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Fortieth session
QUESTION OF NAMIBIA

SECURITY COUNCIL
Thirty-ninth year

Letter dated 20 December 1984 from the Permanent Representative
of South Africa to the United Nations addressed to the
Secretary-General

I have the honour to enclose the text of a letter dated 6 December 1984, addressed by the Secretary of the Multi-Party Conference of South West Africa/Namibia to the President of the General Assembly, as well as the annexures thereto.

I should be grateful if this letter and its annexures could be circulated as an official document of the General Assembly and of the Security Council.

(Signed) Kurt VON SCHIRNDING
Permanent Representative
Ambassador

ANNEX

Letter dated 6 December 1984 from the Secretary of the Multi-Party
Conference of South West Africa/Namibia addressed to the President
of the General Assembly

1. May we, the representative of the parties who have come together in the Multi-Party Conference of South West Africa/Namibia, join with the representatives of the other nations, in congratulating you on your election as President of the thirty-ninth session of the General Assembly of the United Nations. We extend to you on this occasion brotherly greetings and sincere good wishes for a successful and constructive term of office. It is our fervent hope that our country will make significant progress towards the achievement of its independence and the assumption of its rightful place alongside other independent States in the United Nations during your term as President of the General Assembly. As the representative of a fellow African, indeed, southern African State, whose President, His Excellency Kenneth David Kaunda, has made such important and constructive efforts to advance the cause of our independence, and as one who has devoted himself to that cause for the past 11 years, you will, we are convinced, play a constructive role in assisting in the promotion of our independence in your new position. May we presume to offer you some well meant advice in this regard?
2. Once again, Mr. President, the international community is confronted with what has become an annual spectacle, increasingly devoid of meaning or consequence. The nations of the world, gathered in the General Assembly, address themselves again to the question of our country's long delayed transition to independence. The representatives of these great nations deliver lengthy, closely reasoned or emotional speeches, all endorsing our right to independence and the determination of their Governments, through the United Nations, to achieve that independence for us. And yet, Mr. President, today, some 38 years after the United Nations first addressed the question of the South African mandate and 18 years after the General Assembly, in its resolution 2145 (XXI), voted to terminate the mandate, and to declare that the Territory henceforth come under the direct responsibility of the United Nations, our country has not yet achieved that independence to which all pay lip service.
3. On 12 November 1983, the Multi-Party Conference came into being at Windhoek. On that historic day, delegates from six parties, with one other having observer status, came together to assert the right of the people of our country to determine their own future on the basis of justice, freedom and human dignity.
4. We made it clear then that we resented the fact that others many of them with no vital interest in the outcome, were arguing about, interfering with, and seeking to determine, what should and should not happen to us. The spectacle of one group of foreigners raising objections, based on their interests, to plans for our independence devised by another group, without either side having consulted adequately with us, had become intolerable. It has made a mockery of the principle of self-determination and has placed the people of this country in the position of being no more than the playthings of outside interests.

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5. The Multi-Party Conference was born out of the frustration of the people. It came about because we realized that unless we took matters into our own hands we would remain powerless, unless we make decisions about us. We reject categorically, for reasons that will be obvious to you, Mr. President, and to all clear-thinking persons in the General Assembly, all claims of other States including South Africa, the nations of the Western contact group, and the Soviet bloc, and all foreign organizations, to speak for the people of our country, and strongly assert the right of our people to speak for themselves. We reject equally forthrightly, Mr. President, the right of the General Assembly to designate one party, the South West Africa People's Organization (SWAPO), as the sole and authentic representative of the Namibian people.

6. Our rejection of this act is not based on an animus against SWAPO. We recognize its status as a Namibian party and accept its claim to represent some of the people of our country. We reject categorically, however, its claim to speak for all, or even a majority of the people. We were greatly encouraged, Mr. President, by the decision of the President of Zambia, His Excellency Kenneth David Kaunda, to give practical effect to the fact that no one party can claim to represent all the people of our country, in his decision in May 1984 to convene the Namibia independence talks, between the Multi-Party Conference and SWAPO in Lusaka. Although the SWAPO delegation was not prepared to sign the final draft text of the Lusaka Declaration, and the conference ended inconclusively, the talks provided an important opportunity for the participants to exchange views and to address, in conversations with our Zambian hosts, problems delaying the advent of our independence. Your presence at the Namibia independence talks, Mr. President, was also greatly appreciated.

7. It may assist you and other members of the General Assembly, Mr. President, if we set out clearly, our goals and our approach to the question which the Assembly is addressing:

- We seek to ensure that the people of our country shall, in pursuance of their right to freedom, national self-determination and independence themselves determine how that right shall be exercised.
- We recognize the diversity of ideology, of culture, of language and of religion which characterizes our society and we understand the difficulty of moulding one nation out of these many strands. But we are determined, understanding that we must share this land and that we are united in our love for it, to create unity in that diversity while respecting the rights of all.
- We understand that to achieve this all citizens must participate, through their representatives, in the process of deliberation about the present and the future. We have often invited and continue to invite all those parties with manifest support among people of our country to join with us in that process. We reject categorically the notion that we are a front in opposition to any party. We define ourselves in terms of our goals, in terms of the values in which we defined these in our public documents and invite all those who share these goals and values to join with us in strongly asserting our right to achieve them.

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- We are opposed to further violence and bloodshed, believing that the people of our country and indeed the southern African region have already suffered far too much from this internecine struggle, which has drawn in foreign Powers whose interests are divergent from our own. We believe that peace and national reconciliation are vital now and that the task of reconstruction must begin immediately. Regional circumstances are now, at last, conducive to this and the opportunity for reconciliation must be seized urgently.
- We have taken a public position and held talks with South African government representatives in support of the release of persons imprisoned or detained for offences relating to their political convictions. We have not done this lightly, but in the belief that such a process will contribute meaningfully to the creation of a climate conducive to national reconciliation. Mr. Andimba Toivo ja Toivo and Mr. Willibald Sagaria were released from prison on 1 March 1984, and the decision to release 54 detainees from Mariental was made known by the Administrator-General on 3 May. Since then a total of 76 detainees have been released and the Mariental detention centre closed down. We shall continue to work for such further releases as will advance the cause of peace.

8. It is against this background, Mr. President, that Mr. Toivo ja Toivo, now Secretary-General of SWAPO, was able to address the General Assembly on 29 November. It is ironical, but perhaps understandable, that those who were successful in securing his release should now be the recipients of his overblown rhetorical attacks. We understand that SWAPO is frustrated at the discovery that its strategy of aggressive propaganda and "fighting tactics" has not brought about national reconciliation or achieved the goal of independence, whereas our more measured approach is producing results. We understand that SWAPO is fearful that it will forfeit its unjustified designation as the sole and authentic representative of the Namibian people. Despite Mr. Toivo ja Toivo's unfortunate rhetoric, we renew our call to SWAPO to respond constructively to our invitation to join with us in achieving independence for our country.

9. We stand today at the decisive crossroads of our nation's future. If we succeed in our present endeavour to bring about peace and reconciliation, we shall be able to achieve a free, democratic, stable and prosperous country. If we fail, we shall face yet more suffering and strife, economic decline and bloodshed. The choice, we believe, is clear and the preferred outcome equally obvious.

10. It is for this reason, Mr. President, that the Multi-Party Conference adopted a resolution on 30 October 1984, calling for an immediate cessation of hostilities in the northern areas of our country and the convening of a conference of all parties enjoying significant support among the people by 31 December 1984. SWAPO was specifically included in this invitation to ensure that there could be no misunderstanding. We hope, Mr. President, that the nations represented in the General Assembly will encourage SWAPO to respond positively to our call.

11. We express our deep appreciation and gratitude to the Presidents of Gabon, the Ivory Coast and Togo who have, in the course of the past 12 months, offered

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personal encouragement in support of our efforts to achieve national reconciliation and a common national purpose before independence, and to the President of Zambia who advanced these efforts by convening the Namibia independence talks in Lusaka. We are convinced of the necessity of achieving these goals and call on the United Nations and other States represented in the General Assembly, through you, Mr. President, to lend their strong support to our efforts. As a measure of the sincerity of our purpose, we are enclosing a copy of our Declaration of Basic Principles and our Bill of Fundamental Rights and Objectives, adopted at Windhoek on 24 February and 19 April 1984, respectively, for the information of the delegates.

K. Riruako, President, Democratic Turnhalle Alliance
D. Bezuidenhout, Leader, Labour Party of Namibia
E. van Zijl, National Party of South West Africa
H. Diergaardt, Leader, Rehoboth Liberation Front
M. Katjiuongua, President, South West Africa National Union
S. Shipanga, President, SWAPO Democrats

For The Multi-Party Conference of South West
Africa/Namibia

(Signed) Johan C. DE WAAL
Secretary of the Multi-Party Conference
P.O. Box 173
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South West Africa/Namibia

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APPENDIX I

Declaration of Basic Principles adopted on 24 February 1984
at the third plenary session of the Multi-Party Conference
of South West Africa/Namibia, held at Windhoek

We, the political leaders of the people of South West Africa/Namibia, meeting in the third plenary session of the historic Multi-Party Conference hereby:

Reaffirm the right of our people to national self-determination and independence and our determination to strive for a free, democratic, peaceful, stable and prosperous South West Africa/Namibia. It is only this goal - the national interest - and this goal alone, which will henceforth guide our actions.

Also reaffirm that Security Council resolution 435 (1978) of 29 September 1978 is at present the only concrete plan on independence which is being accepted by South Africa, the Security Council and the members of the Western contact group.

Having discussed the many problems confronting our country, in a constructive spirit of frankness, national reconciliation and unity, mutual respect and accommodation, we hereby declare to our people and the world at large that the Multi-Party Conference:

Maintains that South West Africa/Namibia is one and indivisible; South West Africa/Namibia belongs to all its people who are willing to stay here, build and defend it;

Believes in the concept that "all men are created equal" and shall have equal rights and responsibilities, irrespective of their national origin, race, religion or political views. The people of South West Africa/Namibia must work together for the common cause of nation-building, common allegiance, friendship and co-operation, political stability and economic progress;

Takes cognizance of the fact that it may take an indefinite period of time before Security Council resolution 435 (1978) can be implemented, because its implementation is linked to the demand for the withdrawal of Cuban forces from Angola by both South Africa and the United States of America;

Hopes that the Lusaka Agreement between Angola and South Africa will last to enable a discussion of the wider issues of a Namibian/South West African settlement and peaceful co-existence among the States within the region as a basis for resolving local and inter-State problems as well as a return to normal and peaceful life for the inhabitants of the war-ridden territories;

Our contribution to the resolution of the problems which have given rise to instability and security concerns would be to use the cease-fire agreement in a responsible and constructive manner in order to finally eliminate the causes of social and political conflict and confrontation;

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An extensive dialogue among the relevant political parties of this country, in a spirit of national reconciliation and the need for a speedy resolution of the independence dispute, and meaningful negotiations with the Government of South Africa and the international community should be considered the primary concern and objective of all the patriotic and concerned leaders and citizens of our country;

Therefore the Multi-Party Conference accepts the challenge:

To lead our country to a nationally acceptable and internationally recognized independence;

To conduct talks and/or negotiations with interested bodies in the preparation and implementation of the aforesaid aims, as and when demanded by circumstances. Such talks and/or negotiations will include appeals for the immediate release of Mr. Toivo ja Toivo and Mr. Eliazer Tuhadeleni and all other political prisoners and detainees wherever they might be;

To conduct investigations regarding the possibility of entering into relations with neighbouring and other States with the view to our own security and other strategic matters such as co-operation in the areas of health, finance, agriculture and veterinary services, water and energy, physical development, transport, etc. In this connection the issue of Walvis Bay and the borders of South West Africa/Namibia will be the subject of discussion between the future Government of South West Africa/Namibia and the Republic of South Africa;

To draft a permanent constitution:

- Within the framework of Phase 1 of the Western settlement plan;
- Consistent with the Universal Declaration of Human Rights;
- In accordance with the International Covenant on Civil and Political Rights;
- Which will allay the fears and respect the aspirations, ambitions and desires of the different groups mentioned in the Covenant above;

To create an economic order which aims at decreasing our dependence on foreign countries by developing and diversifying our economy mainly through our own efforts and improving the quality of life of our people in all fields - from employment opportunities, health, education and housing to the rural economy. Both the public and private sector as well as foreign investment must serve this purpose. A sound, healthy and strong economy must be the basis of our economic thinking;

To pursue a foreign policy based on dignity, independence, peace and friendship and peaceful co-existence with our neighbours and the rest of the world, to reserve our right to act as we see best at any particular time and on any particular issue. Our own national interest and the behaviour of others towards our country will form the basis of our foreign policy.

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APPENDIX II

Bill of Fundamental Rights and Objectives adopted on
19 April 1984 at the third plenary session of the
Multi-Party Conference of South West Africa/Namibia,
held at Windhoek

PREAMBLE

Independence

Whereas we the people of South West Africa/Namibia desire independence free from outside domination and direction and wish to constitute our own Government;

Peace, reconciliation

Whereas we likewise urgently desire national reconciliation and lasting peace;

Individual rights

Whereas we are united in the belief that all men are born free and equal and endowed by their Creator with human dignity and inalienable rights;

Diversity

Whereas lasting peace, stability and progress depends on the recognition of and respect for the rights of all in the prevailing cultural, linguistic and religious diversity of our society;

Unity

Whereas it is the desire of the people to achieve unity in that diversity with common loyalties to a single State;

Purpose and powers of Government

Whereas governments are instituted among men for the purpose of promoting the safety and welfare of the people, from whose consent those Governments derive their powers and capacities;

Now therefore, we, the people of South West Africa/Namibia, claim and reserve for ourselves and guarantee to our descendants the following fundamental rights which shall be respected and upheld by our successive Governments and protected by entrenchment in the Constitution:

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FUNDAMENTAL RIGHTS

Article 1

The right to life

Everyone has the right to life. No one shall be arbitrarily deprived of his life. The sentence of death may only be executed pursuant to a final judgement by a competent court in respect of the most serious crimes in accordance with the law. Nothing in this article shall be invoked to prevent the abolition of capital punishment by any future Government should they decide to do so.

Article 2

The right to liberty, security of person and privacy

No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

No one shall be detained for an indefinite period of time without a fair and proper trial by a court.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

No one shall be subjected to arbitrary interference with his privacy, the privacy of his home, correspondence or communications. Everyone has the right to the protection of the law against such interference.

Article 3

The right to equality before the law

Everyone shall be equal before the law and no branch or organ of government nor any public institution may prejudice nor afford any advantage to any person on the grounds of his ethnic or social origin, sex, race, language, colour, religion or political conviction.

Article 4

The right to a fair trial

4.1. In the determination of his rights and obligations in a civil action and of any criminal charge against him, everyone is entitled to a fair and public hearing by an independent, impartial and competent court established by law; provided that such a court may exclude the press and the public for all or any part

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of the trial, for reasons or morals, the public order or national security. Any judgement rendered in a criminal or civil action shall be made public, except where the interest of juvenile persons otherwise requires. Everyone charged with an offence has the right to be presumed innocent until proven guilty according to law, after having had the opportunity of presenting witnesses in his favour and cross-examining those testifying against him. Everyone shall be afforded adequate time and facilities for the preparation and presentation of his defence, before the commencement of and during his trial. Everyone shall have the right of access to legal counsel in the event of charges being preferred against him.

4.2. No one shall be tried, convicted or punished again for an offence for which he has already been tried and convicted or acquitted in accordance with the law.

4.3. No one shall be tried or convicted for an offence on account of an act or omission which did not constitute an offence at the time at which it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

Article 5

The right to freedom of expression

Everyone has the right to freedom of expression of opinion, conscience and religious belief, including freedom to seek, receive and impart information and ideas through the press and other media. This right shall be limited only by the obligation to ensure that such expression does not infringe upon the right of others, impair the public order or morals or constitute a threat to national security.

Article 6

The right to peaceful assembly

Everyone has the right to freedom of assembly for peaceful purposes. No restrictions shall be placed on this right except those which, being necessary for the protection of public order, health or morals or the rights of others, are properly prescribed by law.

Article 7

The right to freedom of association

Everyone has the right to associate with any other person or group. No one may be compelled to associate, or prevented from associating with others. Everyone has the right to form and to join trade unions for the protection of the interests of employees. No restrictions shall be placed on this right, except those which,

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being necessary in the interests of national security, public orders, public health or morals, and the protection of rights of others, are properly prescribed by law.

Article 8

The right to participate in political activity and government

Every citizen shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. Every citizen shall have the right to form and join political parties and, subject to proper qualifications prescribed by law, to participate in the conduct of public affairs, whether directly or through freely chosen representatives. The exercise of the right to participate in political activity shall be limited by the obligation to refrain from any advocacy of ethnic, racial or religious hatred and incitement to discrimination, hostility and violence.

Article 9

The right to enjoy, practice, profess, maintain and promote culture, language, tradition and religion

All ethnic, linguistic and religious groups and all persons belonging to such groups, shall have the right to enjoy, practice, profess, maintain and promote their cultures, languages, traditions and religions, in so far as these do not infringe upon the rights of others or the national interest.

Article 10

The right to freedom of movement and residence

Everyone lawfully present within the borders of the country shall have the right to freedom of movement and choice of residence subject to the obligation not to infringe upon the rights of others and to such provisions as are properly prescribed by law in the interests of public health and public order. No citizen shall be arbitrarily deprived of the right to enter the country. Everyone shall have the right to leave the country in accordance with the procedures properly prescribed by law.

Article 11

The right to own property

Everyone has the right to acquire, own and dispose of movable, immovable and immaterial property, alone or in association with others. Everyone shall have the right to leave his property to his heirs or legatees. No one shall be arbitrarily

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deprived of his property. Expropriation shall only be permitted in the public interest and if properly authorized by law. Fair compensation shall be payable in all cases of expropriation.

Article 12

Enforcement of fundamental rights

12.1. The enumeration, in this bill, of certain specific rights, shall not be construed as denying, limiting or disparaging other rights retained by the people.

12.2. Any legislative, executive or judicial act at variance with the provisions of the bill, may be declared null, void and of no effect by order of the Supreme Court and any person who may suffer any disadvantage as a consequence of such an act, shall be entitled to legal redress.

12.3. No fundamental right listed herein, may be repealed, excluded or modified in any way so as to affect its substance or intent.

12.4. Where any fundamental right is properly limited by legislation, such legislation must have a general character and not be limited to a single case.

12.5. All branches and organs of government shall conduct themselves in all their legislative, executive and judicial acts in accordance with the principles enshrined in this bill.

12.6. All persons are entitled to the rights enumerated in this bill, without distinction on the grounds of race, colour, sex, language, political or other opinion, religion, ethnic or social origin, birth or other status.

12.7. Any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of this bill.

12.8. The Supreme Court shall have the power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any rights conferred under the provisions of this bill.

12.9. Any law in force on and continuing in force after the date on which the provisions of this bill come into operation may be submitted by any governmental authority to the Supreme Court for a ruling on the compatibility of such law with the fundamental rights enumerated in this bill, and if such a law has been so submitted for a ruling, no proceeding based on any provision of such law may be instituted under paragraph 7 of this article until the Supreme Court has given its ruling and a period of six months has elapsed after the date of the ruling.

12.10. For the purpose of the hearing and adjudication of any proceedings contemplated in this article, or otherwise based upon the provisions of this bill, the Supreme Court shall be constituted and sit as a Constitutional Court in accordance with the provisions of the laws governing the Supreme Court.

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12.11. An independent parliamentary commissioner (ombudsman) shall be appointed by the Parliament for the investigation and settlement through negotiation and mediation of complaints by individuals of infringements of their fundamental rights arising from administrative practices or actions, provided the infringement in question is not the subject of proceedings instituted in the Supreme Court as contemplated in this article. The parliamentary commissioner shall report annually in writing to Parliament and to such organs of government as are affected by his activities, and shall include in such reports those recommendations he may consider necessary.

FUNDAMENTAL OBJECTIVES

We, the people of South West Africa/Namibia, further wish to record our determination, and to commit our Government to ensure:

- (a) That every person within our country shall enjoy the opportunity to free and full development of his personality in the exercise of those duties and responsibilities which he owes to the community;
- (b) That the family, as the natural and fundamental group unit of society, is afforded protection by society and the State;
- (c) That in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, health and the general welfare and national security of a democratic society;

and, mindful of the existence of certain other social goals whose achievement is essential if we are to create the type of national and democratic society to which we aspire, hereby require our Government to do all in its power to achieve:

1. The establishment and maintenance of a sound and dynamic economic system capable of providing for the needs of all in our society;
2. The opportunity to work, to exercise free choice of employment and to enjoy just and favourable conditions of work and employment; protection against unemployment; and equal pay for equal work;
3. A standard of living adequate for the health and well-being of each person and family unit, including food, housing, medical care and essential social services, and a measure of protection against the consequences of sickness, disability, widowhood and old age;
4. Access to education for all and the opportunity to attain the highest possible standard of education directed at the full development of the human personality and preparation for gainful employment; that higher education shall be equally accessible to all on the basis of merit; that elementary education shall be free and compulsory; the liberty of parents, and, when

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applicable, legal guardians, to choose for their children the type of schools and the direction of education will be protected;

5. The opportunity for all to participate fully in cultural activities, to enjoy the arts and to share in scientific advancement and its benefits; and protection of the moral and material interests of authors in their scientific, literary and artistic productions.
