



UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/13968
29 May 1980

ORIGINAL: ENGLISH

LETTER DATED 29 MAY 1980 FROM THE PERMANENT REPRESENTATIVE OF
SOUTH AFRICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-
GENERAL

The joint communiqués issued by the missions of the Council for Namibia following their visits to Barbados and Guyana, the texts of which appear in press releases NAM/502 of 12 May 1980 and NAM/508 of 21 May, respectively, attack South Africa's sovereignty over several islands off the coast of South West Africa/Namibia.

The 12 islands along the coast of South West Africa/Namibia, namely Ichaboe, Hollamsbird, Mercury, Long, Seal, Penguin, Halifax, Possession, Albatross Rock, Pomona, Plum Pudding and Sinclair's (formerly also known as "Roast Beef"), are South African territory and South Africa exercises full sovereignty over these islands. The legal grounds from which South Africa derives sovereignty over these islands are set out in the attached annexure.

The South African Government rejects any assertion regarding the status of the said islands which is contrary to the position as set out above.

It would be appreciated if the contents of this communication, together with its annexure, could be circulated as a document of the Security Council.

(Signed) J. Adriaan EKSTEEN
Permanent Representative

Annexure

Islands along the coast of South West Africa/Namibia

As a matter of law, 12 islands along the coast of South West Africa/Namibia, namely Ichaboe, Hollamsbird, Mercury, Long, Seal, Penguin, Halifax, Possession, Albatross Rock, Pomona, Plum Pudding and Sinclair's (formerly also known as "Roast Beef"), are South African territory and South Africa exercises full sovereignty over them.

Confirmation of South Africa's ownership of these islands can be obtained from information which is to be found in the British and Foreign State Papers, The Map of Africa by Treaty by Herslet (3rd edition), the various relevant legal instruments and the Imperial Blue Books relating to South Africa (C-4190, C-4262 and C-5180). From these sources the following is apparent:

1. On 21 June 1861 Ichaboe Island was taken possession of in the name of Queen Victoria and on 13 August 1861 Sir George Grey, Governor of the Colony of the Cape of Good Hope, proclaimed the sovereignty and dominion of the Queen over Ichaboe Island and over

"... a cluster of small islands or rocks adjacent to the said Island of Ichaboe ... that is to say Hollamsbird, Mercury, Long Island, Seal Island, Penguin Island, Halifax, Possession, Albatross Rock, Pomona, Plum Pudding and Roast Beef or Sinclair's Island". (Proclamation 53 of 1861(Cape)).

This Proclamation was, however, "subject to Her Majesty's gracious confirmation and disallowance" and in the event was "disallowed". (Vide Proclamation of the Cape dated 9 May 1864.)

2. But on 5 May 1866 Great Britain, having apparently changed her mind, proclaimed her sovereignty and dominion over 11 of the 12 islands mentioned above (Ichaboe excepted). These islands were collectively described as the "Penguin Islands". (Vide Imperial Blue Books relating to South Africa, 1884, C-4262, p. 21.)

3. On 17 July 1866 the Governor of the Colony of the Cape of Good Hope, Sir Philip Wodehouse, annexed these islands, together with Ichaboe, to the Cape of Good Hope. (Vide Proclamation 66 of 1866.) However, since doubts were entertained regarding the legality of this annexation by way of proclamation, Royal Letters Patent were issued on 27 February 1867 authorizing the annexation of "Ichaboe" and the "Penguin Islands" - the latter also being named individually in the Letters Patent and comprising the 11 "adjacent" islands referred to in Proclamation 53 of 1861 (Cape). The Governor of the Cape of Good Hope was appointed Governor of the 12 islands (Imperial Blue Books, supra, pp. 73-74) and in pursuance of the Letters Patent, by Act 4 of 1874 (Cape), the 12 islands were formally annexed to the Cape Colony and devolved in due course upon the Union of South Africa and, subsequently, upon the Republic of South Africa.

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4. A Protocol of 15 July 1886 between Great Britain and Germany (of which South West Africa was a Protectorate) drew a distinction between the islands named in the 1867 Letters Patent and those which were not so named. The former were retained by the Cape Colony while the latter vested in Germany. It is, therefore, implicit in paragraph 4 of the 1886 Protocol that Germany recognized the right and title of Great Britain to the "12 British islands named in the Letters Patent of the 27th of February 1867".

5. It is also the view of the Government of the Republic of South Africa that, in the light of the whole history of the matter and particularly the sudden German doubts expressed in a note of 8 October 1884 (British and Foreign State Papers, vol. 75, p. 552), the Protocol of 1886 would surely have regulated the territorial status of the 12 islands, had any doubts remained, and that, equally surely, paragraph 4 of the Protocol would not have referred to the "12 British islands" had both parties not in fact regarded them as British.

The correctness of these views is confirmed and, indeed, placed beyond doubt by documents relating to a Mixed Commission (British and German) which met in Cape Town in 1885. These and other documents make it perfectly clear that, despite certain doubts expressed by Germany in its note of 8 October 1884, the question of the territorial status of the islands concerned was never considered by the two commissioners and was, in fact, specifically excluded from the scope of their inquiry. The reason for this is apparent. Both before and after the receipt of that note the British, as well as the Cape Government, had vigorously maintained the unassailability of Great Britain's title to the 12 islands named in the Letters Patent of 1867. (Vide for example, Imperial Blue Books, C-4262, pp. 12, 13, 23, 53, 60, 71 and C-5180, pp. 2 and 4). In the face of Great Britain's steadfast refusal to allow any discussion of the matter by the Mixed Commission, Germany abandoned its position that the Commission "would have to examine and report upon" the question, and acknowledged Great Britain's claim to sovereignty over the islands. Thus on 11 March 1885 Chancellor Bismarck instructed Commissioner Bieber that

"... the scope of the inquiry of the Joint Commission, on which you had been designated to the British Government as our Commissioner, was specified in my despatch of the 19th October last in accordance with the state of the negotiations between the two Governments at that time.

"A difference of opinion which subsequently arose with respect to the islands off the coast of Angra Pequena has been settled in the course of last month.

"By a despatch from Lord Derby, dated the 17th ultimo, His Excellency Sir Hercules Robinson has been requested to communicate instructions to your British colleague, Mr. Shippard, and the last obstacle to the commencement of the negotiations has been removed by Mr. de Pass' renunciation (brought to my knowledge on the 22nd ultimo) of his demand to appear in person before the Commission.

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"You will therefore enter on the same as soon as Mr. Shippard is ready to do so and the following instructions will serve for your guidance:

'On the one side our Protectorate between the mouth of the Orange River and Cape Frio, with the exception of Walfisch Bay and the small surrounding territory, the boundaries of which are laid down on the English admiralty chart and in the Annexation Act of the 22nd June 1884, and on the other side, the British sovereignty over the islands named in the Letters Patent of the 27th February 1867 are to be beyond discussion.'

At the third meeting of the Commission, Mr. Bieber stated that his amended instructions excluded consideration of the question of "the right of sovereignty" over the 12 named islands annexed to the Cape Colony. At a later meeting he maintained that the powers of the Governor of the Cape, Sir Philip Wodehouse, "as Governor of the islands of Ichaboe and the Penguin Islands" were limited by the Letters Patent to granting a lease of only the 12 named islands.

6. The questions upon which Messrs. Bieber and Shippard could not reach agreement were referred to Commissioners Krauel and Scott in Berlin in 1886, who eventually produced and signed the Protocol of 15 July 1886. An enclosure to the report of the Commission was a memorandum drawn up by Dr. Göhring setting forth the arguments of the German Government. The position of the German Government as regards the question of the islands appears from Dr. Göhring's statement that the lease of certain islands by Sir Philip Wodehouse was invalid only as far as it concerned the islands not named in the Letters Patent of 1867 and his further statement that "the inquiry has shown that the only islands possessing any value are the 11 (sic) which are undoubtedly British property".
