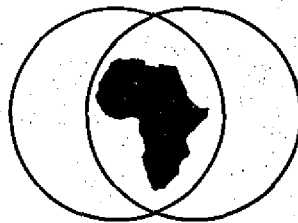


SOUTH WEST AFRICA AND

THE UNITED NATIONS

South African Letter Addressed
to the U.N. Secretary-General
on 27 January 1976

THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS



DIE SUID-AFRIKAANSE INSTITUUT VAN INTERNASIONALE AANGELEENTHEDE

This paper contains the full text of a letter, dated 27 January, 1976, addressed to the Secretary-General of the United Nations by the Permanent Representative of South Africa to the United Nations, Ambassador R.F. Botha. The text is reproduced from a Press Release issued by the Permanent South African Mission to the United Nations in New York. (It was also issued in U.N. document S/11948.)

The letter was submitted to the Secretary-General to coincide with a debate on the S.W.A./Namibia issue in the Security Council, and Ambassador Botha also addressed the Council on 27 January. On 30 January the Council unanimously adopted a resolution on this issue. (The text of this resolution and Ambassador Botha's statement to the Council will appear in a forthcoming issue of *Southern Africa Record* published by the SAIIA.)

In addition to this paper the Institute has recently published (January 1976) a Report by Professor John Dugard on the Dakar Conference on "Namibia and Human Rights" (held from 5 to 8 January, 1976) and its implications for the South West Africa issue and détente. The Institute will also shortly be publishing a report on a symposium on the S.W.A./Namibia issue, held at Jan Smuts House, Johannesburg, on 28 January, at which the speakers were Professor J. D. van der Vyver, Professor John Dugard and Mr. J. H. P. Serfontein.

It should be noted that, as the Institute is precluded by its Constitution from itself expressing an opinion on any aspect of international affairs, opinions expressed in this *paper* are solely the responsibility of the author and not of the Institute.

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February, 1976

Your Excellency,

I write to you in connection with the current consideration by the Security Council of the question of South West Africa. Your Excellency will recall that on 27 May 1975, my Foreign Minister wrote to you setting out my Government's position with regard to this question as well as providing information on the latest developments in the Territory. The negative reaction at the United Nations to that letter was a source of great disappointment to the South African Government.

There can be no doubt that if Member States, and in particular members of the Security Council, were to have a clear grasp of the fundamental realities of South West Africa and the principles underlying my Government's approach to the whole issue, they would develop a proper appreciation of the impressive developments which have been achieved and which continue to be achieved in the Territory and a better understanding of South Africa's objectives. With that object in view, I now wish to deal with some of these fundamentals. In doing so, it is incumbent on me to revert briefly to certain important aspects of the background to this issue so that it can be considered in correct perspective.

Issues of Law

It is conveniently forgotten that there is no legally binding instrument or determination giving the United Nations a right of supervision of the administration over the Territory. Nor is there any legally binding decision giving the General Assembly or the Security Council the right to impose its will on the administration of the Territory or on the peoples of the Territory. Neither the General Assembly nor the Security Council can arrogate to themselves such a power. Their powers are strictly circumscribed by the Charter of the United Nations and they cannot do as they like however many times they may decide they can. The 1971 Advisory Opinion of the International Court of Justice on which many States take their stand is not only entirely untenable but is clearly and demonstrably the result of political manoeuvring instead of objective jurisprudence. An advisory opinion is, as its name indicates, advisory only. The weight to be attached to it depends ultimately on the cogency of its reasoning. Every State which accepts the 1971 Advisory Opinion of the International Court of Justice should indicate clearly whether it accepts the reasoning of the Court on which that opinion was based. And how many States would unequivocally declare that they accept the Court's conclusion concerning the powers of the General Assembly which necessarily implied that the General Assembly had the power to make findings of fact and of law which would bind even non-consenting States? How many States would agree that the General Assembly could ordain a given political and economic system for all countries of the world; or prescribe political independence for Northern Ireland; or for Scotland; or prohibit State religions. If States do not accept that the General Assembly can lay down legally binding rules in these matters, then they cannot accept and do not truly accept the Court's 1971 Opinion.

As regards the Security Council, it is necessary only to point out that the suggested limitations placed by the Court upon its powers to make binding decisions hardly amount to limitations at all - the purposes and principles of the United Nations are so wide as to be almost all-encompassing, and virtually any situation could be considered one which might lead to a breach of the peace.

Were the Court's findings in this regard to be accepted, the careful safeguards incorporated in Chapter VII of the Charter would become virtually meaningless, and measures which have in the past been regarded as permissible only under that Chapter would now be authorised by Articles 24 and 25. Certainly the majority of States Members of the United Nations cannot and do not agree that the General Assembly and the Security Council are endowed with unlimited powers.

The only legally binding pronouncement on the subject of South West Africa is the Court's judgment of 18 July 1966, in contentious proceedings in the South West Africa cases. It is apparent from that judgment that the Court had not thought that a power of unilateral revocation existed in favour of the United Nations. But the Court in its 1971 Advisory Opinion disregarded its previous pronouncements which related to vital issues. To quote just two examples : that "it was never the intention that the Council (of the League) should be able to impose its views on the various mandatories - the system adopted was one which deliberately rendered this impossible"; and that "resolutions of the United Nations General Assembly ... subject to certain exceptions not here material ... are not binding, but only recommendatory in character". There were also passages in the reasoning in the judgment which strongly suggest that the Court was of the opinion that there was no longer any entity vested with supervisory powers in respect of the Mandate. Thus, for example, the Court stated at p.36, paragraph 57, of its Judgment of 18 July 1966 :

"Another argument which requires consideration is that in so far as the Court's view leads to the conclusion that there is now no entity entitled to claim the due performance of the Mandate, it must be unacceptable. Without attempting in any way to pronounce on the various implications involved in this argument, the Court thinks the inference sought to be drawn from it is inadmissible. If, on a correct legal reading of a given situation, certain alleged rights are found to be non-existent, the consequences of this must be accepted. The Court cannot properly postulate the existence of such rights in order to avert those consequences. This would be to engage in an essentially legislative task, in the service of political ends the promotion of which however desirable in itself, lies outside the functions of a court-of-law."

And there is a further significant passage at pp. 47-48, para. 89, of the Judgment which reads as follows :

"The Court feels obliged in conclusion to point out that the whole 'necessity' argument appears, in the final analysis, to be based on considerations of an extra-legal character, the product of a process of after-knowledge. Such a theory was never officially advanced during the period of the League, and probably never would have been but for the dissolution of that organization and the fact that it was then considered preferable to rely on the anticipation that mandated territories would be brought within the United Nations trusteeship system.

It is these subsequent events alone, not anything inherent in the mandates system as it was originally conceived, and is correctly to be interpreted, that give rise to the alleged 'necessity'. But that necessity, if it exists, lies in the political field. It does not constitute necessity in the eyes of the law. If the Court, in order to parry the consequences of these events, were now to read into the mandates system, by way of, so to speak, remedial action, an element wholly foreign to its real character and structure as originally contemplated when the system was instituted, it would be engaging in an ex post facto process, exceeding its functions as a court of law. As is implied by the opening phrase of Article 38, paragraph 1, of its Statute, the Court is not a legislative body. Its duty is to apply the law as it finds it, not to make it."

I am reverting to these vital issues of law to make one thing very clear to Your Excellency and to the Security Council: the law is not on the part of the United Nations. Neither are the facts.

Clearly the Security Council ought to examine an alleged threat to the peace or a breach of the peace or an act of aggression on some basis of fact. In this respect the Court's 1971 Opinion is of no assistance whatsoever. Indeed, the Court declined to embark upon an enquiry into the accusations of oppression and repression despite South Africa's invitation to the Court to do so.

Thus the present course of action in the United Nations commenced in the emotional atmosphere which followed on the 1966 Judgment. Despite a reasonable attitude on South Africa's part at that time, when it appealed to the General Assembly not to drive her into a position where real co-operation would become impossible, the General Assembly acted completely contrary to clear Charter provisions and adopted a resolution purporting to terminate South Africa's right to administer South West Africa.

Supervision

The South African Government does not recognise and has never recognized any right on the part of the United Nations to supervise the affairs of the Territory. Moreover, the Government cannot be expected to agree to United Nations supervision of any electoral process as long as the majority of members of the United Nations continue for their own interested purposes to conduct a virulent, malicious and completely biased campaign in regard to the Territory. Despite this hostile attitude, we have nevertheless over the years repeatedly endeavoured to find an acceptable basis for negotiations with the United Nations with a view to solving the problem. Thus in 1951 South Africa proposed that a new agreement be entered into with the remaining Principal Allied and Associated Powers of the First World War.

South Africa went so far as to declare her willingness to have the idea of such an agreement sanctioned by the United Nations beforehand. But this did not satisfy the majority of the General Assembly. Despite this negative attitude, South Africa reconfirmed her willingness to arrive at an amicable arrangement; and towards the end of 1952, the United Nations Committee concerned could report agreement in principle on five points. The Committee itself expressed its appreciation of South Africa's efforts, but regarded itself so bound by its terms of reference that it could not accept anything less than South Africa's account-ability to the United Nations.

Still South Africa did not close the door to finding a basis for negotiation. In 1958, South Africa invited the members of the United Nations "Good Offices" Committee to visit South Africa and South West Africa. In the record of the discussions, the Committee expressed its appreciation towards South Africa for her frankness, friendliness and desire to find a mutually acceptable basis of agreement. However, the United Nations again remained intransigent.

Although a deadlock appeared to have been reached, South Africa still remained willing to find a basis for discussions and received the Carpio-Martinez de Alva Mission in 1962. The Communique issued at the conclusion of their visit was not to the liking of the majority of the Member States and as far as the United Nations was concerned it therefore simply did not exist.

During 1972-1973 there were of course also the contacts with Your Excellency. They held promise. But it seemed that South Africa was required by certain United Nations members to do all the compromising - that South Africa was expected to abandon its position completely, without the United Nations conceding anything. Some progress was made. That is apparent from Your Excellency's three reports on the contacts. Indeed more was achieved in the fourteen months of the contacts than had been achieved in all the years that this issue had been on the Organization's agenda. It is on record that during the contacts with Your Excellency the South African Government had anticipated that on the basis of developments at that time, it might not take longer than ten years for the population of South West Africa to reach the stage where it would be ready to exercise its right to self-determination. In the light of recent developments in the Territory, the South African Government in fact now believes that this stage may be reached considerably sooner. But the attitude of a majority of the United Nations was uncompromising and even before this Council met in December 1973, calls were being made to terminate the contacts.

Thus in the light of the repeated willingness of South Africa to explore every avenue of dialogue and contact on the question of South West Africa, my Government rejects the United Nations' claim that South Africa has adopted an intractable attitude.

Question of Information

Consider also the question of information regarding South West Africa. In this connection I wish to remind Your Excellency of the many efforts made by my Government to ensure that full information on the Territory is available for everyone genuinely interested in acquainting himself with conditions in South West Africa. I need only refer to the following to substantiate this statement :

- (1) Thousands of pages in the record of the International Court of Justice contain fully documented facts on conditions in South West Africa, as well as refutations of the bulk of accusations which had up to that time been made in the United Nations against South Africa. Those facts were ignored by the General Assembly as well as by the Security Council in the process of rushing to a condemnation of South Africa.
- (2) The invitation extended to the World Court in 1956 to inspect South West Africa and to see whatever it wished. This proposal was strenuously opposed by the Applicants in those cases. Likewise they opposed South Africa's contemplated oral evidence, in spite of their original factual allegations, as being irrelevant. They themselves had not produced a single witness. South Africa went so far as to indicate that it would consider, if the Applicant States should wish to call the United Nations petitioners as witnesses, whether she ought not offer to pay their witness fees so as to allow South Africa the privilege of cross-examining them before the International Court of Justice. There was no response. Indeed, the Applicants dramatically intimated that they had not relied upon the accuracy of the statements in the petitions, but that they had cited the petitions for the bearing they might have as confirmation of the reasonable and predictable consequences of South Africa's policies. And yet, it was largely on the basis of the statements of these very same petitioners that the General Assembly of the United Nations passed resolution after resolution leading up to resolution 2145 (XXI), purporting to revoke South Africa's right of administration of South West Africa. I need hardly say that this basic position has not changed.
- (3) There was the active participation by the South African delegation in the General Assembly debate on South West Africa during the Twenty-First Session in 1966.
- (4) This was followed by the publication and distribution to Governments and International Organizations, including the United Nations, of the "South West Africa Survey 1967".
- (5) Early in 1967 an invitation was extended to the Envoys of various Governments in South Africa to visit all parts of the

Territory and to see conditions for themselves.

- (6) Statements on South West Africa were made by South African representatives in the General Assembly on 11 and 14 December 1967.
- (7) Various communications were addressed by the South African Foreign Minister to the Secretary-General of the United Nations. In particular his letters of 26 September 1967, 15 February 1968, 27 March 1968, 30 April 1969, 26 September 1969, 30 April 1973 and 27 May 1975 are note-worthy examples.
- (8) The factual exposition presented by the South African Government in its written statement to the International Court of Justice in the 1970/71 advisory proceedings. During the oral hearings South Africa indicated that it would wish to place further factual material before the Court in order to disprove the contentions that it had violated its trust obligations under the Mandate. The most extraordinary aspect of the whole matter was that the Court, having once decided not to go into the factual issues, nevertheless did so. Moreover, in doing so it attacked South Africa's policies in a decidedly uninformed and prejudiced manner after having refused to hear the further evidence which South Africa had wished to adduce in this connection. Amongst others, Judge Dillard of the United States of America was uncomfortable as far as this aspect of the proceedings was concerned. He accepted that it "would not have been compatible with (the Court's) judicial function to have determined the issue of breach on these grounds in the absence of a full exposure of all relevant facts". But he did not attempt to explain why the Court nevertheless expressed itself on this subject.
- (9) In mid-1975, the "South West Africa Survey, 1974" was published and widely distributed.

It is clear from the above that no serious attempt has as yet been made by the United Nations fully to acquaint itself with the facts concerning the peoples of South West Africa and their conditions and standards of living. I therefore repeat that the many charges of oppression remain mere assertions which cannot bear examination. These allegations form the basis of the political campaign which has been waged against my Government in the United Nations and upon which numerous resolutions have been drafted and adopted. I therefore wish to emphasize that a real case against my Government has as yet not been submitted to proper enquiry. This is a most important aspect of the South West Africa issue. We are being accused of being obstinate, of defying the United Nations and now defying the Security Council. I

realize that Governments may from time to time revise their outlooks on a given international situation. Governments may change their views on a considerable number of subjects in the light of changing circumstances. As far as South West Africa is concerned, I must emphasize that no Government and no resolution of any organ of the United Nations can change the basic facts in that Territory. It is therefore not the South African Government that is defying the United Nations, but the true facts and situation of South West Africa which are defying the United Nations.

The importance of correct information on South West Africa was only once recognized and that, ironically enough, after the General Assembly adopted resolution 2145 (XXI). I refer here to the views of a few of the representatives of the Ad Hoc Committee for South West Africa established in terms of operative paragraph 6 of General Assembly resolution 2145 (XXI). At the 5th meeting of this committee in 1967 the representative of Italy expressed the view that if United Nations machinery was to be set up, better knowledge of the existing situation would be required. The representative of Canada at the same meeting agreed that some information in addition to that provided by the Secretariat might be necessary "because the General Assembly would undoubtedly expect the Committee to express its views on the practicability of the various proposals it had examined".

Mr. Rogers, the United States representative at the 7th meeting of the Committee, is reported to have stated that he was sure that the Committee had noted with interest - as he had - the stated willingness of the South African Government to ensure that the facts regarding the problem were known to all concerned. The Committee, and indeed the United Nations as a whole, according to Mr. Rogers, had everything to gain by trying to obtain the fullest possible information with respect to conditions in the Territory and by exploring all methods for obtaining it. However, these few suggestions for a full and impartial consideration of the facts came to naught.

One fact has clearly emerged, namely, that any information and findings favourable to South Africa are summarily rejected and ignored by the United Nations, while mere assertions are eagerly accepted, provided that they further the political objectives of the majority within the United Nations. Nevertheless the facts concerning the high standards of development already achieved in South West Africa cannot be assailed. What is of even greater importance is that those facts belie any allegation of a threat to peace. Those facts make it clear that there exist no grounds for Security Council intervention.

Initiatives for Peace in Southern Africa and Africa

My Government's efforts to reach agreement on the peaceful settlement of differences which can lead to progress and stability for all the Nations of Southern Africa are well-known. My Prime Minister, in concert with other African Leaders, has undertaken bold initiatives in an endeavour to bring together opposing groups to work out a peaceful

solution to the problems of Rhodesia. We have withdrawn our police from Rhodesia, inter alia to contribute to a more amenable atmosphere in which discussions could take place between the Rhodesian political leaders.

In Mozambique the South African Government acted responsibly and constructively, avoiding any action which would have made the new Government's task more difficult.

The South African Prime Minister has during the past year personally undertaken several journeys to Black African countries in a continuing effort to reach a modus vivendi which can form the basis of permanent co-existence on the African continent. We have never been a colonial power. On the contrary one of the longest and most severe struggles against colonialist imperialism was fought by us. We neither present any threat to peace nor are we a threat to any country.

In the Republic of South Africa, sincere efforts are being made to remove practices and measures which inhibit the further improvement of better relations between Black and White. According to a report which appeared in The Christian Science Monitor of 16 January 1976, the result of a poll undertaken recently by the Black mass circulation newspaper The World indicated that 53% of South African Blacks were of the opinion that the South African Prime Minister was "either good or excellent at his job". The Christian Science Monitor commented that:

"It is almost unthinkable that any other previous white South African Prime Minister in recent history would have been regarded this way by Blacks."

In South West Africa itself substantial progress has been made in all directions. As is the general case, further development will largely be determined by the physical conditions and human resources of the Territory, and the Security Council should have a clear understanding of these factors.

Physical Conditions in the Territory

Any authority approaching the problem of the constitutional, social and economic development of the Territory of South West Africa will be faced with certain incontrovertible realities of which the most important are that the Territory is a vast, sparsely populated and arid region. It is nearly four times the size of the United Kingdom, with a population of only 850,000. Through the lack of water, and not as a result of any ideology or policy on the part of the South African Government, the Territory is a harsh and forbidding land. Save on the Northern and Southern boundaries, the Territory lacks perennial rivers, its rainfall is low variable and ineffective and, except for the Northern part, where most of the Black peoples live, desert or semi-desert conditions prevail. Climatic conditions deteriorate progressively as one moves South and West, culminating in the almost waterless Namib Desert.

In terms of land area, only 32.1% of the Territory receives an annual rainfall of more than 400 mm. Owambo, Kavango and the Caprivi are situated in the highest rainfall region. These areas are favoured not only by a higher annual precipitation, but also by a rainy season of longer duration. The majority of the inhabitants of the Territory live in these three regions. Here also is to be found the bulk of the best grazing and most of the land suitable for crops in the Territory. It is not surprising then to find that almost 60% of the Territory's population lives in these Northern areas.

The Peoples of the Territory

The South African Government did not push these peoples into these areas. Having migrated from other parts of Africa, the pastoral and agricultural Owambo, Kavango and Caprivi peoples discovered and settled the areas where they live to this day. Due to their settled form of existence, the Northern peoples of South West Africa escaped the large-scale violence and bloodshed which in earlier days were endemic among the nomadic peoples of the central and southern parts of the Territory.

Among the earliest inhabitants of the latter areas were the Bushmen, the Nama and the Dama. The Bushmen were a nomadic people, subsisting entirely by hunting game and gathering the wild fruits of the veld. The Nama were nomadic pastoralists who did not practise agriculture, but depended for their living on their herds and to a certain extent also on hunting and the products of the veld. The Dama are a mystery to students of ethnology, differing entirely from the Nama on the one hand and the Bantu peoples of Southern Africa on the other. History shows the Dama as practising either a primitive hunting and gathering economy or, more frequently, in the role of slave to the Nama, whose language the Dama eventually adopted, to the complete disappearance of their own.

Another important group of the central part of the Territory is the Herero, a Bantu people. They were an exclusively pastoral people and for a considerable period had lived in the Kaokoveld, an inaccessible region in the North-west. Towards the end of the 18th Century, the greater part of the Herero continued its migration southward, leaving behind in the Kaokoveld some Herero and related tribes (Himba and Chimba). After the southward migration of the Herero during the first decades of the 19th Century, war between them and the Nama broke out and continued intermittently for decades.

The Rehoboth Basters are another of the population groups of the southern part of the Territory. They are a unique community. Members of the Rehoboth Community are registered at birth as Rehoboth Basters at their own request. They trace their ancestry to wandering groups of mixed European-Nama descent.

The Coloured population of the Territory is mainly an urban population and, like the Rehoboth Basters, speaks mainly Afrikaans.

From the earliest days of the settlement at the Cape of Good Hope White explorers, hunters and traders from South Africa and elsewhere periodically visited the Territory and later many of them came to be settled there. Their numbers have steadily increased during the past century and today they form the second largest entity in the Territory.

No-one can deny that the Territory's geographical features have to a large degree moulded the different cultures of its inhabitants and to a considerable extent also their history. The South African Government did not create these disparities, The South African Government insists that the heterogeneous nature of the population of South West Africa is the product of history and not of a government policy. When it was given the responsibility of administering the Territory, the South African Government was faced with the difficult task of rehabilitating the peoples of the Territory after almost a century of internecine warfare and of consolidating their social and political structures.

Progress achieved in the Territory:

The South African Government has never had anything to hide in South West Africa. The results of progress are there for everybody to see. The following statistics give some indication of the substantial progress which has been achieved in the Territory.

- The Bantu Investment Corporation, which in 1964, the first year of its operation, had a gross turnover of \$333,200 and 30 Black employees, in 1973 recorded a turnover of some \$19.5 million and at present employs some 1,450 Black South West Africans. Moreover, an economic programme has been drawn up which will create some 5,000 employment opportunities for Blacks during the period 1972/1977, entailing a capital investment of \$33.75 million.

- Because of the aridity of the Territory, the question of water supply has been accorded high priority. Apart from an amount of \$208.5 million which had been spent up to 1974 on the construction and operation of 177 domestic water supply schemes by the State throughout the Territory, a total of approximately 1,400 boreholes had been drilled and 500 dams built in Black areas during the same period. Over the seven years preceding 1974 no less than 87,000 metres of drilling had been carried out at a cost of \$1.8 million. The total amount spent on water development in these areas between 1 April 1963 and 31 March 1974 was \$17.08 million. Moreover, it is estimated that expenditure on water supply for development, apart from irrigation, is likely to grow from the 1974 level of approximately \$45 million per annum to around \$150 million in 1980.

- With regard to education, the number of schools for Blacks and Coloureds in the Territory increased from 313 in 1960 to 598 in 1973; the number of teachers from 1310 in 1960 to 3,453 in 1973 and the number of pupils from 43,000 in 1960 to 140,000 in 1973.

- During the period 1972/73 expenditure on health services amounted to \$15.18 million, compared with \$2.98 million ten years earlier. In 1973 there were 1550 Coloured and Black nurses in the Territory. In 1974 there were 183 hospitals and clinics. As regards hospital fees, White patients are charged according to a fixed tariff based on income. Non-White patients are charged 20 cents for a first visit and 10 cents for each follow up visit. All Non-White patients are entitled to free treatment, including specialist treatment.

- Total investment in respect of the fixed and movable assets in South West Africa of the South African Railways amounted to \$255 million in 1973, while total expenditure on roads from 1953 to 1973 amounted to \$364.5 million. The value of radio, telegraph and telephone installations in the Territory amounted to \$52.5 million in 1973.

- The total cost of administering the Territory in 1974 amounted to \$513 million per annum and in this connection it should be recalled that the population, according to a 1974 estimate based on the 1970 census, is only 850,000.

These results have been achieved despite a natural environment which is basically inimical to economic development. The South African Government asserts that these achievements compare favourably with those of any other country of the world under comparable circumstances.

Constitutional Developments

Faced with the task of developing the Territory politically and otherwise in the interests of all its inhabitants and of bringing them to the stage where they could freely exercise their right of self-determination in an orderly and peaceful manner, the South African Government adopted the only realistic course open to it. On the one hand it set about developing the political institutions of the various groups in accordance with recognized democratic practices, while at the same time respecting and making due allowances for their wishes and traditions. On the other hand, it has encouraged contact and consultation among them in order that they may as soon as possible reach peaceful agreement with one another on their constitutional future. These efforts culminated in representatives of all the groups meeting in conference, freely and of their own accord, in order to co-operate in eliminating frictions and advancing social and economic conditions, thus creating an atmosphere of mutual confidence for their main task, namely the finding of a constitutional modus vivendi for the peoples of South West Africa as soon as possible. Of the groups participating in the Constitutional Conference, the Coloureds, East Caprivians, Kavongos, Owambos, Rehobothers and Whites, who together constitute some 631,000 people or 74 per cent of the population - are represented by persons chosen in accordance with established electoral machinery

and by way of free elections witnessed by the press. The representatives of the remaining groups, while designated by more traditional means represent a majority of the rest of the inhabitants. Clearly, therefore, the Conference is as broadly representative as is possible at this time. The Conference will, of course, have to explore various ways and means of attaining its several objectives, including a constitutional settlement, and in the nature of things it is only to be expected that the representatives will continue to report back to the inhabitants on the progress made and will continually take due cognizance of their wishes. Moreover, while any proposed constitutional arrangement will obviously have to enjoy the broad support of the inhabitants, it is for them themselves to decide by what process this is to be determined and the South African Government can neither anticipate their wishes in this respect nor simply ignore the democratic electoral processes which already exist in the Territory and force upon them some other electoral process.

The South West Africa Constitutiona Conference commenced with its First Session on 1 September 1975 and at the conclusion of that phase of the Conference, a Declaration of Intent regarding the future constitutional development of the Territory was adopted. The Declaration reads as follows :

"We, the true and authentic representatives of the inhabitants of South West Africa, hereby solemnly declare :

That in the exercise of our rights to self-determination and independence, we are voluntarily gathered in this Conference in order to discuss the constitutional future of South West Africa;

That we most strongly condemn and reject the use of force or any improper interference in order to overthrow the existing order or to enforce a new dispensation;

That we are firmly resolved to determine our future ourselves by peaceful negotiation and co-operation;

That mindful of the particular circumstances of each of the population groups it is our firm resolve in the execution of our task to serve and respect their wishes and interests;

That mindful of the interdependence of the various population groups and the interests of South West Africa in its entirety, we are therefore resolved to create a form of Government which will guarantee to every population group the greatest possible say in its own and national affairs, which will fully project the rights of minorities and which will do justice to all;

And further we declare that we are resolved to devote continuous attention to social and economic conditions which will best promote the welfare, interests and peaceful co-existence of all the inhabitants of South West Africa and their descendants;

That we are resolved to devote ourselves to the promotion of and respect for human rights and fundamental freedoms for all without discrimination merely on the basis of race, colour or creed;

We therefore decide

- (a) To draft a constitution for South West Africa as soon as possible and, if possible, within a period of three years;
- (b) To devote continuous attention to measures to implement all the aims specified in this Declaration."

The Second Session of the Conference took place from 10 to 14 November 1975. The Conference decided that the agenda items should be referred to Committees for in-depth study and four Committees, known as the First, Second, Third and Fourth Committee were established, the first two having eleven representatives each and the other two ten members. Each was authorised to hear expert evidence concerning its particular field of activity, as and when considered necessary. The Conference requested the Committees to commence work immediately following the conclusion of the Second Session of the Conference and to report to the full Conference when the Third Session convenes early in March 1976.

The First Committee is focussing attention on the question of discriminatory practices based solely on race and colour relating to remuneration, pension schemes, general conditions of employment, legislated minimum pay-scales for all inhabitants of South West Africa and related matters. The Committee was also requested to include in its work a study on the abolition of the "pass-laws" and the introduction of an identity document system for all South West Africans.

The mandate of the Second Committee is to gather and study all information relating to the economic upliftment of the inhabitants of the Territory, with special reference to owners, entrepreneurs and professional groups. Matters being studied in this connection relate inter alia to property in urban areas, and to infrastructure, financing and guidance.

The Third Committee will give attention to the social upliftment of all inhabitants, with special reference to housing, public facilities and services, and social pensions and welfare, the elimination of discrimination in the police force and the elimination of inequality in medical services, based on race.

The Fourth Committee will focus its attention on, and investigate, educational facilities and education.

The Constitutional Conference, at its Second Session, further decided that :

- (a) Representatives of the Conference be appointed overseas, when it is deemed expedient, in order to keep governments and institutions informed of developments at the Conference;
- (b) Evidence by minority groups and other institutions which espouse a peaceful resolution of the problems of South West Africa should be accepted, in either written or oral form, but that each such request to present evidence be considered on its merits;
- (c) A Committee will be appointed at an appropriate time in order to investigate the question of the return to South West Africa of exiles from the Territory.

South Africa's Attitude to Positions Taken by the United Nations :

The foregoing developments may be put into perspective by referring to the statement made by my Prime Minister at Windhoek on 20 May 1975, dealing in broad outline with the fundamental issues in regard to the problem as enunciated at the United Nations.

As regards the separate international status of the Territory, the Prime Minister reiterated that South Africa respects the separate status of the Territory and that South Africa does not claim for itself one single inch of South West African soil.

He agreed with the demand that the human dignity and rights of all peoples irrespective of colour or race be maintained and promoted but he was constrained to ask : "is it not time that some of our critics should also do so? Particularly those who invoke these rights for themselves but deny to other peoples the right to decide upon their own future".

As regards the requirement that the inhabitants of South West Africa should, as early as possible, be given an opportunity to express their views freely on their constitutional future, the South African Prime Minister indicated that that was in accordance with South Africa's policy.

On the question of South Africa's withdrawal from the Territory according to the wishes of the inhabitants, my Prime Minister stated : "we do not occupy the Territory. We are there because the peoples of the Territory want us there. We do not force ourselves upon the peoples of the Territory and in this regard we take cognisance only of the wishes of the peoples of South West Africa".

My Prime Minister also agreed with the demand that all political groups be allowed to propagate their point of view and to participate without hindrance in peaceful political activities in the process leading to self-determination. There was no impediment in the way of anybody to propagate any constitutional form of Government in a peaceable manner and to win majority support for his point of view.

As regards the demand that the Territory should not be split up in accordance with the policy of apartheid and that it should become independent as one state unless the inhabitants should freely choose otherwise my Prime Minister stated : "anybody who knows South West Africa will know that the different peoples in South West Africa were there long before the present South African Government came into power and it is my position that nothing will occur in the Territory which is not in accordance with the free choice of its population groups. It is for them and nobody else to choose and as I have repeatedly said : all options are open to them".

My Prime Minister thus indicated that it appeared that in substance South Africa was in agreement with the most important aspects of the points of view which are put in the United Nations.

As far as the Organization of African Unity is concerned, in principle, and bearing in mind the views expressed by him, the Prime Minister stated : "We have no quarrel with their points of view concerning self-determination, independence and the maintenance of the Territorial integrity of the Territory. Where we do differ, and very clearly differ, is in regard to the role claimed for the United Nations and SWAPO."

As regards the release of South West Africans who are alleged to have been imprisoned for offences of a political character, the South African Government wishes to point out that the persons concerned have in every case been imprisoned for offences which have involved common law crimes of violence, such as murder and arson, or attempts and conspiracies to commit such crimes. My Government does not see its way clear to releasing such persons before the expiration of their sentences since it has an undeniable duty towards the inhabitants to maintain law and order in the Territory. Moreover, those who commit crimes such as the recent assassination of Chief Elifas and the still more recent murder of a number of innocent people near the Angolan border, cannot expect to escape the full consequences of their deeds merely because their crimes may be politically motivated.

As it has stated, my Government acknowledges the right of free political activity in the Territory provided that it is not attended by violence or threats of violence. Any South West African who is currently in self-imposed exile abroad and who wishes to return to the Territory in order to participate peaceably in political activities or for other good reasons, may apply to do so. A number of persons who have asked to return have not only been permitted to do so but in several cases have been assisted by the authorities in various ways.

My Government again wishes to draw the attention of Your Excellency to the efforts being made in the Territory to remove measures and practices which stand in the way of the advancement of good relations among the population groups.

Annexure Containing Additional Information :

Additional information on the subjects dealt with in this communication will be found in the attached document.+

Refugee Problem :

For some time now South West Africa has witnessed the results of the chaos and the ravages of war in Angola. Thousands of refugees have crossed the border into South West Africa to seek a haven of peace and a respite from the deprivations of war. On 12 September 1975 Your Excellency was informed of the serious situation necessitating the reception, care and repatriation of almost 10,000 refugees which on that date had already crossed into South West Africa from Angola. At a subsequent stage as many as 13,000 refugees from Angola were taken care of by the South African Government before many of them could be repatriated to Portugal. As my Foreign Minister pointed out in the letter addressed to Your Excellency on 22 January 1976 : "the South African Government has spent more than U.S.\$5 million on maintaining the various refugee camps in South Africa and South West Africa and on supplying food, medical services, transportation and other provisions to the refugees. At the present time South Africa still provides food, medical services and other necessities to more than 2,800 refugees at three locations (Chitido, Calai and Cuangar) near the Angola-South West Africa border."

In this connection I should like also to quote an extract from a statement made by the South African Minister of Defence in Parliament on 26 January 1976 in which he said : "Let me say today that the refugee camps at Chitido and Calai are not only being provided with tents to house those people. We are providing them with clothing, food and medical services. We are providing them with everything that one could possibly require in cases of such need. These are not only White people. They are not only people of mixed descent. These are Black people. They are not only ex-Portuguese citizens, they are also Angolans. I want to reiterate here today that if the Cubans win the war for Russia with Russian weapons, there will be an enormous exodus - an exodus, the extent of which we cannot at this stage envisage."

Your Excellency will also recall that my Foreign Minister in his letter to you of 22 January 1976, informed you that : "In the past week some 2,200 refugees sought entry into South West Africa by way of the South African port of Walvis Bay. So far, 1,000 of these refugees have disembarked at Walvis Bay and are now being cared for by the South African authorities. Apart from supplying the necessary services to the refugees and assisting them in various other ways, the South African Health Authorities also had to take steps to prevent the outbreak of health hazards.

The plight of the refugees is of great concern to my Government and we have, therefore, asked Your Excellency to request the United Nations High Commissioner for Refugees to assist in resolving this

+ *South West Africa Survey*, published by the Dept. of Foreign Affairs, Pretoria, in 1974. (See also U.N. document S/11948/Add. 1)

problem. I also request the Security Council to do all it can to assist in the problem of the refugees until such time as a government in Angola can take responsibility for them.

The South African Government cannot and will not allow a similar situation to that in Angola to develop in South West Africa and trusts that Your Excellency will also bend your efforts and counsel towards avoidance of a repetition of these tragic events.

Conclusion :

The South African Government wishes to express its astonishment that there has not been more appreciation for the real efforts it has made to encourage and assist the constitutional development of the Territory. The great strides which have been made in this regard, particularly in the last year, will be apparent to any objective observer. For the first time in history, representatives of all population groups in the Territory are voluntarily cooperating to draft a constitution for South West Africa. This peaceful evolution towards independence is in glaring contradistinction with the tragic war and bloodshed in other parts of the world.

South Africa believes that the peaceful course of action adopted by the inhabitants of South West Africa reflects the true meaning of the concept of self-determination, a concept which the United Nations seems bent on ignoring as far as South West Africa is concerned. For the reaction of this Organization to the many initiatives taken by South Africa to advance the people of the Territory socially, economically and politically, as indeed she was entrusted to do by the original Mandate, has been to reject out-of-hand these advances and the United Nations has preferred instead to capitulate to the pressures of the supporters of a small group of militants who espouse an open and a vowed policy of intimidation, violence and bloodshed against South West Africa. It is difficult to comprehend how Member States of this world body can be so eager to accept the simplistic and ill-founded arguments advanced by those who advocate violence in South West Africa, and to accept without hesitation and without corroboration, the allegations fabricated against my Government.

Despite this hostile reaction, the South African Government reiterates its offer to negotiate with a mutually acceptable personal representative of the Secretary-General in order that he may acquaint himself with the development of the process of self-determination in the Territory. Moreover, as far as the South African Government is concerned, there would be no objection to such a representative attending the Constitutional Conference as an observer, though this is ultimately a matter for the Conference itself to decide. This in itself would provide a measure of international observation.

The South African Government also reiterates its offer to discuss progress and development with leaders of Africa, the Chairman of the United Nations Council for South West Africa and the

Special Committee of the Organization for African Unity. They would also be welcome to visit South West Africa.

There is no legal or factual justification for the Security Council to endeavour to impose its will on the leaders of South West Africa. If the Security Council genuinely desires to achieve a peaceful solution to the question of South West Africa, it must have regard to the true situation which exists in the Territory and not to the narrow political ends of some of its members.

The South African Government would express the hope that the Security Council would refrain from any action which may jeopardise the chances of success of the Constitutional Conference which offers a way to achieving a peaceful future for the Territory. While serious clashes, involving violent death, starvation and misery for thousands of people occur elsewhere; while stagnation and even retrogression is prevalent in many areas, the Territory of South West Africa has a record of impressive progress despite the formidable problems posed by its geographical and physical conformation. There is peace and progress in South West Africa. Its inhabitants live secure and enjoy a growing standard of living based on modern communications and transport systems, on scientific and technical expertise and planned economic development. Its children go to schools and colleges; its inhabitants receive medical facilities of the highest standing; its workers enjoy increasing wages and facilities to improve their skills. The relations between the various groups have never been better. The leaders of the Territory are discussing their differences around a conference table - they are not fighting it out. Is it too much to expect the Security Council to have regard to these basic facts?

I should be grateful if this letter, and annexure, could be circulated as an official document of the Security Council.

Please accept, Your Excellency, the renewed assurances of my highest consideration.

(signed) R. F. BOTHA

PERMANENT REPRESENTATIVE