A delegation from the American Committee on Africa today presented a document to George Bush, U.S. Ambassador to the United Nations, outlining action the United States should take in light of the recent advisory opinion of the International Court of Justice calling South Africa's administration of Namibia (formerly called South West Africa) illegal. The statement, prepared by a group of lawyers, stipulated that the United States should:

1) Refuse to invoke treaties with South Africa which have been extended to Namibia. Thus, products from Namibia "do not qualify for most-favored nation treatment which the General Agreement on Tariffs and Trade requires the United States to afford South African products." Further, the United States should not apply its double taxation treaty with South Africa to Namibia. Consequently, American companies doing business in Namibia should not be given credit by the Internal Revenue Service for taxes paid to the South African government. This would affect such companies as American Metal Climax and Newmont Mining.

2) Discourage American corporations registered with the South African government from doing business in Namibia by denying them credit loans or tax credits, and should levy a special surcharge on profits.

3) Specifically support the interim United Nations administering authority (in place of South Africa) for the territory by accepting travel documents issued by the United Nations to Namibians; supporting the right of the United Nations authority to levy taxes, and should "assist the authority in developing techniques to collect taxes;" granting tax credits to U.S. companies paying them to the United Nations authority.

Also the document proposes that the United States grant political asylum "on the most favorable terms to Namibian refugees;" specifically excludes the American consulate in Cape Town from any activity in Namibia; supports the United Nations administering authority in establishing its own postage for Namibia; and urges that the United States should assist the
United Nations authority "in developing effective means to abolish all laws mandating or permitting racial discrimination."

In presenting the document to Ambassador Bush, Peter Weiss, a lawyer and president of the American Committee on Africa, said, "Our purpose here is to urge immediate implementation by our government of measures which can be taken even without a direct military confrontation with South Africa. We believe our proposals can be put into effect without delay in spite of the intransigence of the South African government."

In an introductory section the document outlines the conflict between South Africa and the United Nations over the status of Namibia. Both the United Nations and the International Court have acted to declare South Africa illegal in exercising authority in the territory. But South Africa has refused to recognize these actions.

The delegation meeting with Ambassador Bush, in addition to Peter Weiss, included the Hon. William Booth, Criminal Court judge; Joel Carlson, who was for years a defense attorney in Johannesburg, now at the NYU Center for International Studies; Michael Davis, also formerly a South African lawyer, now practicing in New York; Hope Stevens, president of Uptown Chamber of Commerce; and George Houser, Executive Director of the American Committee on Africa.

The full text of the document is attached.
American Committee on Africa

ANALYSIS OF AMERICAN OBLIGATIONS VIS-A-VIS NAMIBIA
IN THE LIGHT OF THE INTERNATIONAL COURT'S OPINION

Background

Namibia, formerly known as South West Africa, is an arid, mineral-rich territory slightly larger than Texas. It has a population of some 650,000, of whom more than 80 per cent are non-white.

South West Africa was recognized as a German protectorate in 1890. After the First World War it was entrusted by the League of Nations to the then Union of South Africa as a "mandated territory," to be administered for the benefit of the indigenous people. But South African rule was brutal, discriminatory, and exploitative, and the Union was repeatedly criticized by the Permanent Mandates Commission of the League for acting as if it had annexed the territory.

When the League was dissolved at the end of World War II, South Africa, alone of all the mandatory powers, refused either to convert its mandate into a trust territory under the United Nations or to grant it independence. Nevertheless, without offering in any way to reform its administration of the territory, it solemnly promised that it would continue to administer South West Africa "in the spirit of the mandate."

Shortly thereafter the Union sought approval from the United Nations (which had succeeded to the League's supervisory power over mandates) to incorporate South West Africa; but the United Nations found strong opposition among the Africans and refused. The South African government thereupon undertook to incorporate the territory in fact without changing its former legal status. In particular, it intensified its policy of racial segregation under the new designation of apartheid (now euphemistically called "separate development") in further violation of the U.N. Charter and of its mandate obligations. Neither negotiation nor cajolery nor pressure turned the Union from this course.
(a) changing the accreditation of American diplomatic and consular personnel in South Africa so that their jurisdiction does not include Namibia;

(b) denial of tax credits to American corporations, firms, or individuals for taxes paid to the illegal South African administration on operations in Namibia;

(c) a specific declaration that any grant or concession in Namibia obtained from the illegal South African administration is void so that holders of such grants and concessions may not claim valid title thereto, or to the products derived therefrom, in, e.g., SEC registration statements or any public accounting or audit;

(d) granting political asylum to Namibian refugees.

With respect to the second category of actions taken through the United Nations, American initiatives should start with a declaration of support for the United Nations administering authority for Namibia and recognition of the validity of its acts until, at the earliest possible moment, an independent government is established. Additionally, proposals should be made and pursued to enable that authority to:

(a) represent Namibia in international affairs and sign treaties on its behalf;

(b) establish its own postage as the only valid postage for mail originating in Namibia;

(c) tax and regulate corporations doing business in Namibia, etc.

An enumeration of major obligations of the United States in the light of the Court's Opinion is set forth in the annexed analysis.

It is hereby urged that the United States commence the above initiative without delay and proceed as quickly as possible to fully meet the obligation set forth below.
3) "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 . . . "

The Nature of the United States' Obligations

Since the Court's opinion was not rendered in an adversary proceeding, but in response to a request for advice, it is not binding on states in the sense that a judgment in a contentious proceeding would be binding on the parties there-to. Nevertheless, the opinion represents a definitive exposition of the law on the question raised by the Security Council. Further, it is based on much the same basic premises, principles and reasoning and reaches substantially the same conclusions on major issues as the amicus brief submitted by the United States in the course of the proceedings before the World Court.

Consequently, the United States, a permanent member of the Security Council which sought the ruling, and a proponent of the international Rule of Law, should be deemed obligated, legally as well as morally, to fulfill the duties laid down by the Court as applicable to all states.

Actions which the United States should take to fulfill these duties include many which it can undertake immediately and independently (i.e., without preliminary action by any organ of the United Nations) and others which depend upon prior U.N. action. In the case of the latter, the United States has the additional and antecedent obligation of proposing or sponsoring and supporting appropriate measures and of helping the devise effective means of implementing them.

1. It should be noted that there may be overlapping obligations relating to the same subject matter and that some of these obligations may be more extensive than others, or the application of some may preclude the application of others. In every case the more extensive should be applied. However, all obligations are listed, as in some cases the more extensive action may require additional time to become effective or may be prospective only in application, whereas the other may be immediately applicable or apply to subject matter already in existence or to transactions already in progress.
Actions which should be taken by the United States immediately and independently of the United Nations:

I. American diplomatic and consular accreditation to South Africa

The United States should specifically inform the South African government and publicly announce that its diplomatic personnel in South Africa are accredited to the Republic only, and not to the territory as well; and it should revise the area of jurisdiction of its consular personnel in Capetown to exclude Namibia. Past United States action - closing the consular office in Windhoek, the territorial capital, and physically withdrawing United States personnel from the territory while nevertheless continuing their accreditation to "South West Africa" - is not sufficient.

In addition the United States should instruct its diplomatic and consular personnel in South Africa to vigorously express American disapproval of the occupation of Namibia by all traditional means, such as absenting themselves from public events relating to the territory and refusing to entertain South African officials connected with the occupation.

II. Preventing South African representation of Namibia in international affairs

The United States should seek to prevent the participation of South Africa, insofar as it purports to represent or act for or on behalf of or concerning Namibia, in any international body or conference in which the United States participates. The United States should also refuse to negotiate, sign, or ratify any treaty under or as to which South Africa purports to represent or act on behalf of or for or concerning Namibia.

III. No invocation of treaties extended to Namibia

The United States should refuse to invoke or apply treaties which have been extended to Namibia insofar as Namibia, Namibians, or Namibian property or products are concerned. In particular the United States should set up procedures to ensure that Namibian products do not qualify for most-favored-nation treatment.
which the General Agreement on Tariffs and Trade requires the United States to afford to South African products. These procedures should include a provision whereby products which are produced both by South Africa and Namibia are deemed ineligible for preferential treatment unless a United States consul certifies the products to be non-Namibian in origin.

In addition, the United States should inform the South African government that it will refuse to extradite Namibians under its extradition treaty, which was extended to Namibia. The United States should also refuse to apply its double-taxation treaty to American taxpayers doing business in Namibia or otherwise paying taxes to the South African government in connection with Namibian affairs.

IV. Invalidity of South African concessions and other acts

The United States should deem invalid every grant or concession (mining, drilling, extracting, processing, manufacturing, fishing, etc.) in Namibia which is derived directly or indirectly from the South African government since the termination of the mandate. As a consequence, inter alia, the Security Exchange Commission should require registration statements of the holders of such grants and concessions to reflect the invalidity of their title, and public regulatory agencies should require the balance sheets of such grantees and concessionaires, as well as the reports of accountants and auditors, to reflect the invalidity of their title.

Conversely, the United States should recognize as valid grants and concessions made by the United Nations administering authority. Consequently, title to products obtained in or removed from Namibia under any grant or concession shall be deemed to vest in the holder of the valid grant or concession and not in

2. Throughout this analysis "South African government" includes the Territorial Administration, and acts of the South African government include acts of the Territorial Administration as well as acts of any person or agency operating de facto under the control of the South African government.
the holder of the grant or concessions derived from the South African government. 3.

The United States should not recognize any claims arising out of judicial or quasi-judicial acts (inter alia, judgments, orders, decrees, settlements, notarial acts, arbitral awards) of the South African government taken since the termination of the mandate which relate to Namibia, Namibians, or Namibian property or products.

The United States should not recognize claims arising out of executive or general administrative acts (e.g. administrative findings or decrees, rules and regulations, receipts, official statistics, etc.) relating to Namibia, Namibians, or Namibian property or products which have been taken by the South African government since the termination of the mandate. As a consequence, official receipts should not constitute proof of payment (of taxes, loans, license fees, etc.): South African registration or authentication of documents should not validate them; and findings of fact by a South African administrative agency should be inadmissible in proceedings before American tribunals, etc.

The United States should not recognize claims arising out of documents (such as deeds and registrations, licenses, and certificates) emanating from the South African government since the termination of the mandate insofar as such officials should not accept South African certificates as to weight, measure, contents, or value or prices of goods sought to be imported into the United States; maritime officials should not accept registrations of Namibian vessels or maritime licenses issued to Namibians; and public regulatory agencies should not accept registered deeds to Namibian property or South African certificates as to origin, purity, etc., of Namibian products.

3. The United States substantially recognized this position long before the Court rendered its opinion: on May 19, 1970 Ambassador Yost announced that his government would not protect United States investments in Namibia acquired since the termination of the mandate against the claims of a future lawful government of the territory.
The United States should deem invalid obligations (e.g. savings bonds, short term notes, etc.) in any way connected with Namibian projects which have been issued by the South African government since the termination of this mandate. As a consequence, inter alia, United States public regulatory agencies should not permit banks, insurance companies, and other business organizations under their jurisdiction to treat such obligations as assets, accept them as collateral, etc.: fiduciaries should be surcharged for investing in them; and all banks in the federal reserve system should refuse to honor or clear them.

The United States should not recognize the validity of claims arising out of patents, copyrights, design and trademark registrations, and related rights issued by the South African government in respect of Namibia since the termination of the mandate.

V. Treatment of American businesses in Namibia

The United States Internal Revenue Service should not grant credits against American taxes due for taxes paid by American taxpayers to the South African government on Namibian property, profits, or transactions or on business done in Namibia. Since payments made to an illegal usurper give rise to no rights, the I.R.S. should similarly refuse claims of American taxpayers to deduct any such taxes paid to the South African government as ordinary and necessary expenses.

The United States should discourage Americans from doing any business in Namibia or concerning Namibian property or products by denying them, inter alia, credit guarantees, loans, subsidies, government insurance, tariff preferences or quotas, tax credits, and otherwise normal consular services in Namibia. All departments of government, including specifically Commerce,

4. The International Court's specific prohibition against invoking treaties extended to Namibia applies to the United States-South Africa double-taxation treaty.
Defense, and State, should notify Americans doing or contemplating doing business in Namibia as to this official policy and should refuse to give them any commercial and/or technical assistance.5.

By analogy to taxes levied or proposed to be levied on gambling and leaded gasoline, the United States should levy a special surcharge on profits of United States taxpayers derived from operations in or relating to Namibia, which it is official United States policy to discourage.

The United States should treat as unincorporated business associations all organizations (specifically including subsidiaries of United States corporations) incorporated by the South African government since the termination of the mandate to do business in Namibia. As a consequence the liability of members, officers, directors, and purported incorporators and shareholders for the debts of such business associations should be unlimited, and any such association should be deemed legally incapable of acting in the capacity of a corporation.

VI. Political asylum for Namibian refugees

The United States should grant political asylum on the most favorable terms to Namibian refugees and should provide or help to obtain educational, vocational, and medical services for such refugees.

Actions which should be taken by the United States through the United Nations:

I. Acceptance of Court's Opinion

The United States should sponsor and support a Security Council resolution accepting and supporting the International Court's Advisory Opinion.

5. Ever since the revocation of the mandate, the United States has recognized the illegality of the South African occupation of Namibia, and in 1970 Ambassador Yost announced that this country would henceforth discourage American investment there, in particular by refusing to make available Export-Import Bank credit guarantees for such investment. The Court's Opinion now requires the United States to broaden the scope of its action.
II. Support for Administering Authority

The United States should sponsor and support a resolution calling on all United Nations members, organs, and specialized agencies to recognize the interim administering authority as representing Namibia; to invite representatives of the authority to participate as full members in all meetings, conferences, negotiations, etc. which concern Namibia or its rights and interests; and to permit the authority to undertake all responsibilities (such as signing and ratifying international treaties which are drafted under the aegis of such United Nations agencies or organs or of which they are depositaries or as becoming a member of bodies created under such treaties.) The United States should so treat the administering authority, effective immediately.

III. Travel documents and visas

The United States should encourage all United Nations members to acknowledge and accept the travel documents issued to Namibians by the administering authority and should support the exclusive right of the administering authority for Namibia to issue visas for entry into or residence in Namibia.

IV. Postage

The United States should support the administering authority in establishing its own postage, in obtaining representation on the international Postal Union, and in obtaining recognition of its stamps as the only valid postage for mail originating in Namibia.

The United States should support the issuance of special commemorative stamps by the United Nations postal authorities to commemorate the termination of the mandate and the assumption of the administration by the United Nations.

6. In its written statement to the Court on the Namibian question, the United States indicated that it from the Council, acting ad interim, should be treated as the effective governing body.
V. Regulation of business in Namibia

The United States should support the right of the administering authority to levy taxes on persons, business associations, and corporations obtaining income from or doing business in Namibia, and it should assist the authority in developing techniques to collect such taxes, either directly or with the assistance of United Nations member states whose nationals would be subject to such taxes. The United States should grant appropriate tax credits for such payments by Americans while denying them for tax payments made to the South African government.

The United States should support the right of the administering authority to incorporate new and existing businesses in Namibia and the correlative rights to set standards for incorporation and to deny corporate charters to businesses or to withdraw them from corporations enfranchised by it on the grounds of failure to meet or to abide by such standards.

The United States should support the right of the administering authority to require all corporations enfranchised by the South African government since the termination of the mandate to do business in Namibia to become incorporated by the authority according to its provisions therefor and to penalize all corporations subject to such requirements which fail to so incorporate. The United States should not recognize the corporate status of organizations doing business in Namibia which fail to incorporate under the administering authority.

The United States should support the right of the administering authority to establish rules and regulations governing natural persons and unincorporated associations doing business in Namibia and should assist the

7. Note that the right - and duty - to levy and collect taxes is implicit in General Assembly resolution 2248 (S-V) (1967), para. XIII (1) (a), which provides that "The administration of South West Africa under the United Nations shall be financed from the revenues collected in the Territory . . . "
Council in devising effective means to compel them to comply therewith.

VI. Abolition of racial discrimination

The United States should assist the administering authority in developing effective means to abolish all laws mandating or permitting racial discrimination.

VII. Protection of Namibian workers

The United States should support the right of the administering authority to establish basic rights for African workers in Namibia (specifically including a code of minimum conditions of employment) and to establish and/or license and regulate interim fiduciaries which shall, in the absence of bona fide local labor unions, be able to act, inside or outside Namibia, on behalf of African workers against employers who fail to observe the code or otherwise deprive such workers of fundamental rights.

Special Note

The United Nations Assembly and Security Council have already called on all states not to supply arms to South Africa because of its apartheid policy. In principle the United States admits its obligations to honor this existing embargo; but in practice it continues to permit the sale of spare parts for arms previously delivered as well as of jeeps and "civilian" aircraft, which can be - and are - converted to military use.

The Court's Opinion on Namibia, which holds that all states have a duty to refrain from acts which support the (military) occupation of the territory, places the United States under a double requirement to refuse to license the sale or supply to South Africa of any arms, military supplies or equipment (including supplies or equipment convertible to military use, and spare parts), or technical know-how related thereto.