



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/6897
10 November 1967

ORIGINAL: ENGLISH

Twenty-second session
Agenda item 64 (b)

REPORT OF THE UNITED NATIONS COUNCIL FOR SOUTH WEST AFRICA

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LETTER OF TRANSMITTAL

New York, 31 October 1967

Sir,

..... I have the honour to transmit herewith the Special Report of the United Nations Council for South West Africa submitted pursuant to section V of General Assembly resolution 2248 (S-V). This report was adopted by the Council at its 5th meeting, on 30 October 1967.

In accordance with the terms of the said resolution, I have the honour to request that the report be distributed as a document of the General Assembly at its twenty-second session.

Accept, Sir, the assurances of my highest consideration.

(Signed) E.R. BRAITHWAITE
President
United Nations Council
for South West Africa

U Thant
Secretary-General
United Nations
New York

/...

INTRODUCTION

1. By its resolution 2145 (XXI) of 29 October 1966, the General Assembly terminated the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa and decided that South Africa had no other right to administer South West Africa. The Assembly decided further that henceforth South West Africa would come under the direct responsibility of the United Nations.

2. By its resolution 2248 (S-V), adopted on 19 May 1967 during its fifth special session, the General Assembly decided to establish a United Nations Council for South West Africa comprising eleven Member States and to entrust to it the following powers and functions, to be discharged in the Territory:

"(a) To administer South West Africa until independence, with the maximum possible participation of the people of the Territory;

"(b) To promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory until a legislative assembly is established following elections conducted on the basis of universal adult suffrage;

"(c) To take as an immediate task all the necessary measures, in consultation with the people of the Territory, for the establishment of a constituent assembly to draw up a constitution on the basis of which elections will be held for the establishment of a legislative assembly and a responsible government;

"(d) To take all the necessary measures for the maintenance of law and order in the Territory;

"(e) To transfer all powers to the people of the Territory upon the declaration of independence."

3. The General Assembly also decided that the Council would be responsible to the Assembly in the exercise of its powers and functions. It would be based in South West Africa and such executive and administrative tasks as the Council deemed necessary would be entrusted to a United Nations Commissioner for South West Africa, who would be appointed by the General Assembly on the nomination of the Secretary-General and would be responsible to the Council.

4. The General Assembly decided further that South West Africa would become independent on a date to be fixed in accordance with the wishes of the people and it instructed the Council to do all in its power to enable independence to be attained by June 1968.
5. Apart from its general mandate, the Council was specifically instructed to enter immediately into contact with the authorities of South Africa in order to lay down procedures for the transfer of the Territory with the least possible upheaval and to proceed to South West Africa with a view to: taking over the administration; ensuring the withdrawal of South African police and military forces; and replacing South African personnel by personnel - preferably indigenous - under its own authority.
6. The General Assembly called upon the Government of South Africa to comply without delay with the terms of resolutions 2145 (XXI) and 2248 (S-V) and to facilitate the transfer of the administration of South West Africa to the Council. It requested the Security Council to take all appropriate measures to enable the Council for South West Africa to discharge its functions and also requested all States to extend to it their co-operation and assistance.
7. Finally, the Council was requested to report to the General Assembly periodically on its administration of the Territory and to submit a special report to the Assembly at its twenty-second session concerning the implementation of resolution 2248 (S-V).
8. At its 1524th plenary meeting, on 13 June 1967, the General Assembly elected the following Member States as members of the Council: Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, United Arab Republic, Yugoslavia and Zambia.
9. At the same meeting, the General Assembly, on the proposal of the Secretary-General, appointed Mr. Constantin A. Stavropoulos, Legal Counsel of the United Nations, as Acting United Nations Commissioner for South West Africa.
10. The present report consists of three parts: section I, on the work of the Council, constitutes the special report requested by the General Assembly concerning the implementation of resolution 2248 (S-V); section II contains information on administrative matters, as requested of the Council by resolution 2248 (S-V); section III sets out the conclusions and recommendations of the Council.

I. WORK OF THE COUNCIL

11. The United Nations Council for South West Africa held its first meeting on 16 August 1967 for the purpose of organizing its work. It decided among other things that the office of President should rotate among members in alphabetical order, each member presiding for one month. The representative of Chile would preside for the month of August.

12. At a subsequent meeting, on 29 August 1967, the Council approved the text of a letter to be addressed by the President on behalf of the Council to the Minister for Foreign Affairs of the Government of South Africa in accordance with the terms of section IV, paragraph 2, of resolution 2248 (S-V). The text of this letter, dated 28 August 1967, is reproduced as annex I of the present report. The members of the Council agreed to hold informal consultations while awaiting a reply.

13. By a letter dated 27 September 1967, the Secretary-General transmitted to the Council copies of two communications, dated 26 September, from the Permanent Representative and the Minister for Foreign Affairs of the Government of South Africa. These communications, which are reproduced in annex II to the present report, were addressed not to the Council but to the Secretary-General.

14. In his letter, which the Permanent Representative asked to have circulated as a document of the General Assembly (see annex II), the Foreign Minister informed the Secretary-General, inter alia, that he had received the letter of 28 August from the President of the Council and explained his Government's attitude in regard to General Assembly resolutions 2145 (XXI), 2146 (XXI) and 2248 (S-V) concerning South West Africa. In short, the Foreign Minister stated that his Government was unwilling to comply with the terms of resolution 2145 (XXI) and would continue to administer South West Africa notwithstanding that resolution, which it considered to be "illegal".

15. The Council held a third meeting on 16 October 1967 at which it took note of the failure of the Government of South Africa to reply to its letter of 28 August and discussed the substance of the Foreign Minister's communication to the Secretary-General. The Council concluded that the attitude of the Government of South Africa constituted a flagrant defiance of the General Assembly and an outright rejection of its resolutions 2145 (XXI) and 2248 (S-V). This defiance was rendered even more blatant by the continuing actions of the South African authorities

in South West Africa, particularly the application of the so-called Terrorism Act and the illegal arrest and trial in South Africa of thirty-seven South West African nationals, which has shocked international opinion. Under these circumstances the Council reaffirmed even more strongly its determination to seek by all means to obtain the implementation of General Assembly resolutions notwithstanding the present attitude and actions of the Government of South Africa.

II. MATTERS PERTAINING TO ADMINISTRATION

16. Under the circumstances described above, the Council has had no opportunity to undertake in South West Africa the administrative responsibilities conferred upon it in resolution 2248 (S-V). It has, nevertheless, had under consideration certain administrative matters. Two of these are: (a) the question of issuing passports to South West Africans, as had been requested in several communications addressed to the Council and the United Nations Secretariat; and (b) the question of the participation of representatives of South West Africa in the work of the Economic Commission for Africa, which has been under consideration by the Economic and Social Council and by the Economic Commission for Africa since 1964. The Council is shortly to consider reports on the above-mentioned matters, submitted to it at its request by the Acting Commissioner. The Council will in due course submit a further periodic report to the General Assembly on its administrative activities.

17. In addition to the foregoing, the Council also has under consideration a number of communications from South West Africans and others concerning the Council's work.

III. CONCLUSIONS AND RECOMMENDATIONS

18. Bearing in mind its terms of reference, the Council concludes that the refusal of the Government of South Africa to co-operate in the implementation of General Assembly resolutions 2145 (XXI) and 2248 (S-V) makes it impossible for the Council to discharge effectively all of the functions and responsibilities entrusted to it by the Assembly. The Government of South Africa is not only defying the United Nations but is continuing to act in a manner which is designed to consolidate its control over South West Africa. The Council considers that the continued presence of South African authorities in South West Africa constitutes an illegal act, a usurpation of power and a foreign occupation of the Territory which seriously threaten international peace and security.

19. In these circumstances, the United Nations Council for South West Africa recommends to the General Assembly that it should take the necessary measures, including addressing a request for appropriate action on the part of the Security Council in accordance with section IV, paragraph 5, of resolution 2248 (S-V), to enable the Council for South West Africa to discharge all its functions and responsibilities effectively.

ANNEX I

Letter dated August 1967 from the President of the Council
for South West Africa to the Minister for Foreign Affairs
of the Republic of South Africa

Sir,

On behalf of the United Nations Council for South West Africa, I have the honour to invite your attention to General Assembly resolution 2145 (XXI) of 27 October 1966 and 2248 (S-V) of 19 May 1967.

As you will note in paragraph 1, part II of resolution 2248 (S-V), the United Nations Council for South West Africa has been established to "administer South West Africa until independence, with the maximum possible participation of the people of the Territory".

The Council has been requested by the same resolution, to enter immediately into contact with the Authorities of South Africa in order to lay down procedures, in accordance with General Assembly resolution 2145 (XXI) and resolution 2248 (S-V) for the transfer of the administration of the Territory to the Council.

The Council would be grateful if you would kindly indicate the measures that the Government of South Africa proposes to facilitate the transfer of the administration of the Territory to it.

The Council would appreciate receiving an answer from the Government of South Africa at the earliest possible date, in order to enable it to report to the General Assembly at its twenty-second session.

Accept, Sir, the assurances of my highest consideration.

(Signed) José PIÑERA
President
United Nations Council
for South West Africa

ANNEX II

Letter dated 27 September 1967 from the Secretary-General of the United Nations to the President of the Council transmitting copies of communications dated 26 September 1967 received from the Permanent Representative and Minister for Foreign Affairs of the Republic of South Africa a/

I have the honour to transmit herewith a copy of a letter dated 26 September 1967 addressed to me by the Foreign Minister of the Republic of South Africa and also a copy of an accompanying letter of the same date from the Permanent Representative of South Africa to the United Nations.

In accordance with the request made by the Permanent Representative, the communication from the Foreign Minister of the Republic of South Africa and the accompanying letter from the Permanent Representative will be circulated as a document of the General Assembly.^{b/}

(Signed) U THANT
Secretary-General

a/ Previously reproduced under the symbol A/AC.131/3.

b/ A/6822.

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Enclosure 1

26 September 1967

Excellency,

I am directed to transmit the enclosed communication from the Foreign Minister of the Republic of South Africa, Dr. the Honourable H. Muller, and should be grateful if it could be circulated as a document of the General Assembly.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) M.I. BOTHA
Ambassador,
Permanent Representative
of the Republic of
South Africa

Enclosure 2

26 September 1967

Your Excellency,

I have noticed that General Assembly resolutions 2145 (XXI) and 2146 (XXI) of 27 October 1966 and 2248 (S-V) of 19 May 1967, and decision of 13 June 1967 are apparently listed as subjects for discussion under the South West Africa question which appears as item 65 of the agenda for the twenty-second session of the United Nations. In addition, I have recently received a communication from the Chairman of the "Council for South West Africa" requesting me to indicate "what measures the South African Government proposes" for handing over the administration of South West Africa to the said body. It would therefore seem that the position of the South African Government concerning these resolutions has not yet been fully understood by all States Members of the United Nations.

For the sake of clarity I therefore propose to set out briefly the South African Government's attitude in this matter:

It will be recalled that resolution 2145 (XXI) purported, inter alia, to terminate the Mandate and to decide that "South Africa has no other right to administer" South West Africa and that "henceforth South West Africa comes under the direct responsibility of the United Nations". In explaining the South African vote on the resolution a day before the voting took place, I indicated that my Government was "fundamentally opposed to each of the draft resolutions".

The South African Prime Minister himself has on a number of occasions, since the adoption of the resolution, stated that the South African Government considers the resolution as illegal. Various other States have independently questioned its validity.

It is unnecessary to be exhaustive about the grounds of invalidity as the following brief exposition will suffice to show that there can be no doubt on that question:

(a) The resolution violates the basic principle embodied in Article 10 and associated provisions of the Charter, viz., that, with limited and irrelevant exceptions, the powers of the General Assembly are confined to discussion and making of recommendations. In purporting to terminate, unilaterally, South Africa's right of administration of South West Africa, the majority in the General Assembly therefore acted in conflict with one of the basic principles upon which Members joined the Organization.

(b) The purported termination apparently rested upon the basis that the United Nations had succeeded to the supervisory powers of the League of Nations. However,

(i) It was never established that the League of Nations itself had a power of unilateral cancellation of a Mandate. On the contrary, the findings of the International Court of Justice in its 1966 Judgement in the South West Africa cases indicate plainly that the League had no such power.^{c/}

(ii) In any event, after the proceedings in the South West Africa cases, the question whether the United Nations did succeed to the supervisory powers of the League is, putting it at its lowest, more undecided than ever.^{d/}

(c) There was no substance in the suggested grounds that South Africa had failed to fulfil its obligations in respect of administration of the Territory and ensuring the well-being of the inhabitants. This point was dealt with at length by South Africa's representatives at the twenty-first session of the General Assembly in their statements on 26 September,^{e/} 5, ^{f/} 12, ^{g/} and 26 October 1966^{h/} and is carried further in the recently published "South West Africa Survey 1967" and below.

(d) It was exactly because of uncertainty about legal or factual justification for any drastic action on the part of the General Assembly of the United Nations that legal proceedings were recommended by the United Nations Special Committee in 1957-1959. One report mentioned:

"... the advantage that the Court, in reaching its opinion, would proceed by impartial judicial methods and on the basis of evidence produced to and weighed by the Court."

^{c/} See analysis given by South Africa's representative during the 1431st plenary meeting of the General Assembly on 5 October 1966, as contained in document A/PV.1431, pp. 119-121.

^{d/} See analysis by South Africa's representative during the 1417th and 1431st plenary meetings of the General Assembly on 26 September and 5 October 1966, respectively, as contained in document A/PV.1417, pp. 11-20 and A/PV.1431, pp. 97-106, respectively; see also "Ethiopia and Liberia v. South Africa", pp. 56-84; document A/6480, 20 October 1966, pp. 1-12; and "South West Africa Survey 1967", pp. 34, 37 and 38-39.

^{e/} A/PV.1417, pp. 2-50.

^{f/} A/PV.1431, pp. 96-121.

^{g/} A/PV.1439, pp. 81-108.

^{h/} A/PV.1451, pp. 12-17.

Apart from its illegality, the unrealistic nature of the resolution is apparent, and was emphasized by the inability of the members of the Ad Hoc Committee to agree upon a practical course of action in pursuance of the October 1966 resolution. The unrealistic nature of the resolution was further emphasized by the major reservations recorded on the further resolution, instituting a so-called Council for South West Africa, approved by the General Assembly of the United Nations during its special session in May 1967.

South Africa is administering the Territory in the spirit of the Mandate entrusted to it by the League of Nations, and has no intention of abdicating its responsibilities towards the peoples of South West Africa. As will be evident from the publication "South West Africa Survey 1967", its policies and methods of leading the peoples of the Territory along the path of progress and stability towards self-realization are meeting with marked success. On a continent riddled with tension, struggle, even violence and bloodshed, refugeeism and the like, mainly because of difficulties between ethnic groups, South West Africa is one of the relatively few areas where peaceful evolutionary progress is continuing, despite enormous ethnic diversity, adverse natural conditions and incitement from outside its borders by, for example, communist trained saboteurs and even, I regret to say, by certain persons occupying exalted positions who apparently have not informed themselves of the facts.

In my statement before the General Assembly on 12 October 1966,^{i/} I asked whether delegates had given any thought to the practical consequences of an attempt by, for example, some United Nations body to administer South West Africa divorced from South Africa. I mentioned a few examples of essential support from South Africa, for example, the railway system, postal services and telecommunications and Walvis Bay harbour. These can be considerably enlarged upon so as to show that only chaos and collapse could result from such a change. Evolutionary progress is being made under South Africa's administration in all spheres of life - political, economic, educational, health, housing, etc., as dealt with in the "South West Africa Survey 1967". These and also projects for further development, planned and under way, would be brought to an abrupt end. Quite apart from the probable tensions and struggle in the political sphere, and the disruption they could cause,

^{i/} A/PV.1439, pp. 81-108.

the outlook would indeed be one of complete economic collapse and enormous setbacks in every other sphere.

The loss of essential support provided by South Africa is not a matter of money alone, though this is in itself considerable. Essential facilities are involved, for example, harbour, inland transport, postal and telegraph services, etc.; trained and specialized manpower services, know-how and experience in numerous essential spheres, for example, water supplies, power supplies and health services; benefits of inter-trade and marketing facilities, including essential food supplies, etc. Some are totally irreplaceable; others can be replaced only at exorbitant cost and over a lengthy period. In vital respects these services and facilities depend essentially on South Africa's special position as an adjoining State administering South West Africa as an integral portion of its own territory.

The cardinal objective at which the October 1966 resolution was said to be directed, and for the sake of which the call was made for a termination of South African administration, was "to enable the people of the Territory to exercise the right of self-determination and to achieve independence".

However, the South African Government itself has clearly pledged that the objective of its policy in South West Africa is self-determination for all the peoples of the Territory, and that the wishes and aspirations of all the peoples are being, and will be, fully taken into account.

For example, in my statement before the General Assembly on 12 October 1966, I elaborated on the subject and spoke of "the advancement of the peoples concerned to their self-determination and self-realization" as "a principle to which my Government is completely committed".^{j/} The statement of the South African Minister of Bantu Administration and Development to the Ovambo people at Oshakati on 21 March 1967, stressed that "the right to self-determination is the foundation of our policy". And the "South West Africa Survey 1967" is likewise explicit on the point.^{k/} It is intended that this right of self-determination should be exercised by each national group. Otherwise the group in the vast majority would be able to decide the future of the Territory on its own, overriding the aspirations of

^{j/} A/PV.1439, p. 96.

^{k/} "South West Africa Survey 1967", particularly pp. 46-49.

smaller groups and thereby in effect preventing them from exercising their right of self-determination.^{1/}

The fact that each national group will determine its own future does not exclude the possibility of forms of co-operation between groups. It is envisaged that when the national groups reach a stage when they are able to control their own destiny, they will be free - if they so wish - to negotiate with each other on a basis of equality and decide with whom, on what terms and in what manner - politically, economically, etc. - they wish to co-operate.

The manner in which each group exercises democratically its right of self-determination will be decided by the groups themselves in consultation with the Administering Authority. Although traditional means of consultation of the people are respected, the Minister of Bantu Administration in his March 1967 address to the Ovambos strongly urged that elected representatives be included in their system of self-government, in addition to the traditional leaders.

It is often alleged that South Africa has hung an iron curtain around South West Africa, cutting it off from the outside world. This has, however, been shown to be entirely without substance, for example, by the following:

- (a) The full and detailed information given to the International Court in voluminous pleadings and extensive expert testimony, together with the invitation to the Court to inspect the Territory and to see whatever it wished;
- (b) The full participation by the South African delegation in the General Assembly debate on South West Africa during the twenty-first session in 1966;
- (c) The publication and distribution, to Governments and international organizations, including the United Nations, of the "South West Africa Survey 1967";
- (d) The invitation issued early in 1967 to the envoys of all Governments accredited in South Africa to visit all parts of South West Africa and see conditions for themselves.

The South African Government has also indicated its willingness to discuss with any other genuinely interested Government the problems of development in South West Africa, provided that Government is prepared in good faith to make a constructive contribution to such discussion and is not merely looking for ways and means of implementing the illegal General Assembly resolution 2145 (XXI).

^{1/} Ibid., pp. 46-47.

South Africa feels it can be justifiably proud of the achievements in the Territory. This is amply borne out by a perusal of the "South West Africa Survey 1967".

South Africa is energetically pursuing the task of developing South West Africa in keeping with the spirit of the sacred trust which it accepted with the grant of the original mandate, and will resist with all means at her disposal any attempt to endanger the safety of the country and the peoples committed to her care. In this stand the Government has the support of the vast majority of the peoples of the territory.

For these and other reasons the South African Government has come to the conclusion that the October 1966 General Assembly resolution, apart from its plain illegality, also

"... lacked any semblance of economic or social worth because it completely ignores the disastrous consequences which would inevitably follow from the course which it sets. It attempts to force upon South Africa a course of action which, far from promoting the progress and well-being of the inhabitants of the territory, cannot but destroy many of them, throwing the remainder back into the cruel conditions of the past and bringing untold misery upon all. I must repeat what I said at the United Nations last year: South Africa will be no party to such an act." m/

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

(Signed) H. MULLER
Minister of Foreign Affairs

m/ Republic of South Africa, House of Assembly Debates (Hansard), Weekly Edition, No. 12, 17 to 21 April 1967, col. 4528.