

# UNITED NATIONS SECURITY COUNCIL



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ANNEXES TO THE TELEGRAM DATED 5 JULY 1961 FROM THE CHAIRMAN  
OF THE COMMITTEE ON SOUTH WEST AFRICA ADDRESSED TO THE  
SECRETARY-GENERAL

The following documents have been received from the Chairman of the Committee on South West Africa for attachment to his telegram dated 5 July 1961:

- I. Letter dated 1 May 1961 from the Chairman of the Committee on South West Africa to the Minister of External Affairs of the Union of South Africa
- II. Proposed itinerary of the Committee on South West Africa
- III. Letter dated 16 May 1961 from the Permanent Representative of the Union of South Africa to the United Nations addressed to the Chairman of the Committee on South West Africa
- IV. Letter dated 14 April 1961 from the Secretary-General to the Minister of External Affairs of the Union of South Africa
- V. Letter dated 10 May 1961 from the Minister of Foreign Affairs of the Union of South Africa addressed to the Secretary-General
- VI. Letter dated 17 May 1961 from the Chief of the Transportation Section of the United Nations to the Consulate General of the Union of South Africa, New York
- VII. Letter dated 25 May 1961 from the Consul General of the Union of South Africa, New York, to the Chief of the Transportation Section of the United Nations
- VIII. Telegram sent on 14 June 1961 from the Chairman of the Committee on South West Africa to the Minister of External Affairs of the Republic of South Africa
- IX. Telegram sent on 23 June 1961 from the Chairman of the Committee on South West Africa to the Minister of Foreign Affairs of the Republic of South Africa
- X. Letter dated 23 June 1961 from the Acting Permanent Representative of the Republic of South Africa to the United Nations to the Secretary-General

I. Letter dated 1 May 1961 from the Chairman of the Committee on  
South West Africa to the Minister of External Affairs of the  
Union of South Africa

On behalf of the Committee on South West Africa, I have the honour to refer to General Assembly resolution 1596 (XV) of 7 April 1961, a copy of which is enclosed.

As you will note from operative paragraph 5 of that resolution, the General Assembly has requested the Committee on South West Africa immediately to proceed to discharge the special and urgent tasks already entrusted to it in resolution 1568 (XV) as fully and expeditiously as possible.

Accordingly, the Committee intends to visit the Territory of South West Africa and to offer the population an opportunity to present its views. The Committee would, in addition, welcome discussions with representatives of the Union Government both before and after its visit to South West Africa.

A copy of the Committee's proposed itinerary is enclosed herewith.

The party will be composed of representatives of members of the Committee on South West Africa, accompanied by six officials of the Secretariat of the United Nations.

It is the sincere hope of the Committee that your Government will extend to the Committee its full co-operation in the mission entrusted to the Committee by the General Assembly.

In view of its proposed departure on 30 May 1961 the Committee would appreciate receiving a favourable answer from the Government of the Union of South Africa at the earliest possible date.

Accept, etc.

(Signed) Enrique Rodriguez Fabregat  
Chairman of the Committee on  
South West Africa

II. Proposed itinerary of the Committee on South West Africa

Wednesday, 31 May	Arrive Johannesburg
Saturday, 3 June	Leave " (air) Arrive Windhoek
Monday-Saturday, 5-10 June	Visit Windhoek area (car)
Monday, 12 June	Windhoek-Luderitz (air)
Tuesday, 13 June	Luderitz-Oranjemund-Keetmanshoop (air)
Thursday, 15 June	Keetmanshoop-Mariental (car)
Friday, 16 June	Mariental, via Hoachanas to Windhoek (car)
Monday, 19 June	Windhoek-Tsumeb (air)
Tuesday-Saturday, 20-24 June	Side trips by road around Tsumeb; and by air to Ondangua (Ovamboland), Ohopoho (Kaokoveld), Runtu (Okavango)
Saturday-Sunday, 24-25 June	Namutoni (Etosha Pan Game Reserve)
Monday, 26 June	Tsumeb-Swakopmund (train)
Tuesday, 27 June	Swakopmund-Windhoek (car)
Wednesday, 28 June	Windhoek-Johannesburg (air)
Thursday, 29 June	Leave Johannesburg for return trip (air)

III. Letter dated 16 May 1961 from the Permanent Representative of the Union of South Africa to the United Nations addressed to the Chairman of the Committee on South West Africa

You will recall that your letter TR 212 of 1st May, 1961 was sent to me for transmission to His Excellency the Minister of External Affairs of the Union of South Africa. In passing I may mention that this letter only reached my office on May 3rd, and although it was forwarded immediately it arrived in Cape Town only the 10th of May.

At that time the Union Government already had in its possession a letter from the Secretary-General dated 14th April, 1961 relating to General Assembly resolution No. 1596 (XV) as a whole.

I have today transmitted to the Secretary-General the reply from the Minister of External Affairs of the Union of South Africa, giving the Union Government's views on the resolution. Part of this reply deals with paragraph 5, and therefore also the suggestions contained in your letter of 1st May, 1961.

(Signed) B.G. Fourie  
Permanent Representative

IV. Letter dated 14 April 1961 from the Secretary-General to the Minister  
of External Affairs of the Union of South Africa

I have the honour to transmit herewith a copy of resolution 1596 (XV), adopted by the General Assembly at its 979th plenary meeting on 7 April 1961, and to draw the attention of your Government to operative paragraph 5 of the resolution.

Accept, etc.

(Signed) Dag Hammarskjöld  
Secretary-General

V. Letter dated 10 May 1961 from the Minister of Foreign Affairs of the Union of South Africa addressed to the Secretary-General

1. I have the honour to acknowledge receipt of your letter TR 212 of the 14th April, 1961, with which you forwarded to me a copy of resolution 1596 (XV) adopted by the General Assembly at its 979th plenary meeting on 7th April, 1961, and in which you drew the attention of the Union Government to operative paragraph 5 of the resolution.
2. In reply to your letter TR 212 of the 20th December, 1960, in which you draw the attention of the Union Government to resolution 1568 (XV), I explained why it would not be possible for the South African Government to accede to the request that it should facilitate the mission of the Committee on South West Africa to visit the Territory. The considerations set out in my reply continue to be relevant.
3. Meanwhile the General Assembly has again requested the Committee to carry out its mission and to do so immediately, even, if necessary, without the co-operation of the Union Government. What precisely is meant by this directive is not clear, unless of course it was the intention of those responsible for the drafting of paragraph 5 of resolution 1596 (XV) to convey an implied threat by which the Union Government is to be coerced into abandoning a position which it has consistently taken up, and which is well-founded in fact and in law.
4. I have since been informed by the Chairman of the United Nations Committee on South West Africa, that the Committee intends visiting the Territory "in order to offer the population the opportunity of presenting its views".

The South African Government takes strong exception to the suggestion contained in this paragraph, viz., that a Committee of the United Nations is entitled to have consultations with the inhabitants of the Territory, a procedure which was not permitted under the Mandates System of the defunct League of Nations.

5. The Assembly resolution of March 23rd contains several serious allegations as to alleged conditions in the Territory, such as "tyrannical policies"; "terrorizing the indigenous inhabitants"; "repression"; the necessity of "protecting the lives and properties of the inhabitants", etc. My Government cannot but resent, and regret, the manner in which facts given in the past, by successive South African delegations have been summarily rejected in favour of the irresponsible and mischievous allegations. In this connexion I would remind you of my assurance to

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the Fourth Committee that adequate replies could be given to those spurious charges, but that in view of the Union's adherence to the sub judice rule it would refrain from doing so until the International Court of Justice has disposed of the matter. If and when the merits are tried by that Court, it is hoped that these charges can be repeated and the Union Government be given the opportunity of dealing with them in accordance with the rules of judicial procedure.

6. Coming now to the proposed visit of the United Nations Committee to South West Africa, it is noted that resolution 1568 (XV) entrusts "special and urgent tasks to the Committee". The South African Government must necessarily view this instruction with particular concern and disquiet, since it is a direct infringement of the sub judice principle. These "tasks" envisage an investigation in loco, into matters which, as the General Assembly was aware, feature prominently in the contentious proceedings on the subject of South West Africa, at present pending in the International Court of Justice. One of the members of the Committee which proposes to visit South Africa is actually the representative of a plaintiff in those proceedings!

My statement on the sub judice principle, made in the course of the debate in the Fifteenth Assembly, is on record. The fact that this principle was disregarded by both the Fourth Committee and the Assembly, does not detract from the validity of our attitude in the matter and cannot debar us from continuing to claim protection against action so obviously prejudicial to the Union's case. It is recognized practice in the legal systems of most civilized countries, that the sub judice principle is observed in regard to an action pending in a Court of Justice, viz., that no action should be taken which might be likely to hinder, embarrass or prejudice the Court in the exercise of its judicial functions. The sub judice principle has been applied also by the most important organ of the United Nations itself, viz., the Security Council, when it was sought to discuss the Anglo-Iranian dispute. In the course of the discussion in the Security Council, Sir Benegal Rau - later a Judge of the International Court - said: "It may not therefore be wise or proper for us to pronounce on this question, while substantially the same question is sub judice before the International Court of Justice." The Security Council decided to adjourn the discussion of the matter.

7. Not only did the General Assembly, during the fifteenth session, ignore the considerations outlined above; it has refused even to consider the sincere efforts

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which the South African Government has made in the past to find a mutually satisfactory solution of the South West Africa issue, such as the proposal made in 1951 and repeated on a number of occasions since then, to conclude an arrangement with the three remaining principal allied and associated Powers, and which was rejected. In 1958 the Union Government invited the Good Offices Committee to come to South Africa for discussions. This Committee advanced certain proposals, one of which envisaged partition of the Territory and was accepted in principle by the South African Government. The Fourth Committee declined even to consider this proposal.

8. It is necessary to point out that the proposed visit would be in conflict with the procedure followed under the Mandates System of the defunct League of Nations - in fact, it does not even fall within the scope of the supervisory functions envisaged in the 1950 advisory opinion of the International Court of Justice. The proposed visit is not based on any precedent in the practices followed by the League of Nations in the exercise of its supervisory functions. Such a visit would therefore go far beyond any authority which the United Nations could claim to have derived from either principle or precedent, under the defunct League of Nations.

9. In resolution 1596 (XV), the General Assembly has not confined itself to questions appertaining to the internal administration of the Territory. It has gone further, and in the resolution adopted directed the attention of the Security Council to the situation in respect of South West Africa, which it alleged, if allowed to continue, would constitute a threat to international peace and security. This allegation which appears three times in the General Assembly resolution, this year also in its operative paragraphs, would be a grave one if it had any foundation. The charge is, in fact, both spurious and ridiculous, and is obviously being made in order to circumvent the contention of the South African Government that this matter is still sub judice before the International Court of Justice.

10. The South African Government is convinced that international peace and security is not threatened in the Territory of South West Africa and is prepared to confirm its conviction by requesting an independent person of international standing, to be mutually agreed upon by the President of the General Assembly of the United Nations and the South African Government, to conduct an impartial and objective inquiry into the validity or otherwise of this particular charge.



11. For the reasons aforementioned, the South African Government cannot depart from what it regards as an important principle, and is therefore unable to accede to the request of the United Nations Committee to co-operate in connexion with their proposal to visit South West Africa.

Will you accept, etc.

(Signed) Eric H. Louw  
Minister of Foreign Affairs

VI. Letter dated 17 May 1961 from the Chief of the Transportation Section  
of the United Nations to the Consulate General of the Union of  
South Africa, New York

It is requested that visas for the Territory of South West Africa and the Union of South Africa be granted to the following members of the Committee on South West Africa:

Mr. Enrique Rodriguez Fabregat (Uruguay), Chairman of the Committee;  
Mr. Victorio D. Carpio (Philippines), Vice-Chairman of the Committee;  
Mr. Poul Boeg (Denmark), Rapporteur of the Committee;  
Mr. Marcello Rafaelli (Brazil);  
Mr. Girma Abebe (Ethiopia);  
Mr. Carlos Gonzalez-Calvo (Guatemala);  
Mr. Sasmojo Karseno (Indonesia); and  
Mr. Mostafa Rateb Abdel Wahab (United Arab Republic).

These persons are scheduled to leave this country between 25 and 30 May 1961 on an official United Nations mission, undertaken in accordance with General Assembly resolution 1596 (XV) of 7 April 1961. A copy of the proposed itinerary is enclosed herewith.

It will be greatly appreciated if the visas are granted at your earliest convenience to permit travel as planned.

Thank you for your kind attention in this matter.

(Signed) Virgil A. De Angelis  
Chief  
Transportation Section

VII. Letter dated 25 May 1961 from the Consul General of the Union of South Africa, New York, to the Chief of the Transportation Section of the United Nations

With reference to your letter No. TR 212/1 of the 17th May, 1961, the South African authorities regret that, for the reasons indicated in the Hon. the Minister of External Affairs' letter of 10th May, 1961 to the Secretary-General, the applications for visas for the members of the Committee on South West Africa mentioned in your letter cannot be granted.

(Signed) Henry P. Martin  
Consul General

VIII. Telegram sent on 14 June 1961 from the Chairman of the Committee on South West Africa to the Minister of External Affairs of the Republic of South Africa

THE COMMITTEE ON SOUTH WEST AFRICA HAS DECIDED TO GO TO THE REPUBLIC OF SOUTH AFRICA ABOUT THE LAST WEEK OF JUNE 1961 IN ORDER TO DISCUSS WITH REPRESENTATIVES OF YOUR GOVERNMENT THE PRACTICAL ARRANGEMENTS FOR IMPLEMENTING GENERAL ASSEMBLY RESOLUTION 1568 XV AS FULLY AND AS EXPEDITIOUSLY AS POSSIBLE STOP FOR THIS REASON THE COMMITTEE REQUESTS YOUR GOVERNMENT TO GRANT VISAS TO THE MEMBERS OF THE COMMITTEE FOR THAT PURPOSE AND WOULD APPRECIATE AN EARLY REPLY STOP HIGHEST CONSIDERATION

ENRIQUE RODRIGUEZ FABREGAT  
CHAIRMAN COMMITTEE ON SOUTH WEST AFRICA

IX. Telegram sent on 23 June 1961 from the Chairman of the Committee on South West Africa to the Minister of Foreign Affairs of the Republic of South Africa

HONOUR INFORM YOU COMMITTEE ON SOUTH WEST AFRICA HAS ARRIVED IN ACCRA AND AWAITS  
REPLY TO MY CABLE SENT 14 JUNE 1961 BEFORE COMMITTEE LEAVES ACCRA ON 28 JUNE EN  
ROUTE TO OTHER AFRICAN TERRITORIES STOP

ENRIQUE RODRIGUEZ FABREGAT  
CHAIRMAN COMMITTEE ON SOUTH WEST AFRICA

X. Letter dated 23 June 1961 from the Acting Permanent Representative of the Republic of South Africa to the United Nations to the Secretary-General

I have the honour to inform you that the South African Government have carefully considered the telegram which Professor Fabregat addressed to the Minister of Foreign Affairs on the 14th June 1961 but that for reasons fully set out in Mr. Louw's letter to you of the 10th May my Government are not able to depart from what they regard as an important principle. In the circumstances the South African Government cannot agree to the proposed visit and discussions on the basis envisaged in Professor Fabregat's telegram.

Please accept, etc.

(Signed) H.E. Pakendorf  
Acting Permanent Representative

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