

The Dakar conference on Namibia and human rights

1. *Procedural arrangements*

The international conference on "Namibia and Human Rights" that took place in Dakar, Senegal on 5 to 8 January 1976 was, to the best of my knowledge, the idea of dr Karel Vasak in his capacity as president of the International Institute of Human Rights of Strasbourg, France, who planned the conference - again to the best of my knowledge - in close collaboration with mr Seán MacBride, the United Nations Commissioner for Namibia. The Government of the Republic of Senegal acted as host for the conference, the conference was formally sponsored by mr Seán MacBride, and it was officially organized by the International Institute of Human Rights. The International Commission of Jurists and the International Association of Democratic Lawyers also lent their support to the organizers of the conference.

I attended the Dakar conference at the invitation of, and with financial assistance from, the International Institute of Human Rights; and being a former participant of the Institute's annual training centre, I maintained close contact at the conference with members of the Strasbourg office of the Institute who acted as secretariat to the conference. I found myself among the approximately 300 participants at the conference in the category of so-called "individual experts", who had been invited to the conference presumably to strengthen the number of academic lawyers at the conference. The other categories of participants were classed as "delegates designated by governments and inter-governmental organizations, national liberation movements and non-governmental organizations" and

as "observers". Individual experts and observers could participate in all the activities of the conference on an equal footing with delegates of governments, inter-governmental organizations, national liberation movements and non-governmental organizations, but only the latter category of participants had the right to vote. I hasten to add that decisions based upon votes were avoided at the conference and that the resolutions of the conference were supposed to portray what was thought to be the general opinion of the participants.

The purpose of the conference was said to be, firstly, to "throw light on the human rights situation in Namibia and on the struggle for human rights in Namibia", and, secondly, to "lay the foundation for the liberation of Namibia in the spirit of the Universal Declaration of Human Rights". Stripped of all traces of fanciful phrasing and in view of what actually took place in Dakar it is, I think, fair to state that the conference in effect represented a grotesque effort to sell Swapo to the world - notably the western and African countries - as the alleged only authentic representative of the people and as the indisputable future government of South West Africa. It may also have been the sincere wish of the organizers of the conference to sell human rights ideals and principles to Swapo but Swapo's major, or perhaps sole, interests in the conference was presumably to acquire international support for its military activities on the borders of, and for its political aspirations within the territory. Swapo was obviously the guest of honour at the conference and from time to time its representatives were specifically asked by the chairman to indicate whether certain proposals made by speakers from the floor would meet with Swapo's approval.

The first day of the conference was dedicated to certain formal matters and to the presentation of a series of messages from important international bodies and various national governments. The speakers at this plenary session included representatives of the United Nations Special Committee against Apartheid, the Council for Namibia, the

Commission on Human Rights, Unesco, various international church organizations, including the World Council of Churches, and national governments such as those of Zambia and Senegal.

The conference was formally opened by the president of the Republic of Senegal, mr Leopold S Senghor. The opening session was - needless to say - also addressed by mr Sam Nujoma, the president of Swapo.

A message of dr Kurt Waldheim, secretary-general of the United Nations, was disseminated to the participants at the conference. Dr Waldheim himself was not present. The United Nations was represented by its deputy secretary-general, mr Issoutou Djermakoye.

Dr Kenneth Kaunda of Zambia, who was also scheduled to speak at the opening session informed the organizers of the conference at the last moment that he could not attend. Also not present was dr Karel Vasak, the actual brain behind the conference. Speculations would have it that dr Kaunda's détente associations with South Africa's mr John Vorster had inspired his decision not to go to Dakar. It was common knowledge at the conference that dr Vasak's leave to travel to Africa had been cancelled by the Council of Europe, of which dr Vasak is the secretary. It was believed that the Council feared that it may be embarrassed by the participation of any of its officials at a conference which was potentially prone to breed or to stimulate militant ideas.

As far as the procedural arrangements at the conference are concerned, the formalities proceeded as follows: On the second and third days of the conference the participants gathered simultaneously in either of two commissions. The first commission was supposed to consider the past and present situation of South West Africa, while the second commission was constituted to give attention to the present and future situation of the territory. Both commissions were called upon to draft preliminary observations dealing with the relevant aspects of the problem, and on the final

day of the conference the participants once again assembled in a plenary session for the purpose of approving the *Dakar Declaration on Namibia and Human Rights* and a *Programme of Action* proposed to international organizations, states, non-governmental organizations and social, professional, trade-union and information organizations as a set of measures to be taken by such organizations to secure for the people of South West Africa the exercise of their right to self-determination.

For the record I may add that I attended the second Commission's sessions and that my travel arrangements forced me to miss the final plenary session.

2. *Suppositions accepted by the conference*

The Dakar conference accepted without question certain propositions, of which the following are of special interest and import:

2.1 *The illegality of South Africa's Presence in South West Africa*

The first proposition I have in mind was that South Africa's presence in South West Africa constitutes illegal occupation and a colonial type of administration of the territory. This attitude is in accordance with resolution 2145 (XXI) adopted by the General Assembly of the United Nations on 27 October 1966, whereby South Africa's administration of South West Africa - which, incidentally, by virtue of GA Res 2372 (XXII) of 1968, became known in international law as Namibia - was outlawed. The outlawing of South Africa's presence in South West Africa was endorsed by the Security Council of the United Nations in SC Res 264 of 1969 and by the International Court of Justice in the Namibia case of 1971.

2.2 *The Right of Self-Determination*

The second proposition worth mentioning adopted by the Dakar conference proclaimed that the right of peoples to self-determination is an essential prerequisite for the implementation of human-rights

principles.

This proposition is again in conformity with the sentiments entertained by the United Nations in the present regard. Article 1(2) of the UN Charter proclaims the development of friendly relations among nations, "based on respect for the principle of equal rights and self-determination of peoples" to be a purpose of the organization - other provisions of the Charter referring to this right being arts 55 and 76 - and a long sequence of United Nations resolutions endorsed the special importance attached by the international community to the principle of political independence. In its resolution 421 D (V) 1950 the General Assembly of the United Nations decided that the right of peoples and nations to self-determination was a fundamental human right, but in resolution 637 (VII) 1952 the General Assembly went further and actually acknowledged the right of peoples and nations to self-determination as a prerequisite to the full enjoyment of all fundamental human rights. The right of self-determination also finds expression in the Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 and in art 1 of the International Covenant on Civil and Political Rights 1966 and of the International Covenant on Economic, Social and Cultural Rights 1966. The human rights covenants of 1966 was destined to become the Bill of Rights of the international community of states, and it was decided by the General Assembly as early as 1952 - i e in GA Res 545 (VI) 1952 - to include an article in the covenants proclaiming the right of all peoples and nations to self-determination. It may, for the record, also be noted that the covenant on civil and political rights entered into force earlier this year (on January 4), while the covenant on economic, social and cultural rights became effective some time later (on March 23).

Seen as a prerequisite to the full enjoyment of human rights and fundamental freedoms, the right of self-determination of peoples and nations carries with it a weight of logical consequences, for instance that the mere lack of independence of the South West African peoples implies that human-

rights principles are being infringed in the territory, and also that the implementation of human-rights values will be futile as long as South Africa remains in effective control of South West Africa.

In the present context one ought also to be reminded of GA Res 3103 (XXVIII) of 1973 which recognizes the use of armed force as a legitimate means for the liberation of peoples subjected to colonial or alien domination or to racist régimes. The preliminary observations of the Second Commission accordingly recalls "the United Nations resolutions on the legitimacy of armed struggle and the political and material aid which States are invited to give it", and the Dakar Declaration reiterates that "all means, including armed struggle, are justified to liberate the country".

2.3 The Role of Swapo in South West Africa

The Dakar conference presupposed that Swapo is the sole authentic representative of the people of South West Africa. The Programme of Action therefore calls for "maximum political and material support to Swapo", and the Dakar Declaration requests Governments that have not yet done so to recognize Swapo as such. Swapo's claim that it is "the authentic representative of the Namibian people" had earlier been endorsed by the General Assembly of the United Nations in paragraph I of its resolution 3295 (XXIX) of December 13, 1974, and the General Assembly at the same time promised support for Swapo's alleged efforts to "strengthen national unity".

This may be a convenient stage to make a few comments regarding Swapo.

I would first of all like to stress that not a single individual at the conference with whom I discussed Swapo's claim to be the only authentic representative of the people of South West Africa really believed that that is the case. Even the South Africans at the conference differed widely on the question as to the percentage support for Swapo in the territory. My own guess was that

Swapo could, at the most, rely upon support from not more than 20% of the Black citizens of South West Africa, and I base my opinion on the exceptionally high percentage poll in the Ovambo elections of January 1974 which was boycotted by Swapo. Swapo's blunt refusal to test its following in any future election conducted under South African control made its claim to majority support suspect, even though Swapo justified its attitude on the grounds that participation in elections conducted by South Africa would amount to an acknowledgement of South Africa's authority in the territory, which in turn would belie the supposed illegality of South Africa's claims to the territory. A Swapo confidant (in a private discussion) also advanced the argument in support of Swapo's refusal to participate in elections conducted by South Africa in the territory that Swapo was not permitted by the South African authorities to canvass freely. This argument led to an admission by the Swapo confidant that Swapo in actual fact does not presently enjoy majority support in the territory, but could muster majority support if it were permitted to indulge in unrestricted canvassing under United Nations control.

I must also stress that Swapo was not prepared to commit itself to human-rights ideals and principles. It is true that a working paper dealing with principles to be enunciated in the constitution of independent Namibia and which was allegedly drafted by Swapo proclaimed that such a constitution should contain a Bill of Rights which "will reflect the developing international standards of human rights". The same document also contains a supposed undertaking by Swapo to ratify the International Covenant on Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966, to which reference have been made earlier, but at the Conference Mr Sam Nujoma, the President of Swapo, expressly stated that Swapo had in fact not decided to ratify the Covenants and will consider whether it ought to do so only after South West Africa will make its decision in this regard without any interference from outside.

From what I have seen, heard and read I am personally convinced that Swapo has become a militant organization with definite Marxistic tendencies. In his opening speech at the conference Mr Nujoma said: "Since 1966, the strategic line which our liberation activity has been taking is characterized by two major tactics, namely, continuous mass political mobilization and guerilla resistance". Swapo launched the armed struggle in the territory - to be exact - on August 26, 1966. In a working paper entitled "Namibia and the International Rule of Law" which is said to be a survey by Swapo, the author accordingly went to great lengths to prove "that a liberation war is not only morally but legally justified".

Swapo's Marxistic tendencies appeared from various other documents distributed to participants at the conference wherein Swapo proclaimed its intention, *inter alia*, to nationalize all industries and natural resources in South West Africa and to abolish the Roman-Dutch law when it comes to power in the territory.

2.4 *Apartheid in South West Africa*

The fourth proposition adopted by the Dakar conference stated that South Africa is practising the policy of apartheid in South West Africa and that those practices constitute crimes against humanity. This proposition follows the line of reasoning of the many United Nations resolutions condemning racial discrimination and which culminated in the International Covenant on the Punishment of the Crime of Apartheid, 1973, which was proclaimed in GA Res 3068 (XXVIII) 1973. It was also relied upon by the Dakar conference as a further justification for armed intervention and/or liberation belligerency to bring South Africa's occupation of South West Africa to a speedy end.

The Dakar Declaration accordingly states that the system of apartheid is "a continuing threat to peace and security in southern Africa". It was also thought that South Africa's persistent refusal to submit to the many United Nations resolutions

calling for the discontinuation of apartheid practices justified the expulsion of South Africa from this world body in terms of art 6 of the UN Charter, which authorises such expulsions in cases of persistent violations of the principles contained in the Charter.

Specifically included in the South African policies that were denounced by the conference under this heading is the idea of bantustan homelands. In its preliminary observations the Second Commission referred to this aspect of the South African racial policy as an "attempt to divide the people of Namibia", the Dakar Declaration rejects the policy of "Bantustanization" as an "attempt to destroy the unity and territorial integrity of Namibia", and in the Programme of Action the Security Council of the United Nations is called upon to restrain "any attempts by South Africa to alter the borders of Namibia or to fragment or partition any portion of the Territory".

In passing I should like to point out that this is a rather surprising aspect of United Nations policies. One of the major crimes of colonialism was the shattering of natural and national borders in Africa, thereby dividing ethnic and cultural entities and grouping peoples with quite different cultural-historical extractions into single national entities. Somehow the United Nations came to regard such artificial and arbitrary colonial borders as sacred, and its resolute determination to maintain those borders are evidenced by the sad history of, *inter alia*, Katanga and Biafra. One must therefore recognise that there is more to the United Nations opposition to the South African bantustan policy than mere stubborn anti-South Africanism. It concerns a persistent belief that existing borders ought to be respected and that political entities ought not to be divided into smaller states.

2.5 *South Africa's Involvement in Angola*

A further proposition subscribed to by the Dakar conference would have it that South Africa's military involvement in Angola constituted a threat to

international peace and security. This being the case, sanctions to be imposed by the Security Council of the United Nations in pursuance of chapter VII of the UN Charter were called for. A decision by the Security Council taken under chapter VII of the Charter would mean that member states of the United Nations would be compelled to give effect to the Security Council's decision.

The sanctions mentioned in the Programme of Action include a complete embargo on the sale or transfer of arms and all other forms of military equipment to South Africa, the suspension by member states of financial relations with South Africa, and a check upon facilities provided by member states to South Africa which would enable it to undertake the production of uranium, plutonium and other nuclear materials or reactors.

I have recently stated in Johannesburg that South Africa's Angola escapade would in all probability be proved to have been the greatest blunder of this century. I made this statement in view of the fact that South Africa decided to indulge upon its Angolan campaign at a time when a Security-Council meeting had actually been scheduled for the purpose of deciding whether or not South Africa's activities in South West Africa did in fact constitute a threat to international peace so as to merit the imposition by the Security Council of obligatory sanctions.*)

Needless to say, that the implementation of sanctions against South Africa could cause the country irreparable harm and could, for that matter, also affect neighbouring countries, such as Lesotho, whose economy is closely associated to South African economic institutions. In the past South Africa succeeded in avoiding enforceable sanctions, but it is obvious that South Africa had never before given so much scope for a positive finding by the Security Council that its activities in South West Africa constituted a threat to international peace, which in terms of the UN Charter would justify the imposition of compulsory sanctions against South Africa. South Africa actually participated in belligerency outside its own borders and that

could easily have been taken to spell out international warfare.

We know now that the Security Council in fact once again refrained from taking action against South Africa under Chapter VII of the UN Charter. My own guess is that this mere fact lends considerable support to speculations that South Africa entered Angola with at least the moral support, but more probably at the instigation, of certain Black African countries and possibly also of some Western power. It is also commonly believed in South Africa that the South African government's reluctance to disclose what actually occurred before and during the Angolan campaign is in all probability due to an honourable desire not to embarrass those associates who caused or approved the use of South African troops against MPLA forces.

2.6 *Diverse Other Decisions*

The Dakar conference was particularly set on making certain other actions of the South African government in South West Africa suspect. This applies in particular to the constitutional talks in Windhoek on the future of the territory. Mr Sam Nujoma referred to the Black and Brown participant of the constitutional conference as "government stooges". The Dakar Declaration denounces and condemns the "so-called constitutional conference convened by South Africa, the composition and purpose of which have been illegally determined by the South African government". In its stead free elections under the supervision and control of the United Nations are called for.

As far as elections in South West Africa under United Nations supervision are concerned, I should like to draw attention to a proposal advanced at the conference by prof John Dugard of the University of the Witwatersrand in Johannesburg. Realising that South Africa will in all probability not accept United Nations supervision and that Black African countries will likewise reject South West African elections conducted under supervision of any of the major western super-powers, prof Dugard suggested that it could prove to be

acceptable to all parties concerned if the international community of states would subscribe to elections in South West Africa being held under supervision of one or more of South Africa's détente associates in Africa. This proposal is in my opinion worthy of serious consideration.

On the other hand South Africa's détente efforts also came under fire in Dakar. The Dakar Declaration refers to the détente policy as "a snare" and one which is "aimed at causing confusion in international public opinion as well as at undermining African unity".

South Africa's attempts to stimulate the economic development of South West Africa was seen as instances of economic exploitation. In its preliminary observations the Second Commission mentioned "the looting of the country's natural resources" by South Africa. In this respect great emphasis was laid on what has become known as Decree no 1 of the United Nations Council for Namibia. This Council was established and entrusted with the administration of South West Africa in 1967 by virtue of GA Res 2248 (S-V). Decree no 1 was adopted by the Council on 27 September 1974 and was approved by the General Assembly of the United Nations on 13 December of the same year. (Cf GA Res 2678 (XXV) 1974). It represents the first legislative act of the Council for Namibia and is aimed at protecting the natural resources of South West Africa against exploitation by South Africa and western companies with economic interest in the territory. The Decree, broadly speaking, prohibits prospecting and mining activities in South West Africa without permission of the United Nations. Provision is made for the seizure and forfeiture of animal, mineral or other natural resources taken from the territory, and also of vehicles, ships or containers used for carrying such resources without the necessary permission.

At the conference special attention was given to ways and means for the effective implementation of the Decree - as was stated in the Declaration of Dakar - in order to "protect the natural resources of the people of Namibia and to ensure that these

natural resources are not exploited to the detriment of Namibia, its people or environmental assets". The Programme of Action calls upon member states of the United Nations to enforce the Decree, *inter alia*, by prohibiting through their domestic laws the import, without the authorization of the United Nations Commissioner for Namibia, of goods emanating from South West Africa.

3. *The future of South West Africa*

At a recent conference on the political future of South West Africa held in Windhoek, I outlined what I thought to be the requirements to be complied with by South West Africa if it is to be acceptable as an independent state by the international community and in accordance with basic principles insisted upon by the United Nations Organization. Broadly speaking those requirements amount to the following principles:

3.1 Firstly South West Africa will have to subscribe to the principle of equality which, like the right to self-determination of peoples, has been proclaimed by the United Nations as an essential prerequisite for the effective protection of human rights and fundamental freedoms. The United Nation's consistent and persistent rejection of all instances of, *inter alia*, racial segregation and discrimination leaves no doubt that equal rights and privileges for all citizens of the territory - White, Brown and Black - will inevitably be insisted upon by the world organization.

3.2 The principle of equality also underlies the political doctrine of one man one vote. If there is one lesson to be learnt from the Rhodesian history of the past decade then it is the fact that anything less than total equality at the polls, irrespective of race and without any franchise qualifications whatsoever, is completely unacceptable to the international community of states. What I am, therefore, suggesting is that majority

rule, and in particular black domination, in South West Africa is a *sine qua non* for international recognition of South West Africa as an independent state.

- 3.3 It would finally be in line with modern political notions for the future government of South West Africa to safeguard certain basic human rights and fundamental freedoms in a constitutional Bill of Rights. The Universal Declaration of Human Rights, 1948 and the 1966 human-rights covenants are indicative of the nature and contents of the rights and freedoms that ought to be included in such a Bill of Rights. Since South West Africa comprises a multi-national, multi-religious and multi-racial community the United Nations will in particular insist upon the constitutional protection of the rights and freedoms of minority groups.

I must, however, immediately emphasize that constitutional guarantees are not necessarily a waterproof safeguard of libertarean ideals. The history of decolonization in Africa has demonstrated most convincingly that constitutions can be nullified without ceremony by the depositories of political power. The United Kingdom and France justly pride themselves for having equipped their former colonies with truly democratic and liberal constitutions, but very little of the dual party system, democratic elections and Bills of Right could survive the onslaught of the power-happy régimes of some Black political leaders. Nor need we glance beyond the Limpopo to find proof of the futility of constitutional guarantees. South Africa's own constitutional scandal of the 1950's, which led to the enlargement of the Senate so as to secure a two-thirds majority in parliament for the purpose of circumventing the constitutional protection of the franchise rights of the coloured electorate, provides one of the most striking examples of violations of constitutional safeguards by state authority. This instance of circumventions of statutory

guarantees is in fact so much the more deplorable since the South African government obviated the constitutional entrenchment under the pretence of legitimacy.

One must therefore conclude that the White and Brown inhabitants of South West Africa will enjoy very little, if any, security if the territory were to achieve its independence in accordance with the requirements set by the international community and outlined by the relevant United-Nations resolutions.

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- *) The editorial committee of Koers wants to state explicitly that it dissociates itself from the viewpoints expressed in this and the following two paragraphs and that it does so with the knowledge of the writer. EJS.