

NAUTA VAN HAERSOLTE

VM/lw 3720817

On this fourteenth day of July nineteen hundred and eighty seven, at the request of the UNITED NATIONS COUNCIL FOR NAMIBIA, established and existing under the law of the United Nations, provisionally domiciled in New York, United States of America, representing the people of Namibia and for the purpose of the present proceedings electing domicile in Amsterdam, Keizersgracht 384, at the offices of the attorney W.C. van Manen, and in The Hague, Van Stolkweg 29, at the offices of the attorney E.J. Dommering who is appointed to represent plaintiff before the Court in the present proceedings,

I, _____
bailiff _____

HAVE SUMMONED

1. the partnership URENCO NEDERLAND V.O.F., registered in Almelo, where I am serving this instrument at its offices at Drienemansweg 1, speaking to and leaving a copy hereof with _____

2. the limited liability company ULTRA-CENTRIFUGE NEDERLAND N.V., registered in Almelo, where I am serving this instrument at its offices at Plantshofweg 77, speaking to and leaving a copy hereof with _____

3. THE STATE OF THE NETHERLANDS, having its seat in The Hague, where I am serving this instrument upon the Attorney General at the Supreme Court of the Netherlands, speaking to and leaving a copy hereof with
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TO APPEAR

on Tuesday, the first day of September nineteen hundred and eighty seven, at 10.00 hours, represented by an attorney, before the First Singular Chamber for Civil Matters of the District Court in The Hague, there in session in the Palace of Justice at Juliana van Stolberglaan 2,

IN ORDER

as defendants to hear plaintiff allege and claim that,

1. WHEREAS the Republic of South Africa, owing to and in furtherance of the power it exercises in and over Namibia, is exploiting, and causing to be exploited, the natural resources of Namibia, including uranium, through the production, processing, trading and use of these resources;
2. WHEREAS the exploitation referred to sub 1 is causing great and irreparable damage to Namibia and its people and is undertaken without the consent or permission of plaintiff which, established pursuant to Resolution of the General Assembly of the United Nations No. 2145 (XXI) of October 27, 1966, and No. 2248 (S-V) of May 19,

1967, in order to safeguard the interests of Namibia and its people in anticipation of the independence of Namibia, is the sole lawful administrator of Namibia, vested with the power and charged with the task to promulgate such laws and decrees and to take such measures as are necessary for that administration;

3. WHEREAS the exercise of power and the exploitation referred to sub 1 are unlawful since they violate the norms confirmed by, set forth in and apparent from

(i) League of Nations document 21/31/14D of December 17, 1920, containing the conditions of the mandate over Namibia (then named South West Africa) issued by the League of Nations and accepted by the Union of South Africa, according to which the mandatory, inter alia, was to promote to the utmost the well-being of the people of Namibia and to refrain from establishing military bases in Namibia, which obligations according to the Advisory Opinion of the International Court of Justice of July 11, 1950 (I.C.J. Reports 1950, p. 128) continued to apply notwithstanding the dissolution of the League of Nations;

(ii) the Charter of the United Nations signed on June 26, 1945, incorporating the principle of self-determination of peoples which subsequently developed into and was recognized as the right to self-determination as is demonstrated and confirmed by, inter alia, the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in Resolution No. 1514 (XV) of December 14, 1960, of the General Assembly of the United Nations, as well as the International Covenant on

Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted by the General Assembly in 1966, and the Advisory Opinion of the International Court of Justice of October 16, 1975, in re Western Sahara (I.C.J. Reports 1975, p. 12);

- (iii) the Declaration on Permanent Sovereignty over Natural Resources, contained in Resolution No. 1803 (XVIII) of December 14, 1962, of the General Assembly of the United Nations, incorporating the right of peoples to permanent sovereignty over their natural resources;
- (iv) Resolution No. 2145 (XXI) of October 27, 1966, of the General Assembly of the United Nations, whereby the mandate referred to sub (i) was terminated on account of its violation by the mandatory, as well as subsequent resolutions of the General Assembly, according to which the exercise of power and the exploitation referred to sub 1 should cease forthwith and all States, as well as all enterprises under their control, should refrain from dealings with respect to the exploitation referred to sub 1;
- (v) Resolution No. 283 of July 29, 1970, as well as other resolutions of the Security Council of the United Nations according to which the Republic of South Africa has to terminate its exercise of power in and over Namibia and all States and enterprises controlled by them should refrain from any dealing with respect to commercial or industrial enterprises or concessions in Namibia, as well as from any support of enterprises not controlled by them which could contribute to the exercise of power and exploitation referred to sub 1;

(vi) the Advisory Opinion of the International Court of Justice of June 21, 1971 (I.C.J. Reports 1971, p. 16), according to which the Republic of South Africa should withdraw from Namibia immediately and the States Members of the United Nations should refrain from any acts tending to support the exercise of power referred to sub 1,

as well as Decree No. 1 of September 27, 1974, enacted by plaintiff in accordance with its purpose, power, and task referred to sub 2 and reading as follows:



UNITED NATIONS

NAMIBIA GAZETTE No.1

DECREE No. 1

FOR THE PROTECTION OF THE NATURAL RESOURCES OF NAMIBIA

Conscious of its responsibility to protect the natural resources of the people of Namibia and of ensuring that these natural resources are not exploited to the detriment of Namibia, its people or environmental assets, the United Nations Council for Namibia enacts the following decree:

DECREE

The United Nations Council for Namibia,

Recognizing that, in the terms of General Assembly resolution 2145 (XXI) of 27 October 1966 the Territory of Namibia (formerly South West Africa) is the direct responsibility of the United Nations,

Accepting that this responsibility includes the obligation to support the right of the people of Namibia to achieve self-government and independence in accordance with General Assembly resolution 1514 (XV) of 14 December 1960,

Reaffirming that the Government of the Republic of South Africa is in illegal possession of the Territory of Namibia,

Furthering the decision of the General Assembly in resolution 1803 (XVII) of 14 December 1962 which declared the right of peoples and nations to permanent sovereignty over their natural wealth and resources,

Noting that the Government of the Republic of South Africa has usurped and interfered with these rights,

Desirous of securing for the people of Namibia adequate protection of the natural wealth and resources of the Territory which is rightfully theirs.

Recalling the advisory opinion of the International Court of Justice of 21 June 1971,

Acting in terms of the powers conferred on it by General Assembly resolution 2248 (S-V) of 19 May 1967 and all other relevant resolutions and decisions regarding Namibia,

¹*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.*

Decrees that

1. No person or entity, whether a body corporate or unincorporated, may search for, prospect for, explore for, take, extract, mine, process, refine, use, sell, export, or distribute any natural resource, whether animal or mineral, situated or found to be situated within the territorial limits of Namibia without the consent and permission of the United Nations Council for Namibia or any person authorized to act on its behalf for the purpose of giving such permission or such consent;

2. Any permission, concession or licence for all or any of the purposes specified in paragraph 1 above whensoever granted by any person or entity, including any body purporting to act under the authority of the Government of the Republic of South Africa or the "Administration of South West Africa" or their predecessors, is null, void and of no force or effect;

3. No animal resource, mineral, or other natural resource produced in or emanating from the Territory of Namibia may be taken from the said Territory by any means whatsoever to any place whatsoever outside the territorial limits of Namibia by any person or body, whether corporate or unincorporated, without the consent and permission of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council;

4. Any animal, mineral or other natural resource produced in or emanating from the Territory of Namibia which shall be taken from the said Territory without the consent and written authority of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council may be seized and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

5. Any vehicle, ship or container found to be carrying animal, mineral or other natural resources produced in or emanating from the Territory of Namibia shall also be subject to seizure and forfeiture by or on behalf of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

6. Any person, entity or corporation which contravenes the present decree in respect of Namibia may be held liable in damages by the future Government of an independent Namibia;

7. For the purposes of the preceding paragraphs 1, 2, 3, 4 and 5 and in order to give effect to this decree, the United Nations Council for Namibia hereby authorizes the United Nations Commissioner for Namibia, in accordance with resolution 2248 (S-V), to take the necessary steps after consultations with the President.

4. WHEREAS the manner in which Namibian uranium is exploited, without the consent or permission of plaintiff, and the processing and purification which uranium has to undergo before it can be used in a nuclear reactor, can to the extent relevant in these proceedings be summarized as follows:
- a. in and near the Rössing mine in Namibia - the world's largest producing uranium mine - uranium ore is mined and from that ore a uranium-concentrate is produced, which is purchased by or on behalf of uranium users;
 - b. on the basis of such purchase, orders are placed by or on behalf of the user with a conversion plant, to which the uranium-concentrate is supplied, with an enrichment plant and with a fuel element fabrication plant, and pursuant to these orders
 - (1) the conversion plant - where the uranium from this concentrate is converted into uranium-hexafluoride - supplies, in exchange for the concentrate supplied to it and against payment of a conversion fee, uranium-hexafluoride on behalf of the user to the enrichment plant;
 - (2) the enrichment plant - where this uranium-hexafluoride is enriched as to uranium-235 - supplies, in exchange for the hexafluoride supplied to it and against payment of an enrichment fee, enriched uranium-hexafluoride on behalf of the user to the fuel element fabrication plant;

- (3) the fuel element fabrication plant - where this enriched uranium-hexafluoride is converted into enriched uranium-dioxide and this dioxide is processed into fuel elements - supplies, in exchange for the enriched hexafluoride supplied to it and against payment of a fabrication fee, fuel elements to the user;
 - c. these fuel elements are installed in a reactor of the user and are used for the production of electricity;
5. WHEREAS by carrying out orders which as described sub 4.b are placed on the basis of purchases of Namibian uranium-concentrate, the conversion, enrichment and fuel element fabrication plants are making indispensable contributions towards the exploitation of Namibian uranium, are profiting thereby and are furthering said exploitation;
6. WHEREAS defendant sub 1 - hereinafter also referred to as "Urenco Nederland" -, which is engaged in the business of enriching uranium, is carrying out, inter alia, orders which as described sub 4.b (2) are placed on the basis of purchases of Namibian uranium-concentrate;
7. WHEREAS defendant sub 3 - hereinafter also referred to as "the State" - has argued that, although it is to be assumed that at least part of the uranium-hexafluoride supplied to Urenco Nederland is of Namibian origin, defendants are not to blame therefor because Urenco Nederland cannot ascertain when and to what extent this is the case;

8. WHEREAS this argument cannot disculpate defendants
 - a. not only because Urenco Nederland can demand the assurance that no Namibian uranium-concentrate has been used in the production of the uranium-hexafluoride supplied to it,
 - b. but also and particularly because by carrying out an order which as described sub 4.b (2) is placed on the basis of a purchase of Namibian uranium-concentrate, the enrichment plant is making an indispensable contribution towards the exploitation of Namibian uranium, is profiting thereby and is furthering said exploitation regardless when and to what extent Namibian uranium-concentrate has been used in the production of the uranium-hexafluoride supplied to that plant;
9. WHEREAS Urenco Nederland, as well as Urenco (UK) and Urenco Deutschland oGH which are also engaged in the business of enriching uranium, and their respective managing partners, viz. defendant sub 2 - hereinafter also referred to as "UCN" -, British Nuclear Fuels PLC and Uranit GmbH, belong to the Urenco Group, which was formed after the conclusion of the Treaty of Almelo (Treaty Gazette 1970, 41) between the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland;
10. WHEREAS UCN
 - a. is participating, just as British Nuclear Fuels and Uranit GmbH, for one-third in Urenco Limited, which company acts as the marketing organization of the Urenco Group, concludes enrichment contracts on behalf of this group and co-ordinates the distribution of orders placed thereunder among Urenco Nederland, Urenco (UK) and Urenco Deutschland oGH,

b. is represented on the board of directors of Urenco Limited

and as managing partner is causing Urenco Nederland to act as described sub 6;

11. WHEREAS the State

a. is represented on the Joint Committee established by the Treaty of Almelo,

b. holds the majority of the shares in UCN,

and, through the rights it has pursuant to the Treaty of Almelo, as well as through the powers attached to its shareholding referred to sub b, the special rights granted to it in the articles of association of UCN and the powers of UCN with respect to Urenco Nederland, and through the powers it has otherwise, is able to decisively influence Urenco Nederland and UCN in order to prevent Urenco Nederland from acting as described sub 6 and UCN from causing Urenco Nederland to do so;

12. WHEREAS the State has declared

a. that it recognizes plaintiff as the sole legitimate administrator of Namibia with the power and task referred to sub 2, including plaintiff's power to enact the aforementioned Decree No. 1, as well as plaintiff's right to institute proceedings before the Dutch Courts;

b. that it supports the endeavours of plaintiff to safeguard the natural resources of Namibia for the people of Namibia;

- c. that, inter alia in view of the Security Council's Resolution No. 283 referred to sub 3(v), Namibian uranium should not be imported into the Netherlands, at any rate not for use in the Netherlands, and that no Namibian uranium is purchased by or on behalf of the Dutch electricity producers;
13. WHEREAS plaintiff highly appreciates this recognition and support, but is of the opinion that the State, in view of the norms referred to sub 3 and its declarations referred to sub 12, also has a duty to exercise its aforementioned influence in order to prevent Urenco from acting as described sub 6 and UCN from causing Urenco Nederland to do so;
14. WHEREAS Urenco Nederland by acting as described sub 6, UCN by causing Urenco Nederland to do so, and the State by allowing said conduct, are acting unlawfully vis-à-vis the people of Namibia, viz. infringing and contributing towards the infringement of the right to self-determination of the people of Namibia, the rights of that people with respect to the ownership and exploitation of the natural resources of Namibia, as well as the norms referred to sub 3 and in any case, in view of said rights and norms and the declarations referred to sub 12, are acting contrary to the diligence they are bound to observe vis-à-vis the people of Namibia and its natural resources;
15. WHEREAS defendants are not prepared to voluntarily agree to act or to refrain from acting as described below sub I, II and III, and plaintiff by virtue of its purpose, power and task is entitled to assert the claims formulated hereinafter;

THEREFORE

may it please the Court, to the extent possible by provisionally enforceable judgement,

- I to prohibit defendant sub 1 - Urenco Nederland - and defendant sub 2 - UCN - from carrying out, respectively from causing defendant sub 1 to carry out, any order of enriched uranium which as described in the writ of summons sub 4.b (2) is placed wholly or partly on the basis of a purchase of Namibian uranium-concentrate,

- II to instruct defendant sub 1 - Urenco Nederland - to submit to defendant sub 3 - the State - in furtherance of the supervision of the compliance with the injunction referred to sub I, before carrying out any order of enriched uranium, a written statement from the party by or on whose behalf the order is placed, confirming that the order is not placed as described in the writ of summons sub 4.b (2) wholly or partly on the basis of a purchase of Namibian uranium-concentrate;

with the provision that, in case defendant sub 1 carries out an order in violation of the injunction referred to sub I or sub II, defendants sub 1 and 2 shall be jointly and severally liable for the payment of a penalty to plaintiff in the amount of Dfls. 2.500,-- (two thousand five hundred Dutch guilders) for every kilogram separative work required to carry out that order;

III to instruct defendant sub 3 - the State -

- a. to use its best endeavours to see to it that defendants sub 1 and 2 refrain from carrying out, respectively from causing defendant sub 1 to carry out, any order of enriched uranium which as described in the writ of summons sub 4.b (2) is placed wholly or partly on the basis of a purchase of Namibian uranium-concentrate;
- b. to see to it that defendants sub 1 and 2 observe the injunction referred to sub II;
- c. if in any calendar year it has not learned of any order carried out by defendant sub 1 in violation of the injunction referred to sub I or sub II, to confirm this to plaintiff in writing before the first day of the month of March following that calendar year;

IV to order defendants to pay the costs of these proceedings.

The costs of this instrument are, for me, bailiff, Dfls.