

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

LEGAL CONSEQUENCES FOR STATES OF THE  
CONTINUED PRESENCE OF SOUTH AFRICA IN  
NAMIBIA (SOUTH WEST AFRICA)  
NOTWITHSTANDING SECURITY COUNCIL  
RESOLUTION 276 (1970)

(REQUEST FOR ADVISORY OPINION)

ORDER OF 29 JANUARY 1971

**1971**

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

CONSÉQUENCES JURIDIQUES POUR LES ÉTATS DE  
LA PRÉSENCE CONTINUE DE L'AFRIQUE DU SUD  
EN NAMIBIE (SUD-OUEST AFRICAIN)  
NONOBTANT LA RÉOLUTION 276 (1970)  
DU CONSEIL DE SÉCURITÉ

(REQUÊTE POUR AVIS CONSULTATIF)

ORDONNANCE DU 29 JANVIER 1971

Official citation:

***Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Order of 29 January 1971, I.C.J. Reports 1971, p. 12.***

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Mode officiel de citation:

***Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, ordonnance du 29 janvier 1971, C.I.J. Recueil 1971, p. 12.***

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LEGAL CONSEQUENCES FOR STATES OF THE  
CONTINUED PRESENCE OF SOUTH AFRICA IN  
NAMIBIA (SOUTH WEST AFRICA)  
NOTWITHSTANDING SECURITY COUNCIL  
RESOLUTION 276 (1970)

(REQUEST FOR ADVISORY OPINION)

ORDER

*Present: President* Sir Muhammad ZAFRULLA KHAN; *Vice-President* AMMOUN; *Judges* Sir Gerald FITZMAURICE, PADILLA NERVO, FORSTER, GROS, BENZON, PETRÉN, LACHS, ONYEAMA, DILLARD, IGNACIO-PINTO, DE CASTRO, MOROZOV, JIMÉNEZ DE ARÉCHAGA; *Registrar* AQUARONE.

THE COURT,

Composed as above,

After deliberation,

Having regard to Articles 31 and 68 of the Statute of the Court, and to Article 83 of the Rules of Court,

Having regard to the resolution of the Security Council of the United Nations dated 29 July 1970 requesting the International Court of Justice to give an advisory opinion on the following question:

“What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?”,

Having regard to the written statements filed by the Governments of Czechoslovakia, Finland, France, Hungary, India, the Netherlands, Nigeria, Pakistan, Poland, South Africa, United States of America, Yugoslavia, and by the Secretary-General of the United Nations,

*Makes the following Order:*

Whereas by a letter from the Secretary for Foreign Affairs to the Registrar dated 13 November 1970, the South African Government made an application for the appointment of a judge *ad hoc* to sit in the present proceedings, in terms of Article 31, paragraph 2, of the Statute of the Court;

Whereas, in accordance with the terms of Article 46 of the Statute of the Court, the Court decided to hear the contentions of the South African Government, concerning its claim to be entitled to choose a judge *ad hoc*, in closed hearings by the Court;

Having heard the contentions of the Government of South Africa at a closed hearing held on 27 January 1971, notice of which had been given by the Registrar to those States which had indicated their intention to present oral statements in accordance with Article 66, paragraph 2, of the Statute of the Court;

THE COURT

Decides, by ten votes to five, to reject the application.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-ninth day of January, one thousand nine hundred and seventy-one, in eight copies, of which one will be placed in the Archives of the Court, one will be transmitted to the Secretary-General of the United Nations, and the others will be transmitted to the Governments of the following States, namely: Finland, India, the Netherlands, Nigeria, South Africa, United States of America.

(Signed) ZAFRULLA KHAN,  
President.

(Signed) S. AQUARONE,  
Registrar.

Judges Sir Gerald FITZMAURICE, GROS and PETRÉN make the following Joint Declaration:

We are unable to concur in the decision to reject embodied in the Order, for reasons which we reserve the right to make known at a later

opportunity, inasmuch as the present question is, from certain aspects, related to the substance of the matter on which an advisory opinion has been requested of the Court.

Judges ONYEAMA and DILLARD make the following Joint Declaration:

We are unable to concur in the decision of the Court. While we do not think that under Article 83 of the Rules of Court the Republic of South Africa has established the right to designate a judge *ad hoc*, we are satisfied that the discretionary power vested in the Court under Article 68 of its Statute permits it to approve such designation and that it would have been appropriate to have exercised this discretionary power in view of the special interest of the Republic of South Africa in the question before the Court.

*(Initialed)* Z.K.

*(Initialed)* S.A.

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