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Title **Items-in-Africa - Question of Namibia - South Africa's policy regarding self-determination, independence, civil liberties, and homelands**

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UNITED NATIONS



NATIONS UNIES

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

TO:
A: The Secretary-General

[Handwritten signature] 28 March 1973

THROUGH:
S/C DE:

REFERENCE:
[Handwritten signature]

FROM: G.A. Stavropoulos, Legal Counsel
DE: *[Handwritten signature]*

CONFIDENTIAL

SUBJECT: Question of Namibia
OBJET:

- 1. As promised, I am sending you herewith a copy of the preliminary text of the South African replies to the four questions posed by you at your meeting with Ambassador von Hirschberg on 12 December. This text, which was handed to me by Ambassador von Hirschberg on 14 March, summarizes the results of our conversations at several meetings. Ambassador von Hirschberg explained that it had not been fully cleared with his Government and therefore should be treated as strictly confidential.
2. After examining the draft replies, I handed to Ambassador von Hirschberg on the following day a note setting out a number of points on which further clarification appeared to be necessary. A copy of this
3. At the time, Ambassador von Hirschberg expressed his satisfaction with the contents of the note and thought that it would be acceptable to his Government.
4. At yesterday's meeting, Ambassador von Hirschberg stated that they had only one reply at this stage and, as you remember, dictated to me the following:

" Judging from the questions, it would seem that in view of the enabling bill now before Parliament there is a fear that the inhabitants of an individual nation could or would suddenly become an independent separate entity. Such an eventuality is not envisaged. The eventual Act of Self-Determination should in our opinion be determined in the light of experience gained by all concerned."

*South African
Reply*

17.3.73

Chetani

QUESTION 1:

Taking into account the importance attached by the majority of Security Council members to the need for clarification of South Africa's policy regarding self-determination and independence, can South Africa make its position more clear on this matter?

ANSWER:

South Africa understands the concept of self-determination and independence for South West Africa to mean that it is for South West Africa itself to determine its own future. It is not a decision for either South Africa or for the United Nations to make but one which rests exclusively with the inhabitants of the Territory. There is no question of South Africa or the United Nations predetermining the future of the Territory.

So far as the South African Government is concerned, all options are open to the inhabitants of the Territory in this connection. Thus, they will have the right to form a unitary state, a federation, a confederation or any other constitutional arrangement they may choose. By the same token, should any of the peoples of the Territory choose to opt out of any particular arrangement, they will have that right. South Africa is not prepared to impose any constitutional system on them. It follows that South Africa is not prepared to force any of the peoples either to become part of any particular constitutional system or to disassociate themselves from it. The choice in every instance is theirs and theirs alone.

It must be emphasized that it was not the present or any previous South African Government, nor the German Administration before them, which brought about the separation of the various peoples. This was their traditional way of living - one of their own choice - even before the German administration.

Attached are extracts from a statement by the Prime Minister in the South African House of Assembly on 19th February, 1973, dealing with the Government's conception of

self-determination and independence for South West Africa in greater detail.

QUESTION 2:

Could South Africa provide details regarding the proposed Advisory Council, including: (a) its membership; (b) the various regions, regional governments or authorities from which they will be drawn; (c) how they will be chosen; and (d) what its functions would be?

ANSWER:

The Advisory Council will be composed of two representatives from each region. Where there are regional governments or authorities, they have been asked to nominate representatives. In regions where there is no such authority, as in the case of the Hereros, they have been invited to make the nominations in the manner of their own choice. The Council will meet on the 23rd March.

Pursuant to the Secretary General's enquiry concerning a possible elective element, it should be emphasized that in those regions with legislative Councils elections will be held in the course of this year and next year (Footnote: In the case of Rehoboth, the Basterraad has for a considerable time been elected by the "burghers"). And a substantial number of the members of the legislative Councils will then be chosen by way of democratic electoral processes. In due course, therefore, the procedure envisaged by the Secretary General will have been satisfied in these instances. As at present, these authorities will retain the right to choose their representatives on the Advisory Council.

Through the Council, the leaders of the different regions will discuss with, and advise the Prime Minister on, matters of common interest.

QUESTION 3:

What measures has the South African Government taken, or proposes to take (a) to remove restrictions on movement and (b) to ensure freedom of political activity, including freedom of speech and the holding of meetings?

ANSWER: Security of mind invited the Government to consider the
 criteria for the... of the...
 In his talks with Mr. Escher, Mr. Vorster had indi-
 cated that he was in agreement that there should be legitimate
 political activity, including freedom of speech and the
 holding of meetings. He also said that he would consider
 the possibility of removing restrictions on freedom of
 movement without impairing influx control. These matters
 are still under examination. It is hoped to discuss them
 with the Secretary General or his representative when a
 meeting takes place.

QUESTION 4:

1. SELF-DETERMINATION AND TERRITORY
 Can the South African Government confirm that no
 further steps in furtherance of the "homelands" policy are
 contemplated?

ANSWER: All that is presently contemplated in respect of the
 future constitutional development of South West Africa is the
 passage through the current session of Parliament of enabling
 legislation entitled the "Development of Self-government of
 Native Nations in South West Africa Amendment Bill, 1973."
 The purpose of the enabling legislation is to provide the
 necessary machinery in terms of which the regions could
 ask for and be granted greater self-governing powers. It
 represents an interim stage before self-determination and is
 designed to provide opportunities for acquiring further politi-
 cal and administrative experience. It is by no means the
 final step in the constitutional development of the regions.
 All options remain open to the inhabitants of South West Africa
 to determine their future once they have acquired the necessary
 skills in the art of Government, as the Prime Minister clearly
 stated in Parliament. The legislation imposes nothing on
 any of the regions or on the inhabitants of the Territory as
 a whole. The responsibility for requesting additional self-
 governing powers, when they themselves feel they are capable of
 exercising those additional powers, rests exclusively with the
 regional authorities concerned. South Africa for its part has
 no interest in delaying the act of self-determination.

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The Security Council invited the Secretary-General to continue his efforts to ensure that the people of the Territory, freely and with strict regard to the principles of human equality, exercise their right to self-determination and independence, on the basis of paragraph 4 of the resolution and in accordance with the Charter of the United Nations. In paragraph 4 of the resolution the Security Council reaffirmed the inalienable and imprescriptible rights of the people of Namibia to self-determination, national independence and the preservation of their territorial integrity, on which any solution must be based.

In view of the above, the following further clarifications appear necessary for a better understanding of the replies to the four questions put by the Secretary-General.

I. SELF-DETERMINATION AND INDEPENDENCE

1. The Prime Minister said that self-determination and independence for "South West Africa" means that it is for "South West Africa" itself to determine its own future. He added that all options are open to the inhabitants of the Territory and that they have the right to form a unitary state, a federation, confederation or any other constitutional arrangement they may choose. By the same token, should any of the peoples of the Territory choose to opt out of any particular arrangement, they will have that right. In the light of this it may be asked:
 - (a) What does South Africa understand the term "Territory" to mean? Does it include all the area included within the League of Nations mandate?
 - (b) Who are the "inhabitants of the Territory"?
 - (c) Are the whites considered a nation and what precisely are the boundaries of the region they occupy?
2. The enabling bill currently before the House of Assembly provides that the various native nations may obtain a higher level of self-government when they request it. It is apparently the view of South Africa that the various native nations are at different stages of preparedness and that some of the native nations will, therefore, take much longer than others to acquire the experience in self-government which is considered to be a prerequisite for the exercise of self-determination. Under this system, it would be technically possible for the inhabitants of individual native nations to become independent as separate entities if they so choose and as and when they are ready. If, however, the majority of the inhabitants of the Territory wished to opt for a

unitary state, how can they do that effectively, except by means of a simultaneous territory-wide vote on identical questions? Will the inhabitants of the Territory, including the whites, all vote simultaneously and on the same question? Will every person in the Territory having the right to participate in the act of self-determination be in a position to vote wherever he is in the Territory? - that is to say, will he vote as an inhabitant of the Territory as a whole or as an inhabitant of a region?

3. Alternatively, will it be possible to establish a date when the inhabitants of the Territory will be deemed ready to exercise self-determination and independence? According to what standards and by whom will this matter be decided?

4. What will be the practical effect if the inhabitants of certain "nations" which are not contiguous and have no access to the outside world, opt for one solution while the inhabitants of surrounding areas opt for a different and conflicting solution?

5. When will the white inhabitants be in a position to exercise their right to self-determination and independence?

6. Is it indispensable that experience in self-government must be acquired on a regional basis?

II. ADVISORY COUNCIL

7. What are the regions represented on the Advisory Council?

8. How were nominations to the Council made in regions for which there is no authority, as, for example, in the case of the Hereros? Were all the members of the nations concerned consulted?

9. What provision has been made, pending the introduction of elections, to ensure that all shades of opinion are represented, including those referred to in paragraph 2 of Security Council resolution 323 (1972)?

10. Since the Advisory Council is established as a means of maintaining the unity of the Territory, what will be the relationship of the Council to the administration of the Territory? Will it, in addition to discussing and advising the Prime Minister on matters of common concern to the regions, be empowered to obtain information and submit observations or recommendations to the Prime Minister in regard to the present administrative machinery of the Territory?

11. Will it be empowered to study and advise the Prime Minister on all matters of Territory-wide concern, including particularly the creation of the necessary conditions for the holding of a free and unfettered act of self-determination at an early date? Will its duties include the making of recommendations on the modalities and timing of this act?

12. Will the Advisory Council meet as a body only under the chairmanship of the Prime Minister or will it also meet independently at its own discretion in preparation for its meeting with the Prime Minister? In such case, where will it meet and who will preside over its meetings?

III. POLITICAL ACTIVITIES

13. What is South Africa's understanding of the term "legitimate" political activity?

14. What measures will be taken to ensure that the regional governments or authorities will not in any way restrict the freedom of political discussion, the holding of meetings and the freedom of movement?

15. Would the South African Government be prepared to consider the suspension of any laws which may affect the freedom of speech and publication and the return of exiles who have not been convicted of crimes of violence?

16. What provision would be made to ensure that the people of Namibia have access to full information? Would both the South African Government and the United Nations be enabled to inform the people concerning the meaning of self-determination and the options open to them?