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REPORT BY THE EXECUTIVE SECRETARY ON MEASURES TAKEN
IN PURSUANCE OF RESOLUTION 151(VIII)

M69-77

REPORT BY THE EXECUTIVE SECRETARY ON MEASURES TAKEN
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Associate membership for Angola, Mozambique, Guinea (called Portuguese
Guinea) and Namibia (South West Africa)

At its eighth session, the Commission adopted resolution 151(VIII) on the representation of the peoples of Angola, Mozambique, Guinea (called Portuguese Guinea) and Namibia (South West Africa) in its work. Subsequently, a discrepancy between the English and French versions of the operative paragraph of the resolution was discovered, which affected the substance of the resolution and the accuracy of paragraph 404 of the annual report of the Commission to the Economic and Social Council (E/4354-E/CN.14/393). The Executive Secretary reported the matter to the Economic and Social Council at its forty-third session and sought permission to report again to the Council after obtaining the necessary clarification from the member States of the Commission. In the light of his statement the Council deferred action on Commission resolution 151(VIII) until its forty-fifth session. At the request of the Executive Secretary, the United Nations Legal Counsel examined the said resolution and the discrepancy in the text of the English and French versions.^{1/} On 13 December 1967, the Executive Secretary drew the attention of member States of the Commission to the discrepancy in the texts of the resolution and also communicated the opinion provided by the United Nations Legal Counsel.

Sixteen member States, including one associate member, together with the Administrative General Secretariat of the OAU have so far given their opinions. In the opinion of some member States, the English version of the operative paragraph of resolution 151(VIII) is nearer to the legal position than the French version; but others wish to keep to the spirit of the French version of the resolution which gives the OAU the right to appoint the representatives of the territories under Portuguese administration. The replies received by the secretariat are reproduced in Annex 1.

In view of this, it is for the Commission to give its opinion as to the measures to be taken in pursuance of its resolution 151(VIII).

^{1/} See Annex 2

ANNEX I

CAMEROON

(Original : French)

18 June 1968

The principle that the still-dependent African territories with observer status in ECA should be represented not by the colonial powers but by genuine representatives appointed by the nationals of the territories themselves, is welcomed by the Cameroon Government.

The practical application of this principle, however, raises problems to which Cameroon can see no immediate solution.

The genuine representatives whom we should like can at present be appointed only by the nationalist movements of these territories; but this will be possible only when the Liberation Committee of the OAU, whose responsibility it is, succeeds in eradicating the internal dissensions that are impairing the unity of the nationalist movements in the territories concerned.

The Cameroon Government considers that in present circumstances adoption of this principle will serve two objectives:

It will deprive the colonial powers of the right of representing the still-dependent African territories within ECA;

It will also serve as a means for accelerating the unification of the political movements in these territories.

DEMOCRATIC REPUBLIC OF CONGO

(Original: French)

As regards the discrepancy between the English and French versions of the operative paragraph of ECA resolution 151(VIII) the Congolese Government expressed its opinion at the 10th Council of Ministers of OAU held in Addis Ababa in February 1968.

As stated in the Council's resolution CM/Res.143(X), the French text is the authentic one and the Executive Secretary of the ECA should bring the two texts into line.

I have no doubt that these details have already been brought to the attention of ECA by the Secretary-General of the OAU.

DAHOMÉY

(Original: French)

15 February 1968

I have the honour to inform you that it is preferable to have regard to the constitutional position and established United Nations practice. The English text would seem to cover these considerations better.

ETHIOPIA

(Original: English)

10 January 1968

In taking due note of the discrepancy between the English and French texts in the operative paragraph of resolution 151(VIII) of the Commission, I find that, even apart from said discrepancy as such, the opinion given by the United Nations Legal Counsel is so fundamental as to warrant the widest consultation amongst member States of the OAU.

As my Government is considering taking initiatives to have the matter brought before the next session of the Council of the OAU, and pending the outcome of such consultations, I am not in a position, at this juncture, to offer the views of my Government on the whole matter under reference.

GABON

(Original: French)

15 March 1968

I have the honour to inform you that, since this question is of a legal nature, it should be dealt with by the highest international political authority in Africa, that is, OAU.

Notwithstanding some legal points in favour of another procedure, the Gabon Republic considers that OAU should be able to appoint representatives of the non-self-governing territories in question.

IVORY COAST

(Original: French)

31 January 1968

Following the above-mentioned note (from the ECA Secretariat, ref. ORG 210/1 of 13 December 1967), the Minister informs the secretariat that the Government of the Republic of Ivory Coast shares the opinion expressed by the United Nations Legal Counsel.

The question of the representation of South West Africa and its participation in the Commission's work seems to be solved now that this territory comes under the direct authority of the United Nations.

As regards the problem of the participation of territories under Portuguese administration and their participation in the Commission's work, the Organization of African Unity may submit recommendations or suggestions to the United Nations, but it is for the General Assembly to decide upon the attitude finally to be adopted on the matter.

The opinion of the Government of the Republic of Ivory Coast, therefore, is that the English version of the operative paragraph of resolution 151(VIII), which is closer to the legal and constitutional position, is to be preferred to the French version of the text.

KENYA

(Original: English)

27 June 1968

643 STOP YOUR LETTER OF EIGHTH MAY REFERS COMMA KENYA GOVERNMENT SUPPORTS THE UNITED NATIONS LEGAL COUNSELS OPINION STOP DELAY REGRETTED END.

MADAGASCAR

(Original: French)

17 January 1967

I have to honour to point out that the conclusions of the Legal Counsel seem to dispense with the political solution adopted in resolution 151(VIII) which accorded a certain role to OAU in appointing the

representatives of the peoples of associate members of ECA (the French version even goes as far as stating that OAU shall appoint them).

I should therefore be grateful if you would kindly let me know the terms of reference given to the United Nations Legal Counsel concerning this problem.

Reply by the ECA secretariat to the letter from the Minister of State for Foreign Affairs of the Malagasy Republic:

"I have the honour to refer to your letter No. 008/68-AE/DRE/AP8 of 17 January 1968 to the Executive Secretary, in which you asked for details of the terms of reference given to the United Nations Legal Counsel concerning the solution of the problem of the participation of the Portuguese territories and South West Africa in the work of ECA.

You will recall that in 1964, when the problem of such participation arose for the first time at the Economic and Social Council, the secretariat was requested by Council members to submit comments on the legal aspects of the problem. In reply to that request, this service gave its first legal opinion (see document E/3963). That opinion, of which the Council took note in its resolution 1027(XXXVII), was subsequently communicated to all member States of ECA by letter, ORG 420-ECA, 7th session, signed by the Executive Secretary, of 2 October 1964. I am enclosing a copy of this correspondence for your information.

The Legal Service's task therefore is to give opinions on the legal aspects of the questions examined by United Nations organs and offices when the appropriate organ or official so requests. However, I should like to make it clear that the legal opinions given are intended to clarify the legal aspects of a problem. As such, they are meant to help the appropriate bodies to solve a problem and not to dictate a solution to the bodies concerned.

I hope that these details will enable your Government to give an opinion on the position explained in the secretariat's letter of 13 December 1967."

MOROCCO

(Original: French)

10 June 1968

Under this resolution OAU is empowered to appoint the representatives of the Portuguese colonies and South West Africa. However, since the status of South West Africa and that of the Portuguese colonies in question are different, the question should be divided into two parts:

1. South West Africa

The question of the representation and participation of South West Africa in the work of ECA should be settled by the United Nations Council for South West Africa, since the territory is legally under United Nations responsibility.

2. The territories under Portuguese administration

There can be no question of asking Portugal to appoint representatives from these territories to ECA.

OAU is therefore the only body that can settle the matter.

However, pending examination of resolution 151 by the United Nations General Assembly, ECA could give a hearing to persons from those territories or authorize the territories to make their views known through member States or associate member States of ECA.

NIGER

(Original: French)

20 June 1968

Having studied the texts and the opinion of the United Nations Legal Counsel, I have the honour to inform you that the Government of the Republic of the Niger is in agreement with the expressed view, viz., that the English version of the operative paragraph of the resolution is closer to the constitutional and legal position of the United Nations and to United Nations practice, and that the English version should therefore be preferred.

NIGERIA

(Original: English)

26 August 1968

The Embassy wishes to state hereunder the views of the Nigerian Authorities on the subject:

- "(i) South African Mandate over South West Africa has been terminated by the United Nations General Assembly and a Council has been established to administer the territory until independence. A Commissioner has also been appointed for the territory to perform such executive and administrative tasks as would be entrusted to him by the Council; and
- (ii) Resolution 396 (v) gives the United Nations General Assembly full powers to deal with representation and participation of the Portuguese territories in the work of the Economic Commission for Africa."

SENEGAL

(Original: French)

25 July 1968

The Embassy of Senegal in Addis Ababa presents its compliments to the Executive Secretary of the Economic Commission for Africa and, with regard to the question of the participation of the peoples of the non-self governing territories of Angola, Mozambique, Guinea, called Portuguese Guinea and South West Africa in the work of the Commission, has the honour to inform him that Senegal is satisfied with resolution 151(VIII) (French version), unanimously adopted by the 8th session of the Commission, held in Lagos from 13 to 25 February 1967, the last paragraph of which recommends that "l'Organisation de l'Unité Africaine désigne les représentants des populations des pays intéressés et en informe le Secrétariat exécutif".

SIERRA LEONE

(Original: English)

5 March 1968

I have the honour to inform you that the terms of the legal opinion as set out in your letter ref.ORG/210/1 of 13 December 1967 are accepted by this Government.

SUDAN

(Original: English)

28 January 1968

I would like to state that my Government upholds the English context of the above mentioned resolution and agrees to the United Nations Legal Counsel's opinion on this matter.

My Government will also adhere, in the forthcoming meeting to this same opinion.

TUNISIA

(Original: French)

22 February 1968

There is indeed a discrepancy between the English and French texts of this resolution. While the first text recommends that OAU should determine the conditions under which the peoples of the countries concerned will be represented, the French text states that it recommends that OAU should appoint the representatives of these peoples.

The powers accorded to OAU by the English version are therefore more restrictive than those given under the French text.

It is evident from the note by the United Nations Legal Counsel, of which you kindly sent me a copy, that there is a distinction between the conditions to be applied to South West Africa and to the other group of territories.

1. As regards representation of South West Africa in ECA, on 27 October 1966 the United Nations ended the South African mandate over that territory and took over responsibility for South West Africa itself. On 19 May 1967, the United Nations General Assembly decided to set up a United Nations Council for South West Africa with powers to administer that territory.

The representation of South West Africa is therefore a matter for the Council to settle. On this point the Tunisian Government agrees with the analysis of the Legal Counsel. The Council for South West Africa has been recognized by the United Nations as administrator and representative of South West Africa and it is therefore for the Council to choose its representative to ECA.

2. As regards the representation of Angola, Mozambique and Guinea, called Portuguese Guinea, I would remind you that the Tunisian Government has already had an opportunity, in its letter of 26 November 1966, No. 2330/DCI/2, which is reproduced in document E/CN.14/380, to give an opinion on this matter.

However, the Tunisian Government notes with satisfaction that the argument that the State administering a given territory - in this case, Portugal - should represent that territory at the international level, has been discarded. This argument was the subject of the note of 5 August 1964 by the secretariat of the Economic and Social Council.

UNITED KINGDOM

(Original: English)

11 June 1968

On the question of South West Africa, Her Majesty's Government abstained on G.A. resolution 2145(XVI) which purported to terminate the Mandate and to bring South West Africa under the direct responsibility of the United Nations and also on G.A. resolution 2248(S-V) which established the United Nations Council for South West Africa, for reasons which were fully explained in the General Assembly at the time. The doubts felt by Her Majesty's Government about the legal competence of the United Nations

General Assembly to assume direct responsibility for the administration of South West Africa as by G.A. resolution 2145(XXI) it purported to do, have not been resolved. Whatever the legal position may be, however, the fact remains that South Africa still administers the territory of South West Africa and as long as she continues to do so, it is open to question whether the United Nations Council for South West Africa can make arrangements for the effective representation of South West Africa in international bodies such as the Commission.

On the question of the relationship of the Organization of African Unity to a decision on the representation and participation of certain African territories, in the work of the Commission, Her Majesty's Government agrees with the interpretation placed by the United Nations Legal Counsel on the operative paragraph of ECA resolution 151(VIII) and with his opinion that this question can be decided only by the United Nations General Assembly though the Organization of African Unity can make a recommendation on the subject for consideration.

ORGANISATION DE L'UNITE AFRICAINE

(Original: English)

13 March 1968

I have the honour to inform you that the Council of Ministers of the Organization of African Unity in its Tenth Ordinary Session has adopted resolution CM/Res.143 referring to resolution No. 151(VIII) of the Economic Commission for Africa which was adopted in Lagos in February 1967 concerning the representation and participation of the peoples of the non-self-governing territories of Angola, Mozambique, South West Africa and the so called Portuguese Guinea.

In resolution CM/Res.143, which is attached herewith, the Council of Ministers has the honour to request you, Dear Sir, as there is a discrepancy between the English and French versions of resolution 151(VIII), to bring the English text into line with the French text, the latter being the authentic version.

I also wish to inform you on this same subject that the political parties which should represent these territories are the GRAE and the MPLA for Angola, the FRELIMO for Mozambique the SWA Po for South West Africa and the PAIGC for the so called Portuguese Guinea.

RESOLUTION ON THE PARTICIPATION OF SOUTH WEST AFRICA
AT THE MEETINGS OF THE ECONOMIC COMMISSION FOR AFRICA

The Council of Ministers of the Organization of African Unity meeting in its Tenth Ordinary Session in Addis Ababa, Ethiopia from 20 to 24 February 1968,

Recalling resolution 151(VIII) of the Economic Commission for Africa adopted in Lagos in February 1967, concerning the representation and participation of the peoples of the non-self-governing territories of Angola, Mozambique, so-called Portuguese Guinea and South West Africa,

Noting that a discrepancy exists in the operative paragraph of the said resolution between the English and French versions,

1. Requests the Executive Secretary of the Economic Commission for Africa to bring the English text into line with the French text, the latter being the authentic version.

Reply by the secretariat of the Economic Commission for Africa
to the letter from the Administrative Secretary-General
of the Organization of African Unity

I have the honour to refer to your communication No. ECO 10/1 ECA 1952-68 of 29 October 1968 informing me of resolution CM/Res.143(X) adopted by the Council of Ministers of the Organization of African Unity on the discrepancy between the English and French versions of the operative paragraph of resolution 151(VIII) concerning the participation of South West Africa (Namibia) and the territories under Portuguese administration in the work of the Economic Commission for Africa.

In my letter ORG 210/1 of 13 December 1967 to member States of the Commission, a copy of which was sent to you, I called attention to the discrepancy and sent members, for information, a copy of the considered

opinion of the United Nations Legal Counsel. At the same time I requested governments to let me have their views on the position set out in the secretariat note since a report had to be made for the United Nations Economic and Social Council. Fifteen member States and the Administrative General Secretariat of OAU have so far given their views on the matter. In the opinion of some member States, the English text of the operative paragraph of resolution 151(VIII) is closer to the constitutional and legal position and to United Nations practice.

I have included this point on the provisional agenda for the ninth session. I have no doubt that the Commission will make its opinion clear as to the measures to be taken in implementation of Commission resolution 151(VIII).

ANNEX II

The question of participation of South West Africa
and Territories under Portuguese Administration in
the work of the Economic Commission for Africa, with
particular reference to ECA resolution 151(VIII) of
21 February 1967^{1/}

1. On 21 February 1967, the Economic Commission for Africa adopted resolution 151(VIII) on Associate Membership for Angola, Mozambique, so-called Portuguese Guinea and South West Africa. The English text of the operative paragraph of this resolution reads as follows:

"Recommends that the Organization of African Unity, in accordance with such criteria as it may find appropriate, at the appropriate level, determine the conditions under which the peoples of the countries concerned will be represented and shall so inform the Executive Secretary."

The French text of the same paragraph reads:

"Recommande que l'Organisation de l'unité africaine désigne les représentants des populations des pays intéressés et en informe le Secrétaire exécutif."

2. These two different versions of the said paragraph are examined in the present paper with a view to clarifying their legal implications.

3. It should be borne in mind at the outset that the territories concerned, in accordance with paragraph 6 (a) of the terms of reference of ECA as amended by ECOSOC resolution 974 D (XXXVI), are already associate members of ECA. The point at issue is therefore not their admission to associate membership but their representation in ECA. In particular, it is a question of how the representatives of each of the territories concerned could be chosen to participate in the work of ECA. It is on this question that the English and French texts of the operative paragraph of ECA resolution 151(VIII) differ in substance. In considering this

^{1/} The present paper has been prepared by the United Nations Legal Counsel at the request of the Executive Secretary of the Economic Commission for Africa.

question a distinction must be made between South West Africa on the one hand and the three territories under Portuguese administration on the other. They are therefore dealt with separately in the following sections of this note.

Representation of South West Africa in ECA

4. In its resolution 2145(XXI) of 27 October 1966, the General Assembly decided to terminate the Mandate exercised by the Union of South Africa over the Territory of South West Africa and to place the Territory under the direct responsibility of the United Nations. In its resolution 2248(S-V) of 19 May 1967 the General Assembly established a United Nations Council for South West Africa. Among the functions entrusted to the Council was the power "to administer South West Africa until independence". The resolution also provided for the appointment of a United Nations Commissioner for South West Africa to perform such executive and administrative tasks as would be entrusted to him by the Council. In accordance with this provision, an Acting Commissioner has been appointed by the General Assembly on the nomination of the Secretary-General.

5. It therefore seems clear that the United Nations Council for South West Africa is the appropriate body to arrange for the representation of the Territory of South West Africa in ECA until that Territory achieves independence. This matter was brought to the attention of the Council by the Acting Commissioner for South West Africa in a statement made to the Council on 16 October 1967. On 27 October, in a note submitted to the Council on "the question of the participation of representatives of South West Africa in the work of the Economic Commission for Africa" (A/AC.131/5), the Acting Commissioner, after reviewing briefly the origin and development of the question, stated :

"The Council may wish to consider the possibility of informing ECA through its Executive Secretary, that the Council would be prepared, at the request of ECA, to arrange for the representation of South West Africa in the Commission. While the next session of ECA does not take place until early 1969, any communication from the Council to the above effect can be mentioned in the report of the Commission which is now under preparation and which will be submitted to the Economic and Social Council at its forty-fifth session in 1968."

6. In view of the foregoing it would seem that the question of the representation of South West Africa should be dealt with by the Council for South West Africa which presently has it under consideration. (Report of the United Nations Council for South West Africa, A/6897, para. 16).

Representation of Territories under Portuguese Administration

7. With respect to the three territories under Portuguese administration, the analysis contained in the previous Secretariat note (E/3963) on the legal aspects of the question of their participation in the work of ECA remains valid. The question to which ECA resolution 151(VIII) has given rise and which calls for further examination is the role which the Organization of African Unity can play with regard to the matter of representation of the Territories concerned.

8. Under the terms of reference of ECA and the provisions of the Agreement of 15 November 1965 between the United Nations and OAU on co-operation between OAU and ECA [GA(XX)7, Annexes, agenda item 108, p.4), the scope of activities of ECA and the co-operation between ECA and OAU are related to economic and social matters. In regard to the question of representation, paragraph 6 of the previous secretariat note stated as follows:

"There have of course been a number of situations in the United Nations involving conflicting claims between groups claiming the right to be recognized as the government of a territory. In a case of this kind a determination by a United Nations organ as to which group is entitled to appoint representatives for the territory in question involves a determination as to which is the government of the area. This question, it will be recalled, has been considered as one appropriate for the General Assembly and not within the competence of a subsidiary organ [see, for example, General Assembly resolution 396(V)7].

It is also relevant to recall that the representative of UAR, in introducing on behalf of the heads of delegations the draft resolution which was later adopted by ECA as resolution 151(VIII) stated that "the question of the representation of Angola, Mozambique and South West Africa in the Commission was a political one and should therefore be referred to the highest international political body in Africa, namely, the Organization of African Unity (OAU)" (E/CN.14/SR.136).

9. While OAU could be asked to recommend the conditions under which the peoples of territories under Portuguese administration could be represented internationally, such a recommendation, insofar as it concerns the representation of the Territories in ECA which is a subsidiary organ of the United Nations, would require consideration by the highest political organ of the United Nations, i.e., the General Assembly. This position is in accordance with the position of the General Assembly taken in General Assembly resolution 396(V) and referred to in the Secretariat note quoted in the preceding paragraph. It is in this sense that the English text of the operative paragraph of ECA resolution 151(VIII), which seems to be more in line with the legal position than the French text, should be understood.

10. Pending such a recommendation from OAU and its consideration by the General Assembly, there is nothing to prevent the participation by the Territories concerned in the work of ECA in the manner described in the previous Secretariat note. Thus, ECA could hear individuals from the Territories for the purpose of seeking information within the scope of its activities. In accordance with paragraphs 12 and 13 of the terms of reference of ECA, a link between ECA and the Territories could be established through OAU and non-governmental organizations. It is also possible that the views of the people of the Territories be made known to ECA by a member or by any other associate member of ECA on their behalf.