations is a political and dynamic institution. "Politically," he argues, "it operates within the system of sovereign states competing and cooperating; legally it operates within the framework of the Charter."²⁵⁶ Thus, Leo Gross contends that "the significance of the resolutions of the Assembly is primarily political."²⁵⁷

Jeane Kirkpatrick states that

The decisions of the United Nations are widely interpreted as reflecting 'world opinion' and are endowed with substantial moral and intellectual force. The cumulative impact of decisions of United Nations bodies influence opinions all over the world about what is legitimate, what is acceptable, who is lawless and who is repressive, what countries are and are not capable of

²⁵³Hans Kelsen, The Law of the United Nations: A Critical Analysis of Its Fundamental Problems (New York: Frederick A. Praeger, Inc., 1950), p. 198.

²⁵⁴Ibid., pp. 195-196.

²⁵⁵Ibid., p. 199-200.

²⁵⁶Leo Gross, "The United Nations and the Role of Law," International Organizations 19 (1965): 538.

²⁵⁷Ibid., p. 556

protecting themselves and their families in the world body.²⁵⁸

The notion of General Assembly resolutions as a means of norm creation has also been categorically rejected by some international law scholars. In this vein, Alice B. Haemmerli wrote

One can conclude that majority voting remains severely deficient in the realm of international norm-creation. As a process, it suffers from both political and psychological disabilities, foremost among them the possibility of enunciating rules that do not command general agreement essential and sufficient to their implementation. As a phenomenon, it is misleading. It entails superficial appearances of unanimity where none exists, and encourages ascriptions of consensus on false premises.²⁵⁹

On the other hand, the last two decades have seen another approach towards the impact of United Nations resolutions. A major proponent of this approach is Rosalyn Higgins who contends that the General Assembly possesses a protolegal capacity and that its resolutions can even indicate evolving rules of international law. Professor Higgins argues that "international law is the body of legal norms which apply to relations across state boundaries"²⁶⁰ and has two main sources--contractual law and general international law. Contractual law comprises bilateral and multilateral treaties; the United Nations Charter is of the latter type.

General international law, according to Higgins, "refers to customary rules which are evidenced by the practice of States" and

²⁵⁸Kirkpatrick, Testimony Before the Senate Appropriations Committee, p. 6.

²⁵⁹Alice B. Haemmerli, "International Law and Majority Rule: The Case for Conservatism," S. M. Finger and I. R. Harbert, eds., U.S. Policy in International Institutions: Defining Reasonable Options in an Unreasonable World (Boulder, Colorado: Western Press, 1978), pp. 352.

²⁶⁰Higgins, p. 1.

general principles of international law widely accepted by States. Thus, customary international law is basically a "political" form of international law, "reflecting the consensus of the great majority of States."²⁶¹

Higgins, thus, advocates that

The United Nations is a very appropriate body to look to for indications of developments in international law, for international custom is to be deduced from the practice of States, which includes their international dealings as manifested by their diplomatic actions and public pronouncements. With the development of international organizations, the votes and views of States have come to have legal significance as evidence of customary law. Moreover, the practice of States comprises their collective acts as well as the total of their individual acts; and the number of occasions on which States see fit to act collectively has been greatly increased by the activities of international organizations. Collective acts of States, repeated by and acquiesced in by sufficient numbers with sufficient frequency, eventually attain the status of law. The existence of the United Nations--and especially its accelerated trend towards universality of membership since 1955--now provides a very clear, very concentrated focal point of state practice.²⁶²

Although Professor Higgins concurs with the argument that the General Assembly has no legislative capacity, and that its resolutions are not per se binding, she argues that "the body of resolutions as a whole, taken as indications of a general customary law, undoubtedly provide a rich source of evidence," and that they provide declarations on international law which are "invariably based on other quasi-judicial forms of support."²⁶³

The United Nations, according to Higgins, bringing almost the

²⁶¹Ibid.

²⁶²Ibid., p. 2.

²⁶³Ibid., p. 5.

whole world together, has caused the period during which a new custom of international law develops to be considerably shorter than in the past. Questions regarding the size of a majority supporting an implied legal prescription or the acquiescence of all major Powers to such a norm can only make a difference between usage and customary international law. A usage becomes a law, according to Higgins, "at that point at which States regard themselves as legally bound by the practice--a point which can only be ascertained by the close examination of States' attitudes and public statements."²⁶⁴ These States should constitute the considerable majority of nations and not necessarily all the major Powers, though the latter's exclusion "may in present circumstances render the new custom ineffective."²⁶⁵

During the evolving period of General Assembly resolutions into a customary international law, Higgins refers to Lauterpacht's opinion of General Assembly resolutions that

...whatever may be the content of the recommendation, and whatever may be the nature and circumstances of the majority by which it has been reached, it is nevertheless a legal act by the principal organ of the United Nations which Members of the United Nations are under a duty to treat with a degree of respect appropriate to a resolution of the General Assembly.²⁶⁶

Professor Jorge Castañeda also argues that "as being expressions of collective judgments, resolutions are the normal vehicle for realizing the objectives of international bodies; they represent

²⁶⁴Ibid., p. 6.

²⁶⁵Ibid.

²⁶⁶Judge H. Lauterpacht, South West Africa Voting Procedure Case, ICJ Report, 1955, p. 120, cited in Higgins, p. 7.

the culmination of their deliberative and decision-making process."²⁶⁷ Castañeda recognizes that the drafters of the Charter have made a clear distinction between the adjudication of legal disputes as the role of the International Court of Justice, and the political settlement of disputes as the role of the General Assembly or the Security Council. However, he argues that due to the change in the international situation, "the United Nations has exercised with the passage of time, a great influence in the development of international law" and that "it is certain that the activities of the organization have had an unexpectedly strong impact not only on the content but also on the very conception and scope of important principles and rules of international law."²⁶⁸ As a clear example for this, Castañeda refers to the resolutions, practices, and mechanisms for the protection of non-self-governing peoples, as developed by the United Nations, and which "have had the combined effect of modifying the entire chapter of international law pertaining to territorial sovereignty."²⁶⁹

Castañeda clearly recognizes that the law-creating function of the United Nations is extraordinarily complex. He also recognizes that the Charter uses the term "recommendation" to refer to General Assembly resolutions. This was logical and natural due to "embryonic structure of international society based on the sovereign equality of States."²⁷⁰

²⁶⁷Jorge Castañeda, Legal Effects of United Nations Resolutions, Leland M. Goodrich and William T. R. Fox, eds., and Alba Amoia, trans. (New York: Columbia University Studies in International Organization, 1969), p. 1, Translated by Alba Amoia.

²⁶⁸Ibid., p. 3.

²⁶⁹Ibid., p. 4.

²⁷⁰Ibid., p. 9.

Thus, Castañeda argues that

The organ's adoption of a recommendation represents an expression of a general social feeling. It is a manifestation of the manner in which the purposes of the treaty must be fulfilled in the eyes of the organization. The Member who does not observe it is opposing not only a social consensus but also the juridical system that is the normative substructure of that social environment. The pressure that a recommendation brings to bear on its addressees means this: faced with conduct contrary to the recommendation, and to the extent to which it is contrary, the social group can act in its turn, against the asocial conduct of whomsoever does not carry out the recommendation, directing its reprobation against the author of the conduct.²⁷¹

The use of the term "recommendation" by the Charter in defining the General Assembly's competence, contends Castañeda, does not constitute a legal obstacle preventing it from adopting different kinds of resolutions. "This factor, plus the extreme vagueness with which the powers of a juridical organ such as the Assembly are enunciated, easily explain why the very practice of the organ becomes, with the passage of time, the decisive factor in determining the legal scope of its functions."²⁷² Castañeda differentiates between two categories of General Assembly resolutions: internal resolutions and external resolutions. Internal resolutions pertain to the structure and operation of the organization and cover questions such as the admission and expulsion of members, the appointment of the Secretary-General, the budget of the United Nations and the establishment of subsidiary organs. These resolutions constitute the "internal law of the United Nations." These resolutions are mandatory decisions. Thus, for example, a resolution by the General Assembly granting a national liberation

²⁷¹Ibid., p. 12.

²⁷²Ibid., p. 15.

movement a permanent observer status in its works is mandatory because it grants such a movement the access and the right to participate in the works of the General Assembly despite the probable opposition of certain Member States. Also fall within this category General Assembly resolutions appropriating funds for certain programs benefiting a non-self-governing people or a national liberation movement.

The same also applies to resolutions creating a subsidiary organ. Castañeda states that

Resolutions that create subsidiary organs have mandatory legal effects for all the Member States, including those who oppose their establishment on constitutional grounds. The objecting State lacks legal recourse to prevent the creation of the organ, the indication of its activities in the decision-making mechanism of the organization, with all the legal and even budgetary consequences this implies.²⁷³

With regard to external resolutions, Castañeda points out that as a rule, they "do not legally require their recipient to comply with their content, that is, they are recommendations."²⁷⁴ These resolutions represent an "invitation" by the General Assembly to ascertain a state or a group of states to follow a certain conduct. However, Castañeda argues that within this category there is a group of resolutions that "may nevertheless produce legal effects that can be characterized as binding."²⁷⁵

Such resolutions usually take the form of pronouncements in which the General Assembly determines the existence or non-existence of certain facts or legal situations. As an example, Castañeda states

²⁷³Ibid., p. 58.

²⁷⁴Ibid., pp. 70-71.

²⁷⁵Ibid., p. 117.

that in reference to the Namibian case

The determination by the General Assembly that South Africa has not complied with the obligations of the Mandate establishing the condition or hypothesis of a legal rule, which has the character of a 'general principle of law recognized by civilized nations': if one of the parties to a bilateral treaty does not comply with its obligations, the party that does observe its own obligations ceases to be bound by them and may consider the treaty terminated. By virtue of this rule, the General Assembly could, on the basis of its determination, revoke the Mandate; moreover, as the present representative or agent of the organized international community that granted the Mandate, it could reassume the titles, rights, and powers enjoyed over the Territory when the Mandate was conferred, and could thus proceed to achieve the objective of the Covenant as well as the Charter--the self-government or independence of the people of the Territory.²⁷⁶

Another group of external resolutions is what Castañeda calls resolutions that contain declarations of a general nature. Such resolutions aim at confirming the existence of customary rules or expressing general principles of law. Thus, such resolutions do not create law but they recognize and declare it.²⁷⁷ These resolutions, depending on their content, have different legal values. An example of a high level resolution in this regard is the General Assembly's resolution 95 (I) affirming the Nuremberg Principles and the crime of genocide. On an intermediate level, Castañeda puts General Assembly resolution 1514 (XV) entitled "Declaration On the Granting of Independence to Colonial Countries and Peoples." Although the resolution was not declaring or establishing a specific legal obligation to grant political independence, immediately and unconditionally, to all dependent peoples, it was far more than an

²⁷⁶Ibid., p. 128. However, the author notes that such determinative resolutions are valid only in concretely decided cases.

²⁷⁷Ibid., pp. 165-168.

idealistic political declaration. In the words of Castañeda, this resolution was "the modern interpretation of the principle of self-determination, rendered by the most representative organ of the international community, on the basis of political trends and events since the Charter was signed."²⁷⁸ On a lower level, from the point of view of legal value, there are General Assembly resolutions whose aim is to set a political objective, such as the general and complete disarmament. This type of resolution may have great political importance, but from a legal point of view, it has no relevance whatsoever. Castañeda remarks that the international society is unorganized, decentralized, scarcely institutionalized and lacking organs specifically entrusted with the creation of law. Thus, he concludes that with such present circumstances the requirements of the creation of customary international law could be satisfied through the resolution of the General Assembly with the manifested or tacit recognition of states, although "it would be difficult to determine at what precise moment the new rule came into being."²⁷⁹

Leo Gross asserts that "the growth of customary international law within the framework of the Charter is not excluded, but assertions that such growth has occurred should be treated with caution unless there is reliable evidence that there is not merely consensus as to practice but that this practice has become a matter of law."²⁸⁰

There is no doubt that there is a long way from the birth of an

²⁷⁸Ibid., p. 175.

²⁷⁹Ibid., pp. 105-107.

²⁸⁰Gross, p. 538.

idea until its development into a rule of law, be it conventional or customary. Wolfgang Friedman states that resolutions of the Assembly purporting to be of a lawmaking character are certainly "an important link in the continuing process of development and formulation of new principles of international law."²⁸¹

Professor Oscar Schachter remarks that "in the last few years, we have witnessed an increasing insistence on the authoritative character of General Assembly resolutions" on issues such as self-determination and territorial occupation. Some of these resolutions explicitly purport to "declare the law," and "the authority of the General Assembly to adopt such declaratory resolutions was accepted from the very beginning." Thus, the Assembly affirmed the Nuremberg Principles in 1946 in a unanimous resolution. At the same session it declared genocide a crime under international law. The Assembly later declared South Africa's administration of South West Africa illegal.²⁸²

The shift of emphasis from issues pertaining to human rights, to which the West attached a primary significance, to issues relating to decolonization was once again a reflection of the drastic change in the composition of United Nations membership.

Other scholars attribute the role of the General Assembly resolutions as a means of norm creating to the fact that international law has been perceived by most of the new nations as the normative

²⁸¹Wolfgang Friedman, The Changing Structure of International Law (New York: Columbia University Press, 1964), p. 139.

²⁸²Oscar Schachter, "Alf Ross Memorial Lecture: The Crisis of Legitimization in the United Nations," Nordisk Tidsskrift for International Ret: Acta Scandinavia Juris Gentium 50 (1981): 3-4.

product of European civilization. Thus, the General Assembly may be perceived as the vehicle through which the international community in its entirety can contribute to the development of international law. Hence, "by virtue of its nearly universal representation and powers specifically granted in the Charter, it is the United Nations General Assembly which has most directly influenced the nature and subsistence of contemporary international law."²⁸³

Although no international law scholar claims that General Assembly resolutions constitute a formal "source" of international law, there is a growing body of opinion that "the General Assembly speeds up rule formulation by furnishing a global sounding board where disparate positions of states towards new norms can be voiced openly; hence the normative content of emerging rules is allowed to be more vigorously debated."²⁸⁴ The norms of international law evolve gradually over a period of time. There are two basic prerequisites for their emergence: first, an evidence of practice; and second, a demonstration of acceptance. The General Assembly, through its decision-making mechanism whether by a vote or by consensus, meets such requirements for a forum where these prerequisites can evolve.

The General Assembly practice, particularly during the last two decades, has shown, as C. Joyner argues, that the resolution-issue can be "transformed into a new legal norm or general principle of law."²⁸⁵ Declarations by the General Assembly purporting to declare

²⁸³Joyner, p. 448.

²⁸⁴Ibid., p. 458

²⁸⁵Ibid., p. 463.

the law, particularly those adopted unanimously or by consensus, carry more weight and significance in this regard as authentic interpretations concretizing the principles of the Charter and thus are binding.²⁸⁶ An example of this is the Declaration of Principles of Law Concerning Friendly Relations and Cooperation Among States, adopted by the Assembly as resolution 2625 of 24 October 1970. As Professor Schachter puts it "when all the States in the United Nations declare that a stated norm is legally binding, that determination cannot simply be dismissed as 'ultra vires'--or reduced to a recommendation--because it was made in the General Assembly."²⁸⁷ However, he hastens to add that past and future state practice would significantly determine the validity of the Declaration as a custom.²⁸⁸

Questions about whether States meant to express their conviction in the legally binding nature of the resolution and also about their future practice cannot change the fact that the adoption of such law-declaring resolutions create an "instant custom" of international law. Otherwise, the assumption of good faith of States and their credibility would diminish. Voting in the Assembly on such resolutions is an official act and expression by States and thus resolutions are "relevant and entitled to be given weight in determination of the law in question."²⁸⁹

Law-declaring resolutions, Prof. Schachter further argues, "may

²⁸⁶Schachter, p. 7.

²⁸⁷Ibid.

²⁸⁸Ibid., p. 13.

²⁸⁹Ibid., pp. 12-13.

have legal effect as evidence even if they are not unanimous."²⁹⁰ In this regard, "the size and composition of that majority must be taken into account in judging the weight to be given to the resolution."²⁹¹ Although he states that dissenting states could not be bound by a majority resolution, he argues that "if a resolution is persuasive evidence of an existing obligation, then a dissenting state may be considered bound by that obligation."²⁹²

Unanimity or consensus are not always necessary to give legal value to an Assembly resolution. In the case of *Texaco Overseas Petroleum v. Libyan Arab Republic*, the Arbitrator attributed "legal value" to General Assembly resolution 1803 (XVII) of 1962 which was adopted by 87 votes to 2, with 12 abstentions. Professor Schachter remarks that "what is interesting is that this decision attributing legal value to an Assembly resolution on a highly controversial matter has been widely applauded by many in the United States and other Western countries who have been cautious, not to say hostile, about attributing legal effect to Assembly declarations of law. They have done so obviously because they found the 1962 resolution satisfactory from their standpoint."²⁹³

Notwithstanding the legal argument about General Assembly resolutions, their role in legitimation is undeniable and it goes beyond the narrow meaning of international law. Legitimation is

²⁹⁰Ibid., p. 14.

²⁹¹Ibid.

²⁹²Ibid.

²⁹³Ibid., pp. 8-9.

basically political, and "it must take into account the ends sought, the means for achieving those ends and the procedures used in reaching decisions."²⁹⁴

States have different motives, interests and basic values. Even if they "often agree on ends in the abstract, they disagree on specific measures for reasons of interest and power."²⁹⁵

Resolutions of the General Assembly, if they are to gain consensus, are usually the result of a long process of negotiations and compromises. In other cases, they are approved by the majority against the objections of the minority. Based on the facts of international politics and the Charter of the United Nations, such resolutions, even if not binding on dissenting minorities in the legal sense, are "entitled to considerable weight... in evaluating demands for new law or in judging the acceptance of claims of existing law."²⁹⁶ However, "an essential requirement for legitimizing international decision-- whatever the size of the majority--is their conformity with minimal procedural standards relating to the decision process."²⁹⁷ Thus, voting has to reflect the requirements of 'due process', of fairness and of principle decisions."²⁹⁸

The pursuit by the General Assembly of the goal of decolonization in general and the case of Namibia in particular has had

²⁹⁴Ibid., pp. 16-17.

²⁹⁵Ibid., p. 17

²⁹⁶Ibid., p. 18

²⁹⁷Ibid

²⁹⁸Ibid.

its impact on the role of the Assembly in generating obligations on its members and creating new norms of international behavior. Following the precedents in which the Assembly purported to declare the law, advocates of decolonization pushed through resolution 1514 of 1960, as a sweeping delegitimization of colonialism. Today, it is almost universally agreed that colonialism is outlawed and illegal and that self-determination is an inalienable right for all peoples. This was achieved in spite of the fact that the Charter itself did not prohibit colonialism but rather tried to regulate it.

The process of creating binding obligations on Member States was stretched to cover specific cases and not only general principles. Thus, several scholars agree that General Assembly resolution 2145 of 1966 terminating South Africa's Mandate over South West Africa "was certainly binding on all Members of the United Nations and third parties."²⁹⁹ Legal consequences of this resolution were later specified in ICJ advisory opinion of 1971, as mentioned earlier in Chapter II.

This view was explicitly echoed in the advisory opinion of the ICJ on the Western Sahara in 1975. In a separate concurring opinion, Judge Dillard stated that "the pronouncements of the Court thus indicate, ... that a norm of international law has emerged applicable to the decolonization of these non-self-governing territories which are under the aegis of the United Nations."³⁰⁰ The eventual independence

²⁹⁹Maarten Bos, "The Interpretation of Decisions of International Organizations," Netherlands International Law Review 28 (1981): 147.

³⁰⁰Advisory Opinion on the Western Sahara (1975), ICJ Report 12, p. 121, cited in Bos, p. 150.

of most of those territories "verifies the claim that such practice evidences the necessary opinio iuris to justify the assertion that a rule of customary international law exists."³⁰¹

The question of armed struggle by national liberation movements has been discussed earlier. It is the contention of this study that armed struggle, as a result of the General Assembly pursuit of universal decolonization, has been legitimized in case of a colonial Power's insistence on maintaining control of overseas colonies, and that armed struggle has become a norm of international behavior, even if some major powers still object to the United Nations General Assembly endorsing struggle to achieve independence by all means including military struggle and calling upon all states to assist national liberation movements. The preceding analysis proves the hypothesis that certain resolutions of the General Assembly, if they meet certain conditions, can be qualified as declaring law. The General Assembly Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States is definitely one of those resolutions declaring law. It stipulates that peoples are "entitled to seek and receive support in accordance with the purposes and principles of the Charter" in order to face any forcible action that deprives them of their right to self-determination, freedom and independence. Another declaration of the General Assembly of the same category is resolution 3314 on the Definition of Aggression which repeats in more forceful words the prohibition on the forceful deprivation of peoples of their right to

³⁰¹Bos, p. 151.

self-determination and reiterates their right to seek and receive support. The repeated resolutions of the General Assembly adopted by increasingly overwhelming majorities endorsing armed struggle by national liberation movements against colonial Powers leave no doubt that it has become a well established norm.

As we have seen, the United Nations involvement in the issue of Namibia has contributed to the establishment of new norms of international behavior in a number of significant ways. This contribution was manifested in the consolidation of the right of peoples to self-determination as a universally accepted principle. Also, the United Nations, for the first time in its history, has established an autonomous body to serve as a de jure government of a colonial territory. The General Assembly has recognized a national liberation movement as the sole and legitimate representative of a colonial people and granted it a permanent observer status. Furthermore, the Assembly, by an overwhelming majority has repeatedly recognized the legitimacy of armed struggle by such national liberation movements to achieve independence.

General Assembly Resolutions And Majority Rule

Voting is the usual method of decision-making in international organizations. Thus, it has a great significance in deciding the attitudes and orientations of any international gathering. In the General Assembly the voting system is specified in Article 18 of the Charter. According to this Article, each member of the General Assembly has one vote. Decisions of the Assembly on important

questions are made by a two thirds majority while decisions on other questions are made by a simple majority.

This system was a progressive development from the tradition of unanimity requirement in international conferences and organizations. Article 5 of the Covenant of the League of Nations, for example, stipulated that substantive decisions had to be taken by unanimous vote. That was a manifestation of the supremacy of the principle of state sovereignty over considerations of collective international organization. However, majority rule in the General Assembly does not in any way contravene the principle of state sovereignty as the General Assembly's resolutions are mainly of recommendatory nature.

The provision of granting each member one vote was consistent with previous practice and the principle of sovereign equality. As the organ composed of the entire membership of the world Organization, it was only natural that the General Assembly should provide "an equal opportunity for all members to take part in discussions and to vote."³⁰²

Article 18 establishes two categories of questions to be voted upon by the General Assembly. On the one hand, simple majority is enough to adopt resolutions on "ordinary" questions. Rule 88 of the Rules of Procedures of the General Assembly specifies the majority as that of members present and casting an affirmative or a negative vote. Thus, those who abstain are not counted in the majority; this means that resolutions could be adopted by less than a simple majority of the membership. On the other hand, Article 18 stipulates that decisions of

³⁰²Goodrich et. al., p. 169.

the Assembly on "important" questions shall be made by a two-thirds majority. The Article enumerates some of those questions. However, the Assembly itself can, by a simple majority, decide to consider other questions "important" and thus requiring two-thirds majority.³⁰³

Besides these specific questions specified in Article 18 as important, the criteria for determining other questions requiring the two-thirds majority are not easy to reach. However, "it would appear that members of the Assembly in most cases recognize the desirability of a larger consensus than is represented by a simple majority on questions that are intrinsically important from the points of view of the particular interests of Members and the development of the Organization."³⁰⁴

During the first decade of the Organization, the West, particularly the United States, had a clear and decisive command in the General Assembly. "Of the original 51 Members of the United Nations in 1945, at least 35 were closely associated with the United States, only 5 with the Soviet Union and only 10 were non-aligned."³⁰⁵ As a result, "the United States did not hesitate in those years to use its 'automatic majority' in its own national interest."³⁰⁶

Until 1955, there was little change in the composition of the Assembly. Only 9 new Members were admitted between 1946 and 1950, and

³⁰³Ibid., p. 171.

³⁰⁴Ibid., p. 175.

³⁰⁵John G. Stoessinger, The Might of Nations: World Politics in Our Time 6th ed., (New York: Random House, 1979), p. 315. A clear example of US ability to utilize its position to develop the residual powers of the General Assembly when the Security Council was prevented from action by Soviet veto was the Uniting for Peace resolution of 1950.

³⁰⁶Ibid.

none thereafter until 1955. In 1955, a "package deal" was reached to solve the membership crisis resulting from the cold war, thus admitting 16 states to membership.³⁰⁷

Applications for membership after 1955 came primarily from new States emerging from colonial dependence. Both Western Powers and the Soviet Union voted for their admission, partially to win their future support. However, 1960 was the turning point in the composition of the General Assembly. During that year, 17 new Members, including 16 former African colonies, were admitted to the United Nations. This influx set the stage for basic changes in the direction of the Assembly's interests and for a permanent shift in the voting power structure of the organization.

The increase in the United Nations membership from 51 Members at its establishment to 159 Member States today constitutes the most obvious and dramatic change in the structure of the world Organization. Instead of a majority of long established States, largely western in orientation, the overwhelming majority of the Assembly today is constituted of Third World States. The new Members, like the older ones, have sought to use the United Nations to enhance their primary national objectives. Thus, mostly to the dislike of the Western Powers, the questions of decolonization, racial equality, and economic development became the most predominant preoccupation of the Assembly. The Soviet Union, after being in a permanent minority position for more than a decade, found the change in composition and

³⁰⁷The Permanent Members of the Security Council on each side of the cold war objected to additional applicants that they considered to favor the opposition, thus creating what became known as the membership crisis. See Goodrich, et. al., pp. 86-96.

concerns of the Assembly most useful. Thus, it sought to benefit from the anti-colonial sentiment of the majority not only as an effective propaganda on a matter of principle but also as a good point of departure from which it can attack Western policies in general.

The new flow of anti-colonial resolutions adopted by the General Assembly has been interpreted by many Western officials and observers as anti-West and pro-Soviet. The questions of Namibia and apartheid have been two major focal points in the efforts of advocates of decolonization at the United Nations. Thus, summarizing the view of a majority of States in the United Nations about the Western Powers' stand on the questions of Namibia and South Africa, the United Nations Commissioner for Namibia says:

It's patent to any one that any collaboration with South Africa is morally wrong because of its heinous policy of racial discrimination or apartheid and because of its illegal occupation of Namibia. So, if these countries (Western States) want to maintain economic, political, cultural and other relations with South Africa, they are bound to be the target of the Assembly....³⁰⁸

A study by the United Nations Secretariat states that the contention that the United States is consistently outvoted by a coalition of Third World and Soviet bloc countries is "a widely shared misperception among Americans." The study concludes that "a careful analysis of the voting record of the United States during the past two General Assembly sessions (thirty-sixth and thirty-seventh sessions) reveals that the United States votes with the majority on more than seven out of ten resolutions."³⁰⁹ The study correctly remarks that

³⁰⁸Interview with B. Mishra.

³⁰⁹"US Voting Patterns at the United Nations General Assembly," an unpublished study by the United Nations Secretariat, New York, September 1983.

"the United States position on two subjects, issues concerning Israel and questions concerning South Africa, tends to reduce the percentage of times that the United States voted with the majority by approximately six per cent."³¹⁰ While the average percentage of United States voting with the majority during those two sessions was 85.3% on economic questions, 82.3% on social, humanitarian and cultural matters, it was only 58.3% on questions relating to decolonization.

The instances when the United States is consistently in a minority pertain to highly political issues which an overwhelming majority of Members emphasize and find themselves at variance with United States positions. Thus, these votes should be interpreted as a reflection of differing attitudes towards these particular issues and not of an intrinsic animosity towards the United States or the West in general.

General Assembly resolutions relating to questions of decolonization, including Namibia, have been mustering an overwhelming majority, particularly since 1960. This majority consisted of the African, Asian and Latin American groups supported by the Soviet bloc countries. On the other hand, most Western countries have consistently voted negatively, or at least abstained, on these resolutions. This position stemmed primarily from the fact that some of these countries were also colonial Powers and thus perceived these resolutions as directed against their national interests. Besides, three of these countries, France, United Kingdom and the United States, are permanent Members of the Security Council and voting in favor of General Assembly

³¹⁰Ibid.

resolutions calling for imposition of comprehensive mandatory sanctions against South Africa would almost automatically oblige them to support such a move by the Security Council, something they strongly oppose. A survey of the voting patterns on the General Assembly resolutions pertaining to the question of Namibia clearly demonstrates this division. Thus, General Assembly resolution 2145 (XXI) of 27 October 1966 terminating South Africa's Mandate over South West Africa/Namibia was adopted by a majority of 114 votes, 2 against (South Africa and Portugal) and 3 abstentions (France, Malawi and the United Kingdom). The United States voted favorably on the resolution.³¹¹

In explaining the United States positive vote after the vote, the American representative stated that the United States interpretation of the resolution and the basis on which it supported it

"...that it is South Africa's rights that have come to an end, not the concept of international responsibility itself, and that this consequence has derived both from South Africa's failure to fulfil its obligations and from its disavowal of the Mandate. The rights of the inhabitants as well as the rights and responsibilities of the United Nations, as confirmed by the various advisory opinions of the International Court of Justice, continue."³¹²

On the other hand, the British representative explained his Government's abstention on the draft as he said that "the responsibility of the United Nations should be directed to preserving the international status of the Territory of South West Africa and not

³¹¹Portugal's negative vote could be explained by the fact that at the time it maintained several African colonies and was resisting international pressure to relinquish them. South Africa's vote does not need any explanation. The vote was taken by roll-call. See United Nations General Assembly Official Records Twenty First Session, 1454th Plenary Meeting, p. 22.

³¹²Ibid., p. 30

responsibility for assuming the administration of the Territory, which cannot be achieved by words alone."³¹³ In explaining its abstention on the resolution, the French delegate stated that his country "had clearly expressed its doubts as to the wisdom of having South West Africa administered by the United Nations."³¹⁴ As for Malawi, its abstention could be explained by its traditional conservative regime and its economic dependence on South Africa.

However, this overwhelming majority did not last long. Four months later, when the General Assembly voted to establish the United Nations Council for South West Africa, resolution 2246 (S-V) of 19 May 1967 was adopted by a majority of 85 votes with two against, again South Africa and Portugal, while 30 countries abstained. The abstaining countries were the Eastern European group, the Western group, including the United States, and Malawi.

The Soviet delegate stated, in explanation of the vote that his country gives, "all possible support to the peoples fighting for freedom and independence and overcoming the resistance of imperialist and colonial Powers to the ineluctable process of elimination of colonial and racist regimes." However, he argued that the resolution should condemn South Africa and Western Powers which support it, and "vigorously demand the immediate and unconditional withdrawal from South West Africa" of all South African troops. Thus, he stated that the USSR delegation would abstain on the draft resolution because it "strongly doubts the effectiveness of the measures provided for in the

³¹³Ibid., p. 6.

³¹⁴Ibid., p. 30.

draft resolution."³¹⁵ The same argument was echoed by representatives of other Soviet bloc countries. It was evident that both East and West did not welcome the idea of direct United Nations responsibility for the Territory.

Several Western countries, including the United States had submitted proposals for the appointment of a special representative for South West Africa and a limited council in order to report and recommend to the next regular session of the Assembly specific limited steps towards the establishment of a nucleus of self-government in South West Africa. These countries argued that such approach was practical and realistic and that the dialogue with South Africa should not be foreclosed.³¹⁶ However, these suggestions were not formally submitted to the vote because they evidently lacked support from a majority of the members. Hence, Western Members, considering the draft resolution to be impractical and unrealistic, abstained.

This pattern of voting changed in the following years when draft resolutions on the question of Namibia, reflecting the increasing frustration of the Afro-Asian group over the inability to achieve Namibia's independence while Western countries stood accused of supporting South Africa, at least economically through their continued trade and investment connections with it, and politically by using their veto power at the Security Council against any draft resolution

³¹⁵United Nations General Assembly Official Records, Fifth Special Session, 1517th Plenary Meeting, pp. 1-3. However, the USSR participated as a member of the UCN since its establishment by this resolution.

³¹⁶See the statement of the US representative, Mr. Goldberg, United Nations General Assembly Official Records Fifth Special Session, 1967, 1505th Plenary Meeting, pp. 1-3.

for the expulsion of South Africa from the Organization or imposing comprehensive mandatory sanctions on it, started to move closer to the views of the Soviet bloc countries. Thus, these countries systematically lent their support to such drafts. Western countries mostly abstained.

Since the establishment of the Western Contact Group, its members maintained a "technical abstention" on resolutions pertaining to the question of Namibia on the grounds that they wanted to keep a neutral position to allow them to negotiate with all concerned parties.³¹⁷ Thus, these resolutions have been adopted with increasing majorities. General Assembly resolution 37/233 A-E of 20 December 1982 was adopted with majorities varying from 120 votes in favor with 23 abstentions to 141 votes in favor with 5 abstentions. The political part of the resolution gained the least support while that part pertaining to the United Nations Fund for Namibia gained the largest support.

This point becomes clear when one studies the political function of the General Assembly which Inis L. Claude, Jr. calls the "collective legitimization." This function means that the political organs of the United Nations, particularly the General Assembly, "have come to be regarded and utilized by Member States as dispensers of impressively valuable international approval and disapproval of the claims, policies, and behavior of states."³¹⁸

³¹⁷Interviews with US and other Western representatives, United Nations, New York.

³¹⁸Inis L. Claude, Jr., "Implications and Questions for the Future," International Organization 19 (1965): 843.

The impact of General Assembly resolutions, whether it is merely political and moral or legal, cannot be easily disregarded. Yet, states cling to the attributes of national sovereignty and self-interest when decisions on foreign policy are undertaken. In some cases, certain states, like South Africa, consider opprobrium by the international community less damaging than a change of policy, called for by General Assembly resolutions, which in their view could be detrimental to their survival or vital national interests.

Whenever a resolution is adopted, the practice has been for the Secretary-General of the United Nations to transmit the text of the resolution to Member States. Their replies and comments are subsequently included in a report submitted by the Secretary-General to the General Assembly for consideration. This practice has been an effort to follow up on the question of the implementation of General Assembly resolutions. However, this practice has not led to any drastic change in the phenomenon of non-compliance with resolutions by several Member States. For the time being, States are not obliged to respond to the Secretary-General's correspondence. A shift of emphasis should be produced reflecting the necessity to consider that States are responsible for informing and providing answers to the whole membership on their compliance with General Assembly resolutions. A State voting favorably on a resolution is politically and morally committed to honor its vote by adhering to the provisions of such a resolution. On the other hand, the General Assembly should also be informed of the names of those States which have not taken any action to carry out General Assembly resolutions or even hindering their implementation.³¹⁹

³¹⁹Interview with N. Elaraby.

In recent years, the General Assembly passed hundreds of resolutions on various agenda items. Many of these resolutions were disregarded by States to whom they were addressed. Such States have argued that General Assembly resolutions are mere recommendations, and thus, non-binding. Those States have also accused the General Assembly of improperly attempting to impose the will of its automatic majority on the minority. Some voices have even called for the change of the voting system in the Assembly.

The argument about automatic majority is rather self-serving and superfluous. Majority rule was the system adopted by the founders of the United Nations. Western countries commanded a clear majority during the first decade of the Organization and used it to obtain favorable resolutions to serve their national interests particularly with regard to the Cold War. It was the Soviet Union at that time who complained of such an automatic majority while the West hailed it as democratic. Western countries even tried to circumvent the Soviet veto by expanding General Assembly's authority in matters pertaining to the maintenance of peace and security by General Assembly resolution Uniting for Peace of 1950, which the Soviet Union rejected as unconstitutional.

Thus, the use of the new majority of its voting power in the Assembly to promote the cause of decolonization should not be surprising. On the contrary, this use is only logical because most of Third World countries are small powers to which the United Nations sometimes represent the only means to achieve their foreign policy goals particularly vis-à-vis a militarily superior State like South Africa in the case of Namibia.

The United Nations has been used by various countries and groups of countries to serve their respective interests. As advocates of decolonization realized their voting power in the General Assembly, they did not hesitate to use it in order to mobilize the United Nations machinery behind their cause. In the case of Namibia the culmination of this mobilization was the termination of South Africa's Mandate over Namibia and the assumption of direct responsibility for the Territory. Thus, they succeeded in transforming the General Assembly into a direct active party to the conflict with South Africa over Namibia. This also resulted in the comprehensive and large scale assistance programs that the United Nations provides the Namibian people and its representative, SWAPO, with. The majority of the Assembly also succeeded in delegitimizing South Africa's occupation of Namibia and excluding it from participation in the works of the Assembly. Furthermore, SWAPO was granted an observer status at the Assembly, a position previously reserved for sovereign states. Moreover, armed struggle by national liberation movements was endorsed by the Assembly as a legitimate endeavor to exercise the right of self-determination and achieve independence. This quest for decolonization has in the process changed the norms of international behavior.

On the other hand, any study cannot overlook the fact that the General Assembly, in the past two decades, has adopted hundreds of resolutions on various issues that have been ignored by the States to whom they were addressed in the first place. In the case of Namibia, South Africa has so far continued to defy the Assembly's resolutions on Namibia. South Africa still occupies the Territory, although the Mandate has been revoked almost two decades ago. Numerous other

resolutions, adopted with increasingly overwhelming majorities have met the same destiny of the Assembly's decision to directly administer the Territory. Why?

This question lies at the heart of the concept of international organization. The United Nations Charter stipulates that the Organization is based on the principle of sovereign equality of all its Members.³²⁰ Thus, the Organization has authority only over those aspects of international relations to which its Members have agreed to concede to the United Nations. The United Nations is based primarily on the concept of voluntary cooperation of Member States. This was a reflection of a fundamental fact of international politics when the United Nations was established and still prevails today and is expected to remain so in the foreseeable future. This fundamental fact is that the independent sovereign state is the basic unit of the international system. Consequently, the Organization has no power whatsoever to force a Member State to abide by a resolution. The only exception to that is in the case where the Security Council, including its five permanent Members, decides that a certain situation constitutes a threat to or a breach of peace or that a state has committed an act of aggression. Only in this case has the Security Council the power to decide to take measures, including military action to restore international peace and security or against the aggressor.³²¹

As mentioned earlier, this system was based upon the concept of collective security. The developments that followed the end of World

³²⁰Article 2 para 1.

³²¹See Chapter VII of the United Nations Charter.

War II have rendered this system ineffective. Consequently, any resolution from the General Assembly aiming at achieving a tangible result should have either the consent of the State to which it is addressed or the full support of the major Powers that have the capabilities to exert enough pressure on that State to comply with that resolution.

In many cases, such as that of Namibia, the majority was often justified in its impatience and frustration over the intransigence of South Africa and the stalemate of the situation in the Territory. This frustration has led the majority to push through the General Assembly resolutions that are politically, if not morally, misguided.

Group politics at the General Assembly has also contributed to such development. The Assembly is divided into regional groups, the largest of which is the African group. Draft resolutions pertaining to African issues are usually initiated at the level of the group. In the case of Namibia, they are prepared by the UNCTAD and then sent to the African group for endorsement. After such a step, they are endorsed, almost automatically by the Non-Aligned group. This group includes about a hundred Third World Member States which means that its endorsement would almost necessarily guarantee a large majority approval of a draft resolution in the Assembly itself.

Group politics has often given vocal minorities of radical states the opportunity to take control of debates and the process of drafting resolutions. The majority of each of these groups has often followed the lead of such minority as a result of intimidation, sincere frustration over the issue or even indifference. "In short,

cooperation leads to log-rolling; rhetoric is the payoff."³²² The result has been the approval by the Assembly of strong resolutions against South Africa which it, not surprisingly, rejected. At the same time, those resolutions were opposed, or at least lacked the support, of the major Western countries who possessed the capabilities and power to prod South Africa to change its positions and policies. In his 1984 Report on the Work of the Organization, the United Nations Secretary-General Javier Pérez de Cuellar stated that heated debates and confrontations in the deliberative organs of the United Nations "destroy the possibility of a consensus which could form the basis for practical action."³²³

This has naturally resulted in a flow of repetitive resolutions that were never implemented. In turn, this has exacerbated the frustration of the majority. Soviet bloc countries have invariably and often successfully taken advantage of this situation to alienate the majority from the West. The result was more radical resolutions which not only condemned South Africa but, in several cases, also some Western countries. Although such resolutions honestly reflected the frustration of the majority, they had no real practical value as far as Namibian independence was concerned.

Furthermore, General Assembly resolutions have tended to get longer and longer over the years. Often, the Assembly adopts several resolutions on the same item, which could be easily merged in only

³²²Gordenker, p. 317.

³²³United Nations General Assembly Official Records: Thirty-Ninth Session, Supplement No. 1 (A/39/1), p. 2.

one.³²⁴ Some of those resolutions are mere repetitions of previous resolutions. By doing this, the majority has weakened its own currency.

Again, the Secretary-General referred to this problem when he stated in the same Report that "the non-implementation of resolutions as well as their proliferation has tended to downgrade the seriousness with which Governments and the public take the decisions of the United Nations" and that automatic repetition of some agenda items, debates and resolutions "have been debilitating to the efforts of the Organization in the cause of peace and economic development."³²⁵

The majority of the General Assembly, in my view, has to adopt a new approach to its voting power. Wisdom, discretion and statesmanship are more important and valuable to the majority than rhetoric and acrimony. The majority has to realize that it can push through the Assembly almost any condemnatory resolutions, but this will be the end of the process and no practical positive result would ensue. The passage of resolutions as such is no real victory.

Instead, the majority has to reassess its voting power and reconsider its approach to using it to achieve its goals. As a result of a realistic understanding of the role and authority of the United Nations, the majority has to reemphasize the concept of consensus. It should seek to marshal the full support and backing of the largest number possible of Member States, particularly major Powers to achieve

³²⁴For example, United Nations General Assembly resolution 39/50 of 12 December 1984 on the question of Namibia consists of five separate resolutions, one of them has twenty-four preambular and sixty-nine operative paragraphs. See also Gordenker, p. 317.

³²⁵United Nations General Assembly Official Records: Thirty-Ninth Session, Supplement No. 1 (A/39/1), p. 2.

what could be called a 'working consensus', behind resolutions on important questions like that of Namibia. This could be achieved only if the silent moderate Members of the majority challenge its radicals by logic and wisdom. Some radical draft resolutions are sometimes better left unadopted.

Heated debates, confrontations and rhetoric should be kept at minimum. A recent meeting of eleven former and current Presidents of the General Assembly called for special efforts to "be made by Member States to promote constructive debates in the General Assembly and the systematic introduction of the art of consensus-building before the final vote."³²⁶ The last few General Assembly sessions have witnessed the realization of the majority that consensus would mean more positive results for the whole membership and, consequently, the Organization itself. Thus, debates and resolutions on several highly controversial political issues were "marked by a greater willingness among delegates to accommodate their views rather than steamroll the opposition."³²⁷

On the other hand, consensus does not mean veto power. Major Powers have to understand the frustrations of the majority and the new norms of international behavior. Policies of major Powers and their positions at the United Nations have to reflect such an understanding. They have to exert every effort to meet the majority's concerns for the interests of both sides. Both sides have to start a continuous

³²⁶United Nations General Assembly Doc. A/40/377 of 18 June 1985, p. 8.

³²⁷Seymour Maxwell Finger, "Moderates Prevail at UN," Newsday, 6 April 1985, p. 65.

constructive dialogue on the best means to achieve common goals. Such dialogue should not be confined to the corridors of the United Nations. Proponents of Namibian independence should realize that their endeavors to mobilize the full support of major Powers for that goal should not only be through votes at the Assembly but also by making this goal an integral part of the foreign policies of the majority.

It is only through the meeting of minds of the majority and major Powers that General Assembly resolutions, not only on the question of Namibia but also on all other questions, would have a greater weight.

Furthermore, the General Assembly can take numerous measures to improve its work in a way conducive to positive conclusions and increase the impact of its resolutions. Such measures should include the reduction of the number of agenda items either by eliminating those which have become irrelevant or by merging items of a similar nature under a single heading. The Assembly should also reduce the number and length of resolutions. Also, decision-making by consensus should be encouraged and formally incorporated in its Rules of Procedures. Subsidiary organs which have become irrelevant should be dismantled and those dealing with similar subjects should be merged.³²⁸

The mere adoption of a resolution by the General Assembly should not be the end of the process. The General Assembly should give more emphasis on the implementation of its resolutions. Under the

³²⁸United Nations General Assembly Doc. A/40/377, pp. 8-14. See also Note On Issues to be Considered, background paper prepared by the United Nations Institute for Training and Research (UNITAR) for the meeting of the Presidents of the General Assembly, United Nations Document UNITAR/PGA/1985/03 of 15 May 1985, pp. 7-12.

existing system executive, organizational or administrative parts of a resolution are the responsibility of the Secretary-General. He is bound by General Assembly's resolutions and reports on the implementation of the Secretariat of their relevant provisions. As for those parts addressed to States, the Secretary-General includes the replies and comments received from Member States in reports to be submitted to the Assembly for its consideration. The United Nations Secretariat should devote more attention to the follow-up of resolutions or maybe a new machinery should be established for this purpose.³²⁹

The General Assembly has to emphasize a degree of accountability for compliance with its resolutions, particularly those adopted by consensus. Thus, as a first step, a shift of emphasis in the reporting system should be effected. This could be achieved by including in the Secretary-General's report the names of those Member States which have not reported to him on the implementation of a resolution. Such a step would create more pressure on States to inform the whole membership on their compliance by General Assembly resolutions. Such reports should be considered with due seriousness by the Assembly during its annual sessions.

Above all, it should be emphasized that the important thing is to influence the attitudes of governments on issues like Namibia, especially those that have the power to do something about the situation. Hastily outvoting such governments before making an effort to reach agreement rarely serves a purpose.

³²⁹Interview with N. Elaraby.

CONCLUSION

In an effort to understand the General Assembly's new unprecedented role in the case of Namibia and what new norms of international behavior which this case has helped to create through the actions of the General Assembly, this dissertation has addressed four major questions: the evolution of the role of the General Assembly towards the principle of self-determination in general and its application in the case of Namibia in particular; the role, politics, successes and failures of the UNCN; SWAPO as the "sole legitimate representative of the Namibian people" enjoying a permanent observer status in the General Assembly; and finally the broader issue of the role of the General Assembly and the creation of new norms of international behavior.

The discussion in the first chapter manifests that the right of self-determination has become a universally recognized principle. As the brief review in Chapter II illustrates, the campaign for Namibian independence has benefited from that evolution and made a further contribution to its validity.

The evolution of the principle of self-determination has been significant in the last fifty years. While there was no mention of it in the Covenant of the League of Nations, the United Nations Charter gave it great significance. The Charter of the United Nations

unequivocally stated that the principle of equal rights and self-determination of peoples is a basis for friendly relations among nations. Yet, the Charter did not outlaw colonialism. It only provided for an intergovernmental machinery to supervise the colonial administration of non-self-governing territories and improve the standards of colonial rule.

Only fifteen years after the establishment of the United Nations and as a direct result of an increasingly rapid process of decolonization, colonialism was declared "intolerable and an illegitimate abuse to be done away with as speedily as possible by the international community."³³⁰ Self-determination was recognized as a fundamental right and thus colonialism, by definition, a violation of basic human rights. The validity of such recognition is manifested in the fact that today no State invokes the legitimacy of colonialism or openly challenges the principle of self-determination for colonial territories. However, the General Assembly has not striven to extend its concern about self-determination to non-colonial territories and peoples. This is due to the historic grievances of the majority of Third World countries which suffered from white European colonialism. Thus, their concern and attention are primarily directed against remnants of such colonialism.

In pursuing the case of Namibia, the United Nations has developed new institutions and new norms of international behavior that are desirable, legitimate and consonant with the Charter.

The United Nations of today is clearly different from that of 1945. Even as early as 1969 scholars had correctly remarked that the

³³⁰Emerson, p. 486.

United Nations had become "quite different from the Organization described in the Charter" and that it was "hardly recognizable from a reading of Charter provisions."³³¹ This change was clearly manifested in the unprecedented action of the General Assembly in 1966 of unilateral revocation of South Africa's Mandate over South West Africa/Namibia. The creation of an autonomous body to "administer" the Territory, namely the UNCN; the granting of SWAPO a permanent observer status in the General Assembly; and the United Nations programs and activities to assist Namibian refugees and prepare the Namibian people for independence constitute a new departure for the United Nations that would not have been possible without the fundamental change in the political complexion of the world Organization.

The examination of the United Nations involvement with the case of Namibia is of great significance in studying the evolution of the role and attitude of the world Organization. The role of the United Nations in the question of Namibia has been both of long-standing and unique in many respects. Namibia today is the only colony in the world over which the United Nations has assumed direct, legal and administrative responsibility. The frustration of the General Assembly in its efforts to bring independence to Namibia due to its constitutional limited powers has led to a basic change in the Assembly's customary role as a universal forum of negotiations and conciliation. Instead, the Assembly decided to overtly take the side of Namibian independence and against South Africa. Although this has deprived the Assembly of the possibility of playing its natural role as

³³¹Goodrich, et. al, p. 17.

a conciliator, it has permitted it to stretch its role and powers on the question of decolonization to the limit. Today, the Assembly itself has thrown all its political and material weight behind the struggle of the Namibian people for independence.

The case of Namibia also clearly illustrates the interaction of the roles of the main organs of the United Nations particularly the General Assembly, the Security Council and the International Court of Justice. In this regard, it has proved once again that the Security Council is still the only organ which is competent to adopt decisions legally binding on Member States.

I have also argued that the United Nations Council for Namibia is an important, unprecedented innovation in the institutional development of the United Nations. It has not been able to achieve its goal of de facto administration of Namibia but, despite certain defects, it has made significant contributions towards preparing the Namibian people for independence. The analysis of its work and policies in Chapter III demonstrates the validity of this argument.

The United Nations Council for Namibia was created by the General Assembly to epitomize its determination to bring independence to Namibia. The UNCN was declared a de jure government of the Territory and thus was constituted as a different body from other subsidiary organs of the General Assembly, with high status and a broad mandate. This has been an unprecedented innovation in the institutional development of the United Nations. Since its establishment, major Western Powers have refused to participate in its work. The absence of active Western participation, added to the historical grievances of Third World countries and the role of soviet

bloc countries in the Council, have facilitated the adoption by the UNCN of anti-western positions. On the other hand, the boycott of the UNCN by major Western Powers has significantly weakened its authority and status. This study has suggested the reconstitution of the Council to include the major power centers at the United Nations so as to include those Members whose actions are crucial for the implementation of the General Assembly's resolutions on the question of Namibia. This study also suggested that administrative and travel excesses of the Council should be immediately checked.

In spite of its shortcomings and excesses, the UNCN, as this study reveals, has several achievements to take credit for. The Council has shifted its original mandate of administering the Territory into becoming the vanguard of the efforts by the international community to gain independence for Namibia. Today, the Council symbolizes the dedication of the world Organization to this goal and the role of the General Assembly as a direct party in the struggle to achieve such a goal. The assistance programs for Namibian refugees which the Council administers and its programs to prepare Namibians for independence are unprecedented and of great significance. Such programs have clearly given the role of the Assembly in the process of decolonization a concrete and tangible content. The fact that Namibia is still under South Africa's occupation should not belittle the Council's contribution in the struggle for Namibia's independence.

Colonialism has become an illegitimate phenomenon. Virtually all States today agree with this or at least do not contest it. In the eyes of the majority of the United Nations, it was also most appropriate and legitimate to endorse SWAPO as the sole representative

of the Namibian people and armed struggle for independence. Thus, the General Assembly has established new criteria for representativity and legitimacy.

The analysis of the continuing struggle for national liberation in Namibia in Chapter IV proves the validity of my argument that the General Assembly's recognition of SWAPO as the sole legitimate representative of the Namibian people and its endorsement of SWAPO's participation in United Nations meetings and programs have afforded that organization both legitimacy and concrete support. This role of the General Assembly is both desirable and in accordance with the purposes and principles of the United Nations Charter. It also came as the logical consequence of the Assembly's endorsement of armed struggle as a legitimate means to seek independence.

The recognition of SWAPO as the sole legitimate representative of the Namibian people and granting it a permanent observer status in the General Assembly reflected the change in the political complexion of the United Nations and came as a result of a long process of development and evolution. For SWAPO, this status has had major positive implications both within Namibia and in the international arena. Domestically, the actions of the General Assembly have boosted SWAPO's standing inside the Territory and elevated it above other political parties. Also, SWAPO's role in the supervision of United Nations assistance programs for Namibian refugees has given it an opportunity to enhance its popularity among them and even recruit qualified elements, after finishing their educational or vocational training, to perform various duties for SWAPO. Internationally, the actions of the Assembly have given SWAPO an international legitimacy

crucial for a national liberation movement and enhanced its diplomatic standing. They also enabled SWAPO, legally and financially, to represent the Namibian people at international conferences and gatherings. Furthermore, the General Assembly's actions gave SWAPO the opportunity to lead the campaign to mobilize the entire machinery of the United Nations system to achieve independence for Namibia. However, it remains a fact, that only the intensification of the struggle of the Namibian people itself on all fronts, coupled with a major concerted international effort, can bring independence to Namibia. Also the participation of SWAPO in the works of the General Assembly in general and the UCN in particular has had a moderating effect on its policies and positions in order to project an internationally acceptable image. SWAPO had to accept compromises that are inevitable in any multilateral forum.

For the United Nations itself, the actions of the General Assembly have expanded and virtually amended the Charter with regard to decolonization. Although the United Nations was established as an Organization of sovereign States, SWAPO was granted an observer status in the Assembly as a representative of a people struggling for independence, thus stretching the meaning of the Charter and its provisions on membership to include the preamble of the Charter, that has no legal standing like the provisions on membership, which starts with the phrase "We the Peoples of the United Nations". Such an action was a de facto amendment of the Charter without resorting to the formal process required in the Charter itself.

The case of Namibia in the United Nations raises the broader question of the role of the General Assembly in the creation of new

norms of international behavior. The attitude and resolutions of the General Assembly in this regard clearly illustrate the belief and conviction of the overwhelming majority of its membership in the legitimacy of armed struggle by national liberation movements to achieve independence. Movements like SWAPO have been granted an international status at the most global forum of our times. The debate about the legal value of General Assembly resolutions is still unabated. However, the study of the case of Namibia within the United Nations reveals the contribution of the world Organization in the establishment of new norms of international behavior.

Self-determination has become an explicit rule of customary international law. Armed struggle has been legitimized in case of colonial Powers insistence on maintaining control of overseas colonies. National liberation movements have been granted an international status as legitimate representatives of their peoples.

The General Assembly's endorsement of armed struggle for national liberation, as discussed in Chapter V, is justified and legitimate under the United Nations Charter. The evolution of this principle and actions by the General Assembly, as the analysis of Chapter VI demonstrates, have resulted in the creation of new norms of international behavior.

Beyond the issue of Namibian independence itself, this study has also shown the need for a new approach towards the working of the world Organization. Numerous resolutions of both the General Assembly and the Security Council which were adopted by overwhelming majorities were never implemented. Debates have often been characterized by rhetoric and polemics. As it has been the case with the Namibian

question as well as other issues, General Assembly and even Security Council resolutions had no real effect. In order to achieve concrete and tangible results, the majority should exercise discretion and restraint in the use of its voting power. This study has suggested a new approach by the membership of the world Organization which would strive at achieving a solid consensus behind important resolutions of the United Nations. Only the collective support of the whole membership of the United Nations, particularly the Major Powers, can regain the respect, prestige and effectiveness of the United Nations and its resolutions.

This new approach should be based upon consensus building rather than the automatic resort to the usual voting system. A compromise resolution that has the full support of the entire membership, especially those Members whose actions would be essential, can be more valuable and would have significantly better chances for implementation than a resolution adopted by majority against the opposition of some of the major Powers at the United Nations. Today, there is a need to resort more and more to consensus rather than voting. I have suggested that what is needed is a 'working consensus' which would guarantee the support and backing of all the directly involved parties to the conflict and the major Powers at the United Nations. On the other hand, consensus does not mean granting veto right to major Powers. They have to understand the concerns and frustrations of the majority. Their policies and positions within and without the United Nations would have to reflect such understanding. Consensus cannot be built upon a constant flow of concessions from only one side. Rather, it should be built upon accommodation, conciliation

and compromise which lay at the heart of the concept of international organization.

ANNEX I

GENERAL ASSEMBLY RESOLUTION 1514 (XV)
DECLARATION ON THE GRANTING OF INDEPENDENCE
TO COLONIAL COUNTRIES AND PEOPLES

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevent the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.
7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal

Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

947th plenary meeting,
14 December 1960.

ANNEX II

GENERAL ASSEMBLY RESOLUTION 2145 (XXI)
QUESTION OF SOUTH WEST AFRICAThe General Assembly,

Reaffirming the inalienable right of the people of South West Africa to freedom and independence in accordance with the Charter of the United Nations, General Assembly resolution 1514 (XV) of 14 December 1960 and earlier Assembly resolutions concerning the Mandated Territory of South West Africa,

Recalling the advisory opinion of the International Court of Justice of 11 July 1950,¹ accepted by the General Assembly in its resolution 449 A (V) of 13 December 1950, and the advisory opinions of 7 June 1955² and 1 June 1956³ as well as the judgement of 21 December 1962,⁴ which have established the fact that South Africa continues to have obligations under the Mandate which was entrusted to it on 17 December 1920 and that the United Nations as the successor to the League of Nations has supervisory powers in respect of South West Africa,

Gravely concerned at the situation in the Mandated Territory, which has seriously deteriorated following the judgement of the International Court of Justice of 18 July 1966,⁵

¹ International status of South West Africa, Advisory Opinion: ICJ Reports 1950, p. 128.

² South West Africa--Voting procedure, Advisory Opinion of June 7th, 1955: ICJ Reports 1955, p. 67.

³ Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: ICJ Reports, 1956, p. 23.

⁴ South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962: ICJ Reports 1962, p. 319.

⁵ South West Africa, Second Phase, Judgment, ICJ Reports 1966, p. 6.

Having studied the reports of the various committees which had been established to exercise the supervisory functions of the United Nations over the administration of the Mandated Territory of South West Africa,

Convinced that the administration of the Mandated Territory by South Africa has been conducted in a manner contrary to the Mandate, the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming its resolution 2074 (XX) of 17 December 1965, in particular paragraph 4 thereof which condemned the policies of apartheid and racial discrimination practised by the Government of South Africa in South West Africa as constituting a crime against humanity,

Emphasizing that the problem of South West Africa is an issue falling within the terms of General Assembly resolution 1514 (XV),

Considering that all the efforts of the United Nations to induce the Government of South Africa to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the well-being and security of the indigenous inhabitants have been of no avail,

Mindful of the obligations of the United Nations towards the people of South West Africa,

Noting with deep concern the explosive situation which exists in the southern region of Africa,

Affirming its right to take appropriate action in the matter, including the right to revert to itself the administration of the Mandated Territory,

1. Reaffirms that the provisions of General Assembly resolution 1514 (XV) are fully applicable to the people of the Mandated Territory of South West Africa and that, therefore, the people of South West Africa have the inalienable right to self-determination, freedom and independence in accordance with the Charter of the United Nations;

2. Reaffirms further that South West Africa is a territory having international status and that it shall maintain this status until it achieves independence;

3. Declares that South Africa has failed to fulfil its obligations 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 South West Africa and has, in fact, disavowed the Mandate;

4. Decides 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 other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations;

5. Resolves that in these circumstances the United Nations must discharge those responsibilities with respect to South West Africa;

6. Establishes an Ad Hoc Committee for South West Africa--composed of fourteen Member States to be designated by the President of the General Assembly--to recommend practical means by which South West Africa should be administered, so as to enable the people of the Territory to exercise the right of self-determination and to achieve independence, and to report to the General Assembly at a special session as soon as possible and in any event not later than April 1967;

7. Calls upon the Government of South Africa forthwith to refrain and desist from any action, constitutional, administrative, political or otherwise, which will in any manner whatsoever alter or tend to alter the present international status of South West Africa;

8. Calls the attention of the Security Council to the present resolution;

9. Requests all States to extend their whole-hearted co-operation and to render assistance in the implementation of the present resolution;

10. Requests the Secretary-General to provide all the assistance necessary to implement the present resolution and to enable the Ad Hoc Committee for South West Africa to perform its duties.

1454th plenary meeting,
27 October 1966.

ANNEX III

DECREE NO. 1 OF 27 SEPTEMBER 1974

Conscious of its responsibility to protect the natural resources of the people of Namibia and of ensuring that these natural resources are not exploited to the detriment of Namibia, its people or environmental assets, the United Nations Council for Namibia enacts the following Decree.

Decrees that

1. No person or entity, whether a body corporate or unincorporated, may search for, prospect for, explore for, take, extract, mine, process, refine, use, sell, export, or distribute any natural resources whether animal or mineral, situated or found to be situated within the territorial limits of Namibia without the consent and permission of the U.N. Council for Namibia or any person authorized to act on its behalf for the purpose of giving such permission or consent;

2. Any permission, concession or license for all or any of the purposes specified in para 1 above whensoever granted by any person or entity, including anybody purporting to act under the authority of the Government of the Republic of South Africa or the "Administration of South West Africa" or their predecessors, is null, void and of no force or effect;

3. No animal resource, mineral, or other natural resources produced in or emanating from the Territory of Namibia may be taken from the said Territory by any means whatsoever to any place whatsoever outside the territorial limits of Namibia by any person or body whether corporate or unincorporated, without the consent and permission of the U.N. Council for Namibia or of any person authorized to act on behalf of the said Council;

4. Any animal, mineral, or other natural resources produced in or emanating from the Territory of Namibia which shall be taken from the said Territory without the consent and written authority of the U.N. Council for Namibia or of any person authorized to act on behalf of the said Council, may be seized and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia.

5. Any vehicle, ship or container found to be carrying animal, mineral or other natural resources produced in or emanating from the Territory of Namibia shall also be subject to seizure and forfeiture by

or on behalf of the U.N. Council for Namibia or of any person authorized to act on behalf of the said Council and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia.

6. Any person, entity or corporation which contravenes the present decree in respect of Namibia may be held liable for damages by the future Government of an independent Namibia.

7. For the purpose of paragraphs 1 to 5 above and in order to give effect to this decree, the U.N. Council for Namibia hereby authorizes the U.N. Commissioner for Namibia in accordance with General Assembly resolution 2248(S-V), to take necessary steps after consultations with the President.

ANNEX IV

GENERAL ASSEMBLY RESOLUTION 31/152
OBSERVER STATUS FOR THE SOUTH WEST AFRICA PEOPLE'S ORGANIZATION

The General Assembly,

Having considered the question of Namibia,

Recognizing the crucial phase reached in the struggle of the Namibian people and the added demands and critical tasks imposed upon their liberation movement, the South West Africa People's Organization,

Taking into consideration the report of the United Nations Council for Namibia and the recommendations contained therein,

Reaffirming the resolutions and decisions of the General Assembly and the Security Council concerning the question of Namibia,

Recalling, in particular, its resolution 3111 (XXVIII) of 12 December 1973, by which it recognized the South West Africa People's Organization as the authentic representative of the Namibian people,

Noting that the Organization of African Unity and the non-aligned countries have recognized and invited the South West Africa People's Organization to participate in their meetings in an observer capacity,

1. Invites the South West Africa People's Organization to participate in the sessions and the work of the General Assembly in the capacity of observer;

2. Invites the South West Africa People's Organization to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;

3. Considers that the South West Africa People's Organization is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations;

4. Requests the Secretary-General to take the necessary steps for the implementation of the present resolution and to accord all the facilities as may be required.

105th plenary meeting,
20 December 1976.

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