Mr. Chairman, Members of the Subcommittee:

I want to congratulate you for holding this series of hearings on southern Africa at a time when change is occurring fast and furiously in that part of the world and when it is vital for our government to respond knowledgeably and sympathetically. I also want to thank you for the opportunity to speak to you about Namibia, which has been of special concern to me for many years now.

For your record, I am a lawyer and an Africanist. I have done technical assistance work for the Government of Liberia, have taught African studies, have worked on southern African questions at the United Nations in various capacities for a number of years, and have written a number of articles and other publications on the public law of South Africa and Namibia. Currently I am legal consultant to the UN Commissioner for Namibia. I speak here in my personal capacity, of course, and my views do not necessarily reflect UN positions.

Basic information about Namibia

This summary of information about Namibia may provide some background for my recommendations, which follow.

Namibia is one of the larger territories in Africa, some 320,000 square miles in area. It can be roughly superimposed on California and
Nevada. It is bounded on the north by Angola, on the east by Botswana, and on the southeast and south by South Africa. At the northern border a long thin panhandle (the Caprivi Strip) stretches some 300 miles further east to a junction with Zambia, Zimbabwe (Rhodesia), and Botswana.

Its population is sparse, some 850,000 by official South African estimate (1974), slightly over 1,000,000 according to the Commissioner's Office. One hundred thousand Namibians are white, descendants of Germans who settled there before World War I and Afrikaners from South Africa who flocked to the Territory after the War.

The Blacks consist mostly of indigenous Africans although are some persons of mixed descent ("Coloureds," Rehoboth "Basters"). South African ethnologists recognize some nine indigenous "peoples" or "nations." The government claims that these peoples are mutually antagonistic and unable to cooperate politically. It has been, and still is, South African policy to create and enlarge ethnic hostilities, mistrust, and jealousies by every possible means in order to prevent unified opposition.

The Territory is very rich although its primary wealth is in wasting mineral resources: diamonds, low-grade uranium, copper, and other base metals. There is exploration for oil and gas off the coast and some suggestion of finds in very deep water.

These minerals are exploited today almost entirely by foreign capital. The most important investments are South African, followed by American.

Because the land is largely desert or semi-desert, agriculture, except in the northernmost areas, is largely limited to stock-raising (cat-
tle, karakul sheep). Overgrazing is a continuing problem. Droughts are repeated, sometimes protracted, and the availability of water is the key to agricultural development.

Namibian coastal waters teem with fish, but overfishing by South Africans and other foreigners has caused a serious decrease in the annual catch in recent years. An attempt is now being made to regulate fishing by an international convention, to which South Africa is a party and under which it, in effect, claims to represent Namibia.

The current legal status of Namibia is that of an international territory under direct administration of the UN General Assembly, carried out by the UN Council for Namibia and its executive officer, the Commissioner for Namibia. South Africa unlawfully occupies the Territory by force and administers it in defiance of the International Community and of international law.

As members of the Subcommittee are no doubt aware, Namibia, then known as South West Africa, became an Imperial German Protectorate in 1884–85, as a result of the Congress of Berlin, which established the ground rules for colonial division of Africa.

When Germany lost the First World War, all its colonial territories became mandated territories under the League of Nations. The League entrusted it to the then Union of South Africa, which had occupied it as enemy territory during the War. South Africa was bound by its mandate agreement to deal with the Territory so as to "promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory...." (Art. II)
The South African government demonstrated almost immediately through its administration of Namibia that it looked upon the mandate as a disguised form of annexation. After the Second World War it was the only mandatory power that refused either to free its mandated territory or to convert it into a UN trust territory.

As international standards for dealing with colonial peoples slowly improved after the War, South Africa's practices in Namibia deteriorated: It introduced its domestic apartheid system into the Territory, replacing existing informal racial segregation by rigorous laws. It applied its battery of repressive legislation—including those recent horrors, the Terrorism Act 1/ and the "BOSS Act"2/ to quash Namibian dissent. It began a process of integrating the Territory economically into the Republic so that, whatever its outward political trappings, it would in fact be dependent economically on South Africa.

The most hated action was, however, the creation of "homelands" ("Bantustans") in Namibia. Applying its theory of irreconcilable differences among peoples, the South African government created unilingual homelands for each "nation" in Namibia. It assigned approximately 40% of the Territory's land surface—or approximately 0.14 square miles per capita—for the Black homelands. The remaining 60% of the Territory, which contains the entire seacoast, the urban centers, major known mineral deposits, most roads and railroads, and much of the best agricultural land, is the "white homeland"—an allocation of approximately 1.92 square miles per capita. Blacks, forced by the poverty in their own homelands to seek work in the white area, are rightless "aliens" there, though in their

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1/ Act No. 83 of 1967. 2/ Act No. 101 of 1969, sec. 29, as amended.
own country; they may be sent back to their homelands involuntarily at any time.

By providing substantial perquisites to the local chiefs who back the homelands policy and by promising ultimate "self-government" to each area the Republic has managed to create a class which opposes national unity and fears free and open elections in the Territory.

In October 1966 the UN General Assembly revoked South Africa's mandate over Namibia on account of its maladministration of the Territory. Since that time the South African government has occupied the Territory in clear and flagrant violation of international law. South Africa now has no right to administer the Territory, to represent Namibia or act for it, to grant concessions or collect taxes there, or to engage in any other activity there, except to arrange for the transfer of its administration to the United Nations pending Namibian independence.

This interpretation of international law was specifically upheld by the International Court of Justice in 1971 when it advised that UN members were under international obligation: to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of Namibia; and to refrain from any acts implying recognition of the South African presence or giving support or assistance to its presence. The United States backed this Opinion.

The Republic has, nevertheless, continued its unlawful activities with the acquiescence or connivance of its main trading partners, including the

United States. In particular, it has continued its policy of fragmenting Namibia into Bantustans despite UN calls for independence with territorial integrity.

In the last decade, and particularly since the World Court's 1971 Advisory Opinion on Namibia, Namibian opposition to South African rule has become more unified, more militant, and more sophisticated. Namibians are now engaged simultaneously in political opposition within the Territory, military opposition along the northern border, and political lobbying on the international scene. Many observers know of the general strike in late 1971-72, which shut down the Territory for months. But fewer realize that there is a small-scale war of national liberation going on in the north, where South African paramilitary police have been replaced or reinforced by army units.

SWAPO (South West Africa Peoples Organization), which is active in all areas, is the largest constituent of the national liberation movement. It is recognized by the OAU and the UN as the "authentic representative" of the Namibian people. There are, however, other legitimate political groups, most of which collaborate with SWAPO in the newly formed umbrella organization, the Namibian National Convention.

South Africa has reacted to the growing and increasingly effective opposition with a several-pronged counter-attack: It has advanced its homeland program and held out the possibility of an independent Namibia of federated homelands; at the same time it has redoubled its efforts to destroy national unity by harping on the danger of Ovambo (equated with SWAPO) domination of less populous Black groups. It has directed a campaign of ruthless ferocity against opponents, characterized by public
floggings of both men and women; imposition of permanent martial law in and Ovamboland; detention without trial and torture, even killing, of untried prisoners. (In consequence thousands of Namibians have fled the country. Protesting churchmen, including this last month the American wife of the Suffragan Bishop of Damaraland, have been forcibly deported from the Territory.) To distract the world's attention, South Africa has laid stress on its importance to the West as the guardian of the Cape route.

Recommendations for American Action

The following recommendations have been grouped for ease of presentation under five headings. Most of them are not new, although some respond to recent events. They represent what I consider to be a minimal program if the United States intends to pay more than lip service to the International Rule of Law and to prove that it deems the freedom of Blacks as precious as the liberty of whites.

Full compliance with the International Court's Advisory Opinion on Namibia

** The United States should denounce the provisions in its double taxation and extradition treaties with South Africa which extend those treaties to Namibia.

** The United States should refuse to apply GATT provisions to goods of Namibian origin, since Namibia is not a party to GATT. It should, in addition, take the necessary steps to ensure that goods of Namibian origin are not passed off as of South African origin in order to obtain the benefit of GATT provisions.

The United States has the technical expertise to prevent the mislabeling of Namibian goods based on techniques developed during the two decades it excluded goods from mainland China.
** The United States should extend its arms embargo against South Africa to include spare parts, all equipment (such as helicopters and executive jets) convertible to military use, and, equally important, technical know-how, patents, and machinery for producing arms and armaments in South Africa.

Although the United States claims to enforce fully the UN-requested arms embargo against South Africa, there has been some easing, by means of redefining the goods subject to ban. More important, perhaps, is the transfer of technology, patents, licenses, etc. to the growing South African armaments industry.

** The United States should refuse to supply South Africa with enriched uranium or any equipment, data, patents, or technical advice about nuclear devices (peaceful or otherwise). It should refuse to send American nuclear scientists or technicians to South Africa; to train South African scientists and technicians in nuclear technology; or to allow South African scientists or technicians access to American nuclear laboratories, libraries, or plants.

Beyond the support which nuclear cooperation of any sort gives South Africa in its continued occupation of Namibia, it is unthinkable that the United States should give such assistance to any state which has refused to sign the Nuclear Non-Proliferation Treaty.

Withdrawal, or at least discouragement, of American investment in Namibia

In May 1970 the United States government issued a statement intended to discourage American investment in Namibia by denying post-mandate investors there certain benefits and by refusing to protect them against claims of a future independent Namibian government. This statement is unique among the countries with substantial commercial contacts with South Africa or Namibia.

Nevertheless, there are serious questions about its implementation. As far as I have been able to discover, "discouragement" in fact
consists of a form letter sent by the State Department to known American investors setting out this policy and adding that, if they insist on investing, will they please treat their workers humanely. It would be interest to learn if the State Department has ever evaluated its policy to determine its effectiveness.

Furthermore, it appears that other Departments and agencies of government disregard or even oppose the discouragement policy. Thus the Commerce Department approved sending inspectors to Namibia to observe the slaughter of baby seals there for an American fur company. And the IRS, or the White House, refused (when the issue was raised by Congressman Diggs) to deny tax credits to American investors in Namibia for taxes paid to South Africa on their activities in the Territory.

** The United States should deny such tax credits to American investors by legislation if it cannot be done by administrative action. The legislation or ruling should not allow, alternatively, a deduction of the taxes paid as a necessary business expense.

** All Departments and agencies of government should be instructed to discourage American investment in Namibia by, inter alia, refusing to provide information to potential investors or to assist or furnish any services in connection with such investment. The United States should refuse all consular services to American investors in Namibia.

Recasting immigration policy as to refugees from southern Africa

Unlike refugees from Cuba, Hungary (1956), or Tibet, Blacks from southern Africa have never been treated as, presumptively, political refugees although most of them in fact are. Nearly all of them are hassled by INS officials, and many live under threat of impending deportation—which is tantamount to condemnation to prison or execu-
Even white opponents of the South African government find that
the INS is likely to accept at face value accusations of ideological
impurity made against them by the Republic although the United
States has repeatedly denounced the very South African policies they
opposed.

** The INS should treat Blacks from southern Africa as presumptively
political refugees if they claim that status.

** The INS should cease its mindless harassment of Black refugees
from southern Africa, particularly of students and ex-students who cannot
return to their homes safely.

** The INS should consider presumptively invalid charges of "commu-
munism" and similar accusations levied by any white minority regime
against its citizen refugees in the United States who can show that
they opposed the regime by means considered legitimate in this country.
In case of other charges of a political nature, the immigrant should be
 accorded basic due process by being informed of the charges made by the
regime he opposed and by being granted an opportunity to rebut them in
an administrative hearing.

Support for Namibia at the United Nations

** The United States should reverse its voting record on Namibian
and southern African questions in the United Nations.

The American record on southern African and colonial issues at the
United Nations has been going from bad to worse recently. In the
1974 General Assembly session we were South Africa's strongest sup-
porter— in one case the only state in the entire Assembly to vote
with the Republic. American representatives condemn South Africa
with words, but support it by votes, both in the Assembly and in the
Security Council, where the United States participated in the first
triple veto in history to prevent expulsion of South Africa from
the World Organization. We didn't even vote for the annual resolution
on Namibia in 1974.

The United States should recognize that UN resolutions, like domestic legislation, seldom please anyone completely. Our representatives would do better to accept some unpalatable provisions in helping to shape the overall thrust of UN resolutions than to be totally ignored, as they are now, due to their rigidity.

** The United States should make annual contributions to the UN Fund for Namibia, through which the UN channels its assistance to Namibians outside the Territory.

The United States contributed $50,000 in 1974 but conditioned further contributions on removing the Fund from the Organization's regular budget, thus making it wholly dependent on voluntary donations.

** The United States should contribute to the Namibia Institute.

The Institute, being formally established this week in Lusaka, Zambia, is designed to prepare Namibians, through intensive training, to administer an independent state. It will emphasize training for middle-level administrative personnel and do research on problems that will be faced by the government of an independent Namibia.

** The United States should declare its support for the Decree for the Protection of the Natural Resources of Namibia issued by the UN Council for Namibia on 27 September 1974 and approved by the General Assembly on 13 December 1974.

The Decree states that only the Council may authorize the exploitation or exportation of Namibian natural resources, and it provides for the seizure of Namibian resources exported illegally and for their forfeiture to the benefit of the Namibian people.
When Congressman Diggs asked the State Department representative last month about its position on the Decree, he replied that the question would be one for an American court to decide when the issue came before it. This was, unfortunately, an unsatisfactory response, inasmuch as a court faced with such a novel matter would undoubtedly ask the Department for guidance (although it would not be bound by the Department's advice).

** The United States should call for new Security Council meetings to follow up on Security Council resolution 366 (1974). It should work, at the very least, for a resolution calling for Territory-wide, universal suffrage elections, under UN supervision and control, to elect representatives to a Namibian constitutional convention. The resolution should declare in advance that any other elections would be invalid and a government established on the basis of such invalid elections would not be recognized by any UN member.

Resolution 366, adopted last December, gave South Africa until 30 May 1975 to declare that it would leave the Territory and to take some effective step towards that end. When it failed to meet these conditions, the Security Council met to consider what action it should take. It voted on a draft resolution calling for the imposition of sanctions, against South Africa. The resolution received the necessary majority of votes, but it was vetoed by the United States, Britain, and France. This left resolution 366 in effect, but no further action was taken.

Both the Namibians and the South Africans interpreted the triple veto as an invitation to settle the Namibian issue by force. South Africa immediately started a new crack-down on opponents. At the same time it sponsored homeland elections, under its control, for representatives to attend a constitutional conference, under its control, to determine the Territory's political future. Allegations, by respon-
churchmen and others, of force and fraud in some of the elections have been rejected out of hand; at least one African investigating such charges has been arrested, imprisoned, and beaten.

Namibia-watchers anticipate that the conference will create a confederational Namibian state, which, by the beginning of 1976, will be given nominal independence under Black puppet leadership. If, as expected, the great mass of Namibians reject the new government, the Namibian situation will turn into one of bloody civil war: Black fighting Black (the one supported by the South African government and the other by ?).

Clarification of United States policy towards Namibia and southern Africa

My last recommendation is directed, with all the fervor I can express, to this subcommittee, to urge it to compel the State Department to reveal the policy it is in fact following vis-à-vis Namibia and southern Africa.

As I have gone over earlier statements of State Department officials about the American position on Namibia, I find the following:

(i) The United States is opposed to apartheid.
(ii) It believes that South Africa should get out of Namibia.
(iii) It believes that Namibians should not use force to drive the South Africans out of their country although it admits that that may be the only way to end the occupation.
(iv) It supported, and presumably would again support, negotiations by the Secretary-General to try to bring about an end to South Af-
rivan occupation, but it does not believe in the application of sanctions for that purpose.

(v) It discourages American investment in Namibia but does not advocate withdrawal; it is neutral on American investment in South Africa.

(vi) It supported revocation of the mandate but opposed establishment of the UN Council for Namibia and refused membership on it because it felt the Council could not be effective.

(vii) It has refused to support certain Council activities because the resolution which established the Council directed it to go to the Territory and carry out its functions there whereas the Council, due to the continuing South African occupation, has functioned from UN headquarters.

This rag-bag hardly adds up to a coherent policy, in my opinion.

Turning, then, to United States actions to supplement and enlarge on its statements, I find that:

(i) The United States has failed to implement its obligations as set out in the Advisory Opinion on Namibia.

(ii) It has in recent years almost consistently opposed (or, at best, abstained on) UN resolutions on southern Africa.

(iii) It vetoed a Security Council resolution to expel South Africa and another to impose sanctions against South Africa to end its occupation of Namibia. It failed to propose any alternative to the second resolution which it vetoed.

(iv) It has apparently failed to discourage much investment in Namibia. The only reported withdrawals, by American companies engaged in off-shore oil exploration, resulted from stockholder and UN pressure.

(v) It has consistently failed to invite to the United States (under leadership grants and similar programs) leaders of SWAPO, the pre-
eminent liberation organization. Instead it has invited, sometimes more than once, Africans associated with divisive activities in Namibia.

(vi) It has failed to raise a public protest over a number of particularly outrageous actions by the South African government in Namibia, e.g., public floggings; imposition of martial law; maltreatment of prisoners; repression of opposition political parties; deportation of church leaders, including American citizens, etc.

(vii) It has eroded the arms embargo against South Africa and omitted technical assistance from its coverage.

(viii) It has supplied enriched uranium, from which nuclear weapons can be made, to South Africa and allowed Americans to assist South Africa in developing its own processes although South Africa has failed to sign the Nuclear Non-Proliferation Treaty.

(ix) Behind the scenes it has supported NATO rapprochement with South Africa.

(x) It has unofficially welcomed Admiral Biermann, the South African Chief of Staff, and allowed him to consult with American Defense Department and other government officials in the guise of social gatherings.

(xi) It is rumored to have intervened in Angola, which adjoins Namibia, by granting subventions to the FLNA, one of the competing liberation movements, and probably in other ways.

(xii) It has voided UN-mandated sanctions against Rhodesia (the "Byrd amendment").

(xiii) It appears to have turned a blind eye as long as possible to the recruitment of mercenaries in the United States to fight for the Rhodesian government.

These actions seem hardly consonant, on the whole, with our professed abhorrence of apartheid and our desire to see South Africa out of Namibia. They do, however, seem generally in line with "Op-

Despite denials, Option 2 of NSSM 39 appears to have determined actual American policy towards southern Africa since 1969. Unfortunately it was based on the false premise that Blacks in southern Africa could not change their condition by force. The Portuguese coup a year ago, which resulted from Portugal's inability to win its colonial wars in Africa, demonstrated the fallacy of the premise and the inadequacy of the basic staff work which produced NSSM 39.

Some time last year, it seems clear, a reappraisal was made of the situation in southern Africa. Presumably a new National Security Study Memorandum was produced to take account of the changed situation and of weaknesses in NSSM 39. We may assume that the policy that our government will in fact follow vis-a-vis Namibia--whatever State Department officials say publicly--is found in the new NSSM.

** Therefore my last recommendation is that this Subcommittee should insist on obtaining access to the new, revised NSSM, and that it should refuse to accept anything less, if it is serious in its attempt to understand or influence American policy towards southern Africa.