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IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF
INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

QUESTION OF NAMIBIA

Letter dated 4 December 1974 from the Chargé d'affaires a.i. of the
Permanent Mission of the United Kingdom of Great Britain and
Northern Ireland to the United Nations addressed to the
Secretary-General

I have the honour to inform you that the British Secretary of State for Foreign and Commonwealth Affairs made a statement in the House of Commons today about United Kingdom policy on a number of southern African questions. I enclose a copy of Mr. Callaghan's statement (annex I), together with a detailed note on my Government's attitude towards the advisory opinion of the International Court of Justice concerning Namibia (annex II), which was circulated separately today in the House of Commons official report.

I should be grateful if you could arrange for the circulation of this letter and its enclosures as an official document of the General Assembly under agenda items 23 and 65.

(Signed) J. O. MORETON
Chargé d'affaires a.i.

ANNEX I

Southern Africa

Text of statement made in the House of Commons on
4 December 1974, by the Foreign and Commonwealth
Secretary, Mr. James Callaghan

I will, with your permission Mr. Speaker, and that of the House, make a statement on the Government's review of policy towards southern Africa, which is now complete. We believe it essential for Britain to make clear its firm stand against the policy of apartheid and racialism.

Following the Government's decision to reimpose the United Nations embargo on the sale of arms to South Africa, we have now completed an overhaul of the licensing arrangements for arms sales. This will ensure that our policies are fully in line with our international undertakings.

The Government has acted upon the Trade and Industry Sub-Committee Report concerning wages and conditions in South Africa. My Right Honourable Friend, the Secretary of State for Trade, has commended the Committee's guidelines on employment practices to the Chairman of British firms with interests in South Africa. To assist this, I am making a new appointment of a Labour Attaché to our Embassy in Pretoria.

In matters of civil trade, and where international obligations do not conflict, it is not the policy of Her Majesty's Government that commercial trading relations with other countries should be based on considerations of their internal or external policies. So far as normal trade and investment are concerned, firms remain free to carry out existing or future contracts in South Africa. The usual range of export services, including trade missions and Export Credits Guarantee Department cover, will remain available as for markets of equal commercial standing.

The Government regards sporting contacts with South Africa, so long as selection on the basis of race or colour is maintained, as repugnant and they will receive no official support or approval. The Government asks organizations and individuals to take serious note of this policy, although we shall clearly not interfere with their right to decide these matters for themselves.

It is nearly 20 years since the Simonstown Agreement was signed in circumstances very different from those of today and some of the provisions of the Agreement are no longer appropriate. We intend to hold discussions with the South African Government to bring the Agreement to an end. We should be ready to use on a customer basis, as other countries do, the docking and other facilities at Simonstown as and when necessary.

The Government have considered the advisory opinion concerning Namibia which the International Court of Justice gave in 1971. a/ This is a complicated matter and I am therefore circulating a fuller statement of our position in the official report. The Government's conclusion is that the mandate can no longer be regarded as being in force, that South Africa's occupation of Namibia is unlawful, and that it should withdraw. I am informing both the South African Government and the United Nations of these conclusions.

There are certain elements of the Court's advisory opinion which we do not accept. In particular we cannot agree that the existing resolutions of the Security Council concerning Namibia are mandatory. This is a point of fundamental importance, with implications going beyond the Namibia question itself. Nevertheless, in keeping with the spirit of these resolutions, we have decided to give no further promotional support for trade with Namibia.

The Government look to South Africa to heed the United Nations calls on her to withdraw from this international Territory, and we shall lend our support in the international community to help bring this about.

We have made a contribution of £10,000 to the United Nations Fund for Namibia and we shall, subject to Parliamentary approval, contribute £20,000 to UNICEF funds for humanitarian assistance, through liberation movements, to women and children refugees from Namibia. We also propose to make a contribution to the United Nations research institute for Namibia at Lusaka. We have made repeated representations to the South African Government concerning the plight of SWAPO leaders and will develop contacts with representatives of SWAPO.

As regards Rhodesia, I set out in detail our policy when the House renewed the Sanctions Order on 8 November. The House will have noted that the situation is more fluid than for some time and I shall be ready to take advantage of any developments. As the House knows, I have planned a visit to Africa at the end of this month and this will give me the opportunity of personal discussions with the African Heads of State most closely involved. We seek a just and peaceful solution, which will require the support of the African people, and, in this, the African National Congress, ZANU and ZAPU have an important role to play. These bodies know that we are willing to enter into discussions with them as an essential part of discussions about Rhodesia's future.

Our aim throughout southern Africa is to make a constructive contribution to peace, justice and racial equality and we shall work in co-operation with other countries and organizations to that end.

a/ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971.

ANNEX II

Namibia

Text of statement issued on 4 December 1974
for circulation in the House of Commons
official report

1. It will be recalled that the Security Council of the United Nations sought the advice of the International Court on the question "What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?" The principal conclusions reached by the Court in its advisory opinion of 21 June 1971 were: a/

(1) By 13 votes to 2, that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;

(2) By 11 votes to 4, that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and 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.

2. In October 1971, the Government of the day informed Parliament and the Security Council that they did not accept these conclusions.

3. In its opinion, the Court examined the legality of resolution 2145 (XXI) of 27 October 1966, by which the General Assembly purported to terminate the Mandate. One of the underlying questions, to which the Court gave an affirmative answer, was whether the General Assembly had the competence to make such an executive decision. The Charter confers upon the General Assembly powers which, with certain exceptions of very limited scope, are recommendatory only, and in our opinion the arguments in support of the legal effectiveness of the resolution are not convincing. Accordingly, we are unable to accept the Court's reasoning on resolution 2145 (XXI) and its conclusion that that resolution operated of itself to terminate the Mandate.

4. However, South Africa has itself repudiated the Mandate and the obligations which it accepted by virtue of the Mandate. The United Nations, by resolutions commanding very wide support both in the Assembly and in the Security Council, has

a/ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, para. 133.

adopted the position that, owing to fundamental breaches of its obligations on the part of the Mandatory Power, the Mandate is no longer in force. In view of South Africa's conduct, by which she has divested herself of any entitlement under the Mandate, and of the recognition thereof and response thereto by the United Nations and the international community, the Mandate cannot be regarded as still alive and operative; and, with the termination of the Mandate, South Africa's rights to administer the Territory have lapsed. Nevertheless, the international status of the Territory still continues, since no lawful basis exists or has ever existed upon which South Africa can or could have unilaterally altered that status.

5. The General Assembly, having called the attention of the Security Council to Assembly resolution 2145 (XXI), the Council adopted resolutions in 1969 and 1970, of which the essential one was 276 (1970). This resolution reaffirmed General Assembly resolution 2145 (XXI), declared the presence of South African authorities in Namibia and all acts taken by the Government of South Africa on behalf of or concerning the Territory after the termination of the Mandate to be illegal, and called upon all States to refrain from any dealings with the Government of South Africa inconsistent with this declaration. There was no prior finding under Article 39 of the Charter to found a mandatory resolution within Chapter VII; indeed, proposals for such a finding were not accepted. Nevertheless, the opinion of the Court was that Security Council resolution 276 (1970) imposed obligations upon Member States. The Government believe that the course of events in the Security Council and the consultation among its members do not support the conclusions of fact asserted in the Court's opinion. And as a matter of law they remain of the view that the Security Council cannot take decisions generally binding on Member States unless there has been a determination under Article 39 of the existence of a threat to the peace, a breach of the peace or an act of aggression. Consequently, they are unable to accept this part of the advisory opinion.

6. However, for the reasons explained above, the Government take the view that South Africa is in occupation without title of a Territory which has international status. This occupation is unlawful and South Africa should withdraw. Meanwhile South Africa remains the de facto administering authority. However, in the circumstances, there is an obligation on States not to recognize any right of South Africa to continue to administer the Territory. But there is no obligation, in the absence of appropriate decisions under Chapter VII of the Charter, to take measures which are in the nature of sanctions. It follows that we do not accept an obligation to take active measures of pressure to limit or stop commercial or industrial relations of our nationals with the South African administration of Namibia.
