

MEMORANDUM

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TO: Clients and Interested Parties
FROM: T. Michael Peay *TM*
RE: Namibia Seal Fur Skins Litigation Before the
U.S. Department of Commerce
DATE: March 24, 1976

In my February 25, 1976 memorandum to you, I reported that we had won an interim victory in preventing the Department of Commerce from granting the Fouke Company's request to import 70,000 seal skins per year from Namibia and South Africa into the United States (50,000 of which would come from Namibia, and the balance from South Africa). The status of our victory was rendered somewhat tentative because the Director of the National Marine Fisheries Service had ruled that he would provisionally disallow the importation of the 50,000 Namibian seal furs contingent upon his final ruling as to the effect of international law and policy matters on such importation.

We are pleased to report that on March 15, 1976 the Director's final decision was published in the Federal Register announcing that he upheld his earlier ruling of the importation of 50,000 Namibian seal skins. The Director said:

From the evidence of record it is clear to me that, under present circumstances, it would not be consistent with the foreign policy of the United States to waive the moratorium on importation to allow for the importation of skins of Cape fur seals harvested in Namibia.

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The probable necessary effect of the Director's ruling is to bar the importation of Namibian seal skins not only for the current year, but for as long as South Africa continues to illegally administer and continue its presence within Namibia. Thus, barring any drastic, unforeseen change of circumstances (such as either South African withdrawal from Namibia or a change in U. S. policy vis-a-vis Namibia), we will probably not have to relitigate this question at every annual seal harvest.

This is a major victory with important implications for future administrative litigation involving Namibia in which the Project could become involved. Co-counsel Goler T. Butcher and I were invited to write a brief note on this case for publication in the American Journal of International Law by its Editor-in-Chief, Professor Richard R. Baxter of the Harvard Law School.

Our clients in this proceeding have been Congressman Charles C. Diggs, Jr. and 13 other members of the Congressional Black Caucus, The American Committee on Africa; The Washington Office on Africa; The Episcopal Churchmen for South Africa; Theo-Ben Gurirab, Representative Plenipotentiary of the South West Africa Peoples Organization to the United Nations and to the Americas; The Center for National Security Studies; Elizabeth S. Landis, Esq.; David Kasume; and Michael I. Davis, Esq. As many as five lengthy briefs or other pleadings were filed on their behalf between our initial intervention in July, 1975 and January, 1976. Shortly before the Director's final ruling was issued, there was an abortive attempt by Senator Strom Thurmond (D-S. C.), three South Carolina Congressmen, the Fouke Company and others, to get the White House to override the Director's then impending decision. This was surely one instance in which the Department of State is deserving of commendation for its unwavering stance on the Namibia issue, even in the face of Commerce Department recalcitrance and insensitivity on that issue.

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Hence, we have succeeded in vindicating U. S. international legal obligations and foreign policy relating to Namibia, while precluding the South African Government from earning millions of U. S. dollars worth of foreign currency reserves from the would-be sale of Namibian seal furs to the United States. Attorney Goler Teal Butcher (of White, Fine and Verville in Washington, D. C.) and I look forward to participating in future litigation involving use of the domestic legal process as a means of isolating the repressive and racially discriminatory regime in South Africa. We will report to you regarding such litigation at the appropriate time.